

Rules of Procedure  
The Montgomery County Planning Board

February 24, 2022

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## **CHAPTER 1: AUTHORITY, PURPOSE AND SCOPE**

### **1.1 Authority**

These Rules of Procedure (the “Rules”) are adopted by the Montgomery County Planning Board (the “Planning Board” or “Board”) of the Maryland-National Capital Park and Planning Commission (the “Commission”) under the authority in the Annotated Code of Maryland, Land Use Article, § 20-101 et seq. These Rules supersede any other rules for the conduct of Board proceedings previously adopted by the Board.

### **1.2 Purpose**

The purpose of these Rules is to establish a reasonable and consistent process for the Planning Board to consider, hear, and/or act upon certain regulatory and other matters under Division II of the Land Use Article (the “Regional District Act”) and the Montgomery County Code. The Rules are intended to ensure fair and impartial treatment of each Applicant, Respondent, or Person who is interested in or may be aggrieved by an action; promote the orderly and efficient conduct of public proceedings convened to decide or discuss matters before the Board; and comply with applicable federal, state, and County laws.

### **1.3 Scope**

These Rules apply to the Board’s conduct of public proceedings, meetings and/or hearings on quasi-judicial matters such as any Application for: (a) Project Plan Amendment, Sketch Plan, Binding Pre-Preliminary Plan, Preliminary Plan of Subdivision, Administrative Subdivision, Site Plan, Record Plat, Forest Conservation Plan, Water Quality Plan, Adequate Public Facilities Determination, or any Amendment to any of them including Validity Period Extensions, and any other regulatory applications which may be created in the future which are subject to quasi-judicial review; (b) a Conditional Use, Special Exception or Variance, or any Amendment thereto; and, (c) a Local Map Amendment, or Amendment to a Floating Zone Plan. These Rules do not apply to the Board’s consideration of other matters, including but not limited to: i) studies, reports and analyses that are not undertaken as part of the matters described in paragraph (a) through (c) above; ii) decisions related to management of the Parks Department, its facilities, or operations; iii) consideration of Mandatory Referral matters (which are reviewed under the Uniform Standards for Mandatory Referral Review); iv) any alleged Violation (which is reviewed under the Planning Board Enforcement Rules); v) consideration of the administrative operations of the Commission or Planning Department, including without limitation personnel practices and procurement policies; and, v) any matters which are appropriate for consideration in closed session. Notwithstanding the above exclusions, all activities and actions of the Planning Board and Planning Staff are subject to Chapter III herein related to conflicts of interest, and Section 4.1 related to Planning Board Meetings.

### **1.4 Discretion to Use**

In the discretion of the Chair, and if consistent with applicable laws or regulations, these Rules may be used as a guide to conduct proceedings, meetings, or hearings on other matters such as but not limited to the General Plan, Master Plans or Sector Plans, and any amendments thereto; and Sectional Map Amendments, Corrective Map Amendments and District Map Amendments.

## CHAPTER 2: DEFINITIONS

### 2.1 Definitions.

In these Rules the following definitions apply.

“**Amendment**” means a decision by the Planning Board to amend a specific term, requirement, limit or condition, of any Planning Board Action.

“**Applicant**” means a Person who files an Application pursuant to Chapters 8, 19, 22A, 50, or 59 of the Montgomery County Code.

“**Application**” means a written request filed with the Commission by or on behalf of an Applicant, seeking Planning Board approval, recommendation or amendment of any of the following:

- (a) Project Plan Amendment under § 59-7.7 of the Zoning Code, which allows revisions until 2035 of prior approvals including Project Plans, pursuant to § 59-D-2.12 of the Zoning Code in effect on October 29, 2014;
- (b) Sketch Plan under § 59-7.3.3 of the Zoning Code;
- (c) Preliminary Plan of Subdivision under § 50-4 of the Subdivision Regulations;
- (d) Administrative Subdivision under § 50-6 of the Subdivision Regulations;
- (e) Binding Pre-Preliminary Plan under § 50-5 of the Subdivision Regulations;
- (f) Site Plan under § 59-7.3.4 of the Zoning Code;
- (g) Record Plat under § 50-8 of the Subdivision Regulations;
- (h) Determination of Adequate Public Facilities under Article IV, Chapter 8 or Chapter 50 of the Montgomery County Code;
- (i) Forest Conservation Plan under Chapter 22A of the Montgomery County Code;
- (j) Water Quality Plan under Chapter 19 of the Montgomery County Code;
- (k) Conditional Use under § 59-7.3.1 of the Zoning Code;
- (l) Special Exception Amendment under § 59-7.7, which allows revisions of old approvals;
- (m) Variance under § 59-7.3.2 of the Zoning Code;
- (n) Local Map Amendment for proposed rezoning under § 59-7.2.1 of the Zoning Code;  
or
- (o) Amendment to a Floating Zone Plan under § 59-7.2.1.I of the Zoning Code.

“**Business Day**” means a weekday that is not a Commission holiday.

“**Chair**” means the chair of the Planning Board or another member of the Planning Board presiding in that capacity.

“**Commission**” means the Maryland-National Capital Park and Planning Commission.

“**Day**” means a calendar day.

“**District Council**” means the Montgomery County Council, sitting as the District Council for that portion of the Maryland-Washington Regional District within Montgomery County, Maryland, pursuant to § 22-101(a) of the Regional District Act.

“**Hearing Officer**” means a person or body designated by the Planning Board to conduct hearings on an alleged Violation.

“**Party**” means an Applicant, Applicant’s consultant, Respondent, or other Person who participates in a proceeding covered by these Rules by submitting written testimony or evidence, presenting oral testimony or signing up to do so, or requesting to be made a Party.

“**Person**” means (a) an individual, partnership, corporation, association, joint stock company, public trust, or a receiver or trustee of any of them; (b) an organized group of individuals, whether incorporated or not; (c) a State, a municipality or other political subdivision of a State, the District of Columbia, any territory of the United States, or any agency of any of the foregoing; (d) any agency, authority, or instrumentality of the United States, or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such; and (e) a foreign government or any agency, authority, or instrumentality of a foreign government.

“**Planning Board**” or “**Board**” means the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.

“**Planning Board Action**” means (a) the approval by the Planning Board, with or without conditions, disapproval, continuance or postponement of any Application; or (b) the recommendation of the Planning Board to the Hearing Examiner, Board of Appeals or District Council on any Application.

“**Planning Board Public Meeting**” or “**meeting**” means a duly-noticed public meeting of the Planning Board at which a quorum is present and Planning Board Actions can be taken.

“**Planning Staff**” or “**Staff**” means any employee of the Commission assigned to process, review, report, or make recommendations of any sort to the Planning Board or Planning Director regarding the approval or disapproval of, or making of a recommendation on, any Application or County permit required for development.

“**Preliminary Matters**” means the portion of a Planning Board Meeting that includes (a)

approval of Planning Board Meeting minutes, (b) adoption of Planning Board Resolutions, (c) consideration of Petitions for Reconsideration, (d) appointments of staff, and (e) other ministerial items for the Planning Board's consideration, which may be decided without discussion and may be presented together for approval by a single vote, subject to the provisions in these Rules.

**“Public Hearing” or “hearing”** means a duly-noticed hearing held before the Planning Board, open to the public, and providing an opportunity for any Person, including the general public or Applicant, to appear and present written or oral evidence, cross examination, or rebuttal, all subject to the provisions in these Rules.

**“Quorum”** means a majority of the total membership of the Board (for example, five Board members requires at least three members to be present to transact business or take any Planning Board Action).

**“Regional District Act”** means Division II of the Land Use Article of the Annotated Code of Maryland, as amended.

**“Respondent”** means the Person, or the attorney or agent of that Person, charged with legal responsibility for an alleged Violation.

**“Subdivision Regulations”** means Chapter 50 of the Montgomery County Code, as amended.

**“Subject Property”** means all or part of a property or group of properties that is the subject of an Application for Planning Board Action.

**“Violation”** means an unauthorized or unlawful deviation from any term, condition, limit, or requirement of any Planning Board Action that is actionable under § 23-207 of the Regional District Act, § 50.10.6 of the Subdivision Regulations, § 59.7.8.1 or § 59.7.3.4.K of the Zoning Ordinance, or Chapters 19 (Erosion, Sediment Control & Stormwater Management) or 22A (Forest Conservation Law) of the County Code.

**“Zoning Ordinance” or “Zoning Code”** means Chapter 59 of the Montgomery County Code.

## **CHAPTER 3: CONFLICTS OF INTEREST AND EX PARTE COMMUNICATIONS**

### **3.1 Public Ethics Policy**

To promote confidence and trust in the conduct of public business, members of the Planning Board and Planning Staff must, at all times and in all respects, observe an affirmative obligation to disclose any actual, apparent or potential conflict of interest pertaining to any Application or action that is subject to the Planning Board's jurisdiction.

**3.1.1 Planning Board.** Members of the Planning Board must comply with applicable provisions of (a) the Maryland Public Ethics Law, (b) § 15-120 of the Regional District Act, (c) these Rules, and (d) any ethics rules adopted by the Commission.

**3.1.2 Planning Staff.** Any Planning Staff member who provides information or otherwise participates in any Planning Board proceeding to which these Rules apply must comply with any applicable provisions of the Maryland Public Ethics Law and any ethics rules

adopted by the Commission.

## 3.2 Outside/Ex Parte Communications

- 3.2.1 **Policy.** To preserve public confidence in the fairness of Planning Board deliberations and decisions, the Planning Board must ensure that the public, the Applicant, and any interested Person has the opportunity to know, and respond to, all information that the Planning Board considers in making its decisions. The Planning Board may take administrative notice of facts in common knowledge and matters falling within any member's experience and expertise, as disclosed by that member, in reaching a decision on a matter. The Planning Board's *ex parte* rules, as enumerated in this section, apply only to those matters identified in § 1.3(a), (b), and (c) of these Rules, or as otherwise required by law.
- 3.2.2 **Planning Board's Obligation to Avoid Improper Contacts.** When considering any matter subject to these *ex parte* rules, every Person, whether it be the general public or the Applicant, needs the assurance that other Persons will not have an unfair advantage in presenting their version of the relevant facts or concerns to the Planning Board. To that end, Planning Board members must avoid communicating with Applicants or any other Person, outside of the Commission, about a pending Application subject to these *ex parte* rules, except at Planning Board Meetings when the Application is considered and as set forth in this section.
- 3.2.3 **Prohibitions.** Each Planning Board member must not communicate with any Person, other than Planning Staff, Planning Board legal counsel or another Planning Board member, about the merits or facts of any pending Application subject to the *ex parte* rules, except during the Planning Board Meeting when the Application is being considered. If the Planning Board finds that any Person has intentionally communicated or attempted to communicate with a Planning Board member in violation of this Rule, the Planning Board may impose an appropriate sanction, including but not limited to deferral of the Planning Board Action concerning that Application for a period of up to 6 months or exclusion of any testimony by the Person from the record of the matter to which the prohibited communication pertained.
- 3.2.4 **Disclosure of Unsolicited Communications.** If a Planning Board member receives unsolicited communications about a pending Application subject to the *ex parte* rules outside of a Planning Board Meeting, the member must ensure that the communication is included in the record of the pending Application by sending it to the Chair's office, or disclose and describe the communications at the earliest opportunity during the Planning Board's consideration of the Application.
- 3.2.5 **Scope of Rule.** Nothing provided in this § 3.2 applies to any member of the Planning Staff or Planning Board legal counsel. Subject only to the applicable provisions of the Maryland Open Meetings Act, nothing in this § 3.2 applies to or otherwise restricts any member of the Planning Board from communicating with any other Board member, Planning Staff member, or Board legal counsel for the purpose of obtaining information or advice. This § 3.2 also does not restrict any Board member from communicating with any third party in connection with any other matter that is not subject to these *ex parte* rules.

## CHAPTER 4: PROCEDURES FOR PUBLIC MEETINGS

### 4.1 Policy and Nature of Planning Board Public Meetings

The Planning Board must seek to conduct public hearings and meetings in a fair and efficient manner that permits a thorough exploration of relevant issues of fact and law. The Board must give timely notice of hearings to Applicants and the public to allow them to prepare comments on Staff reports and Applications. The Planning Board's decision on each Application must be based on applicable legal standards and the evidence and argument, if applicable, in the record, whether in written, oral, or exhibit form. The Board may also rely on the knowledge, experience, and observations of its members, and facts in common knowledge.

4.1.1 **Presiding Officer.** The Chair is the presiding officer at any meeting or hearing held by the Planning Board and must conduct each proceeding in a manner that permits the development of a complete record, provides a reasonable opportunity for any Person to be heard, and ensures the efficient administration of the regulatory process. The Chair has the authority to call the meeting/hearing to order, rule upon preliminary matters, limit or exclude irrelevant or duplicative evidence or testimony, take actions to maintain decorum and order, close the public hearing or record, and take any other action authorized by these Rules to conduct the public hearing or meeting, subject to applicable laws and regulations. If the Chair is absent for any reason, the Vice-Chair will preside.

4.1.2 **Format of Public Meetings.** The Board may hold its public meetings, including public hearings, in person or in a partially or completely virtual mode, through video conference, teleconference, or other electronic means consistent with the requirements of the Maryland Open Meetings Act. The location and/or format of the public meeting will be posted on the Planning Board website and included in any notice provided by Planning Staff.

### 4.2 Participation in Public Hearings

The Board welcomes testimony from the public at its hearings whether it is in-person or by videoconference, teleconference or other electronic means. Any Person who wishes to provide oral testimony must sign up to speak through the website or contact the Chair's office, no later than 12 noon on the day prior to the public hearing. Any Person who wishes to submit written evidence or exhibits must provide those items to the Chair's office, via email, fax or regular mail as indicated on the website, no later than 12 noon on the day prior to the public hearing. At the discretion of the Chair, the record may be kept open for a specified period to receive written testimony or exhibits. Each Person offering oral testimony should summarize major points that are more fully discussed in written testimony and refrain from repeating what others have already said. Because hearings conducted under these Rules are quasi-judicial in nature, those participating in the hearing are advised to observe general rules of decorum and address only the issues relevant to the decision before the Board.

### 4.3 Notice of Public Hearings

Planning Staff must provide written notice to the Applicant and all Persons entitled to notice at least ten (10) days before the Public Hearing on an Application and post notice on the Board website of the hearing date, time, and format or location, or provide such notice as is otherwise required by applicable law or regulation including the Planning Board's Administrative

Procedures for Development Review. The notice and web posting must specify where and how Persons may examine the Application file and participate in the hearing.

#### **4.4 Scheduling Subject to Staff Report**

Except in exceptional circumstances as determined by the Chair, the Public Hearing on an Application, except for Special Exception Amendment, Conditional Use, Variance or Local Map Amendment, must be held at least ten (10) days after the Staff report is published on the Board website, unless otherwise required by law or regulation including the Planning Board's Administrative Procedures for Development Review. The Chair must set the date, time, and location of each Public Hearing.

#### **4.5 Rules of Evidence**

Any Public Hearing conducted under these Rules need not conform strictly to the rules of evidence or procedure that govern judicial proceedings. The Board must accept evidence with the goal of developing a full record that assists the Board in its deliberations. The Board may consider relevant evidence, which, based on its experience and expertise, has probative value and assists in reaching a decision. Hearsay evidence, if relevant, may normally be accepted. The Chair will rule on any objections to the admission of evidence and also has discretion to exclude any irrelevant, immaterial, or unduly repetitious testimony or material.

#### **4.6 Requests to Present Rebuttal Testimony and Cross-Examine Witnesses**

The Chair will rule on requests for cross-examination and for rebuttal testimony and may set reasonable limits on the scope, duration and form of such cross-examination or rebuttal testimony. Rebuttal testimony must be brief and limited to refutation of testimony or other material already on the record. If a request to cross-examine is granted, the questions on cross-examination must (a) be brief, (b) pertain only to the testimony of the witness being cross-examined, (c) be interrogatory and not argumentative, (d) not be preceded by statements, and (e) not discuss personality or motives. The Chair may reject any question as out of order or objectionable.

#### **4.7 Guidelines for Public Hearings**

In the Chair's sole discretion, time limits for each segment of a Public Hearing may be set, including limits on the time for individual speakers, the total time permitted for oral testimony, and the order of presentations, questions, statements, and testimony. These guidelines will be posted on the Board's website and/or outside of the hearing room.

**4.7.1 Testimony Under Oath.** All Persons providing testimony or submitting evidence to the Board must swear or affirm that the responses given and statements made therein will be the whole truth and nothing but the truth. The Chair or Planning Staff may administer the oath or affirmation, or witnesses may take the oath or affirmation in writing as part of the process of signing up to testify.

**4.7.2 Limits on Testimony.** The Chair may exclude or otherwise limit any testimony that is irrelevant, immaterial, or unduly repetitious. Witnesses who have provided written testimony or materials should avoid duplication in the record by not reading from their written testimony but rather should use their oral testimony to highlight important points or supplement their written testimony with other relevant information.

#### **4.8 Representation of Organizations**

Any individual who presents written or oral testimony on behalf of an organization, including but not limited to a civic association or homeowner's association, must state for the record at the outset of their presentation the name of the organization and whether the organization has authorized the substance of that testimony.

#### **4.9 Exhibits**

Any exhibit, model, video or audio recording, or other demonstrative evidence to be presented for consideration by the Board as part of a Public Hearing subject to these Rules, must be submitted to the Chair's office no later than 12 noon on the day prior to the hearing. Any Person who proposes to make use of such exhibit or evidence should give Planning Staff sufficient notice to make appropriate arrangements for the exhibit or evidence to be presented. The Chair will rule, at or before the Public Hearing, on the admissibility of any exhibit submitted into the record. Any exhibit or other material entered into the record becomes the property of the Commission and will not be returned. Staff's presentation is not subject to this section.

#### **4.10 Postponement or Continuance of Hearing**

4.10.1 **Postponement.** Prior to the start of a Public Hearing, the Chair may postpone the Public Hearing on any matter covered by these Rules on the Chair's own motion or at the request of any other Board member, Planning Staff, Applicant, or Party.

4.10.2 **Continuance.** At any time after convening a Public Hearing, the Planning Board may, by a majority vote of those present and voting, recess the hearing and continue it to another date, place, and time. Any Board member may move to continue a hearing on the member's own initiative or upon request of the Planning Staff, the Applicant, or any other interested Person (subject to the Applicant's consent, if expressly required by law). If the date, time, and place of a continued hearing is announced on the record, no further notice is required.

4.10.3 **Public Notice of a Continued Hearing.** If the date, time and place of a continued hearing is not announced on the record at the Public Hearing when the continuance is granted, notice of the date, time and place of the rescheduled hearing must be provided in the same manner as the original notice of hearing was provided.

#### **4.11 Board Vote and Resolution**

4.11.1 **Board Decisions.** The Planning Board may approve, with or without conditions, disapprove, or make a recommendation on an Application, on motion of any Board member. Any motion to approve an Application, or recommend approval, with conditions must specify the conditions to which the approval or recommendation is subject. Any motion to deny, or recommend denial of, an Application should state the reasons for such denial or recommendation.

4.11.2 **Attendance and Abstention.** A Board member must abstain from the vote on an Application for which they did not attend the proceeding, whether virtual or in-person, or review the record.

4.11.3 **Vote and Closing of Record.** If the Board votes to approve, approve subject to

conditions, or disapprove an Application, the record of proceedings before the Board must be closed, except as may be needed to clarify the record at the discretion of the Chair.

4.11.4 **Board Resolution.** The Board's adoption of a resolution embodying its decision is the final action in matters subject to these Rules, except for Special Exception Amendments, Conditional Uses, Variances and Local Map Amendments for which only a letter or recommendation is forwarded to the appropriate decision maker. Resolutions may be approved at a subsequent Board Meeting without discussion, or may be approved simultaneously with the Board's decision on a matter as part of a Public Hearing. The Board's consideration of a resolution does not reopen the record of any proceeding that was previously closed.

4.11.5 **Correcting Errors in Resolutions.** After the Board adopts a resolution, the Planning Director must promptly report any error discovered in the resolution to the Board and present a corrected resolution to the Board for adoption. The validity period for an approved Application with a corrected resolution remains the same and the initiation date remains 30 days from the date of mailing indicated on the original resolution.

#### 4.12 **Reconsideration of Resolution**

4.12.1 **Petition to Reconsider.** The Planning Director or any Party may petition the Board to reconsider its decision on any Application decided by resolution and covered by these Rules, within ten (10) days after the date of mailing of the resolution. Any request for reconsideration must be in writing and be filed with the Planning Director. The Chair may waive the filing deadline for good cause shown. Any Party (including the Planning Director) who requests reconsideration must serve a copy of its petition on every other Party. The petition for reconsideration must specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.

4.12.2 **Decision to Reconsider.** The Chair must schedule any petition for reconsideration for Board consideration as soon as practicable. A motion to reconsider may be made only by a member of the Planning Board who voted in the majority on the decision that is subject to reconsideration. The motion passes if it receives the vote of a majority of the Board members present and voting and each member voting on the motion participated in the decision to be reconsidered or read/viewed the record of the proceeding. A motion to reconsider: (a) does not require notice to the public or the Parties other than by publication as part of the Planning Board's Agenda, (b) may be taken without the appearance or testimony of the Parties, and (c) is properly before the Planning Board based only on a petition filed under this Rule or a motion made under this Rule without a petition. If the Planning Board votes to reconsider, the applicable previously adopted resolution is void.

4.12.3 **Notice of Public Hearing on Matters Reconsidered.** After the Board votes to reconsider a resolution, the Chair must promptly schedule a Public Hearing on the issues cited in approving the request for reconsideration and any related issues. At least ten (10) days before the hearing, the Planning Staff must notify all Parties of: (a) the Planning Board's decision to reconsider the resolution; (b) the date of the hearing; and (c) a

reasonable summary of the reasons for reconsideration.

#### **4.13 Preliminary Matters**

- 4.13.1 **Scope.** The Board's may take any of the following actions as Preliminary Matters: (a) approval of Planning Board Meeting minutes, (b) adoption of Planning Board Resolutions, (c) consideration of Petitions for Reconsideration, (d) appointments of staff, and (e) other ministerial items for the Planning Board's consideration, which may be decided without discussion and may be presented together for approval by a single vote, subject to the provisions in these Rules.
- 4.13.2 **Vote.** At the Chair's discretion, but subject to these Rules, the Planning Board may take a single vote on all items listed as Preliminary Matters, or vote on each item, or any group of items, separately. The vote on a motion to approve Preliminary Matters, or any subset of them, constitutes the approval of each item covered by the motion. A Board member must not vote on a resolution if that member did not participate in or review the record of the underlying Board Action.
- 4.13.3 **Notice of Preliminary Matters.** Preliminary Matters do not require mailing or other notice, but will be included on the Board's agenda which is posted on the website, when information is available.
- 4.13.4 **Board Request for Discussion.** Discussion regarding any Preliminary Matters is not permitted, except that a Board member may seek clarification regarding a Preliminary Matter from the Planning Staff. However, a Board member may move to have discussion of a Preliminary Matter as provided in § 4.13.5 of these Rules.
- 4.13.5 **Motion for Discussion of Preliminary Matter.** If any Board member moves to have discussion or a separate vote on a Preliminary Matter, such discussion or separate vote must be held. No other Person, other than a Board member, may request that a Preliminary Matter be opened for discussion or separate vote.
- 4.13.6 **Abstention.** A Board member may abstain from the vote on any Preliminary Matter, but must state the reason for abstaining on the record. A Board member's abstention under this Rule does not require a Preliminary Matter to be opened for discussion or separate vote, unless the number of members abstaining results in the lack of a quorum to vote on the item.

### **CHAPTER 5: MISCELLANEOUS PROVISIONS**

#### **5.1 Time**

In computing any period of time under these Rules, the day on which that period of time begins is not included. If the period would otherwise expire on a day that is not a Business Day, the period is automatically extended to expire on the next Business Day.

#### **5.2 Disclaimer of Maryland Administrative Procedures Act**

A hearing conducted under these Rules is not an "agency hearing" under the contested case provisions of the Maryland Administrative Procedures Act, Maryland Annotated Code, State

Government Article, §§ 10-201 et seq., and that Act is not applicable.

### **5.3 Parliamentary Rules**

Parliamentary procedure in a meeting of the Planning Board is informal. The Chair must conduct meetings in a manner that provides interested Persons notice of matters to be decided and the opportunity to be heard (where applicable) and to ensure the fair, orderly, and efficient administration of the Planning Board's duties.

### **5.4 Majority Vote**

Any Planning Board Action requires a quorum of the Board to be present, either in person or virtually, and a majority vote of those present to vote in favor of a motion to approve, approve with conditions, or deny, or to make such recommendations as applicable. If the Board's final vote is tied such that there is no majority vote, an Application for which the Applicant has the burden of proof shall be deemed denied, or recommended as such, and a resolution or recommendation shall be issued reflecting that determination.

5.4.1 **Record Plat Vote.** Notwithstanding the above § 5.4, for Record Plat applications, if the Board's final vote is tied such that there is no majority vote within 30 days after the Record Plat Application's submittal, the Record Plat shall be deemed approved pursuant to the Land Use Article § 23-201, unless the Applicant consents to an extension.

### **5.5 Annual Review**

Staff will conduct an annual review of these Rules for the Board to determine whether amendments are needed. Any proposed amendments to the Rules will be noticed on the Board's public meeting agenda and considered at a Public Hearing.

### **5.6 Severability**

If a court holds any provision of these Rules (or the application of any Rule to any Person or circumstance) to be invalid or unenforceable, the rest of these Rules (or the application of that provision to other Persons or circumstances) are not affected by that holding, but are valid and enforceable to the fullest extent permitted by law.

###