

ATTACHMENT B

## Rules of Procedure

The Montgomery County Planning Board

## CHAPTER I: AUTHORITY, PURPOSE, AND SCOPE

### 1. Authority, Purpose and Scope.

- 1.1. **Authority.** These rules (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 Maryland Code Article 28 § 7-111. Certain Rules are adopted as regulations under § 59-D-3.9 of the Zoning Ordinance. These rules supersede any other rules for the conduct of hearings that the Board previously adopted.
- 1.2. **Purpose.** The purpose of these Rules is to establish a reasonable and consistent process for the Planning Board to consider, hear, and act upon certain regulatory matters under 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 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 hearings on (a) any Application for Project Plan, Binding Pre-Preliminary Plan, Preliminary Plan of Subdivision, Site Plan, Record Plat, Special Building Permit, Forest Conservation Plan, Water Quality Plan, or any Amendment to any of them; and (b) any alleged Violation. The Board may, in its discretion, apply these Rules to the conduct of other matters.

## CHAPTER II: DEFINITIONS

### 2. Definitions.

- 2.1. **Applicability.** In these Rules the following definitions apply.
- 2.2. **Definitions.**
  - 2.2.1 “**Amendment**” means a decision by the Planning Board to amend a specific term, requirement, limit or condition, of any Planning Board Action.
  - 2.2.2 “**Applicant**” means a Person who files an Application pursuant to Chapter 19, 22A, 50, or 59 of the Montgomery County Code.

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

- (a) A Project Plan for approval of a proposed development under § 59-D-2.12 of the Zoning Ordinance;
- (b) A Preliminary Plan (of Subdivision or Re-subdivision) for approval of proposed development under § 50-34 of the Subdivision Regulations;
- (c) A Binding Pre-Preliminary Plan for approval of a proposed development under § 50-33A or § 50-35A(a)(8) of the Subdivision Regulations;
- (d) A Site Plan under § 59-D-3 of the Zoning Ordinance;
- (e) A Record Plat for a proposed development under § 50-8 of the Subdivision Regulations;
- (f) A determination of adequate public facilities under Article IV, Chapter 8 of the Montgomery County Code;
- (g) A Forest Conservation Plan under Chapter 22A of the Montgomery County Code;
- (h) A Water Quality Plan under Chapter 19 of the Montgomery County Code;

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

2.2.5 “**Chairman**” means the chairman of the Planning Board or another member of the Planning Board presiding in that capacity.

2.2.6 “**Consent Agenda**” means one or more of a limited set of proposed Planning Board Actions, including (a) approval of certain Amendments, (b) adoption of Planning Board Resolutions, or (c) approval of Record Plats, presented together for approval by a single vote under these Rules.

2.2.7 “**Day**” means a calendar day.

2.2.8 “**District Council**” means the Montgomery County Council, sitting in its capacity as the District Council for that portion of the regional district under § 8-101(a) of the Regional District Act.

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

- 2.2.10 “**Party**” means an Applicant, Respondent, or other Person, who has achieved party status in a proceeding governed by these Rules.
- 2.2.11 “**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 persons, 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.
- 2.2.12 “**Planning Board**” means the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission.
- 2.2.13 “**Planning Board Action**” means (a) the approval by the Planning Board, with or without conditions, or disapproval, of any Application, or (b) the imposition by the Planning Board of a Plan of Compliance or Corrective Order based on a determination of Violation.
- 2.2.14 “**Planning 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 any Application, County permit required for development, or an alleged Violation.
- 2.2.15 “**Regional District Act**” means Article 28 of the Maryland Code.
- 2.2.16 “**Respondent**” means the Person, or the attorney or agent of that Person, charged with legal responsibility for an alleged Violation.
- 2.2.17 “**Subdivision Regulations**” means Chapter 50 of the Montgomery County Code.
- 2.2.18 “**Subject Property**” means all or part of a property or group properties that is the subject of an Application for Planning Board Action.
- 2.2.19 “**Violation**” means an unauthorized or unlawful deviation from any term, condition, limit, or requirement of any Planning Board Action that is actionable under § 7-116(h) of the Regional District Act or § 50-41, § 59-A-1.3, § 59-D-3, or Chapters 19 or 22A of the County Code.
- 2.2.20 “**Zoning Ordinance**” means Chapter 59 of the Montgomery County Code.

## CHAPTER III: 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 alleged Violation 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) Maryland Code Article 28, § 2-115, (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 ethics rules adopted by the Commission.

### 3.2. Outside Communications.

3.2.1. **Policy.** To preserve public confidence in the fairness of Planning Board deliberations and decisions, the Planning Board should ensure that the public and interested Persons have the opportunity to know, and respond to, all information that the Planning Board considers in making its decisions. The Planning Board should also ensure that all members have the same opportunity to know and consider any relevant evidence provided to any other Planning Board member. The 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 apply only to those matters identified in Rule 1.3.

3.2.2. **Planning Board's Obligation to Avoid Improper Contacts.** When considering any matter decided under these Rules, the Planning Board deals with Persons who are directly affected by its decision (such as the Applicant and neighbors of a proposed subdivision site). Each of these interested Persons needs the assurance that other interested Persons will not have an unfair advantage in presenting their version of the relevant facts or concerns to the Board. To that end, Board members must avoid communicating with Applicants or any other Persons about a pending Application except at Board meetings when the Application is considered. The Planning Director must regularly publish a roster of pending Applications in appropriate detail to avoid violations of this Rule.

3.2.3. **Prohibitions.** Each Planning Board member must not communicate with any Person, other than Planning Staff or another Board member, about the merits or facts of any pending Application or alleged Violation, except during the Board meeting when the Application or alleged Violation is being considered. If the Board finds that any Person has intentionally communicated or attempted to communicate with a Board member in violation of this Rule, the Board may impose an appropriate sanction, including deferral of the 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 or alleged Violation outside of a Board meeting, the member must disclose and describe the communications at the earliest opportunity during the Board's consideration of the proposal.
- 3.2.5 **Scope of Rule.** Nothing provided in this § 3.2 applies to any member of the Planning Staff. 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 matter other than an Application or alleged Violation covered by these Rules.

## **CHAPTER IV: RULES OF PROCEDURE FOR PUBLIC HEARINGS**

### **4. Policy and Nature of Public Hearings before the Planning Board.**

The Planning Board must seek to conduct public hearings in a fair and efficient manner that permits a thorough exploration of the issues of fact and law to be decided. The Board must give timely notice of hearings to Applicants and the public to allow them to review and prepare comments on staff reports and Applications. The Board's decision on each Application must be based on applicable legal standards and the evidence and argument in the record of the hearing, 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 Public Hearings before the Planning Board.**

The Planning Board must hold a public hearing to receive testimony for any matter governed by these Rules, with the exception of matters placed on the Consent Agenda under Rule 4.13. The Board welcomes testimony from the public and interested Persons at its hearings. If any Person wishes to bring to the Board's attention complex data, reports, or arguments, that Person should submit the material in writing before the hearing. The Board may limit the time allotted for oral testimony. The Board may leave the record open to receive written testimony. Each Person offering oral testimony should summarize major points that are more fully discussed in written testimony and refrain from repetitious oral testimony. Because hearings conducted under these rules are quasi-judicial in character, those presenting testimony are advised to observe general rules of decorum and address only the issues before the Board.

#### **4.2 Presiding Officer.**

The Chairman is the presiding officer at any hearing held by the Planning Board and has broad discretion to conduct hearings in any manner that permits the development of a complete administrative record and provides a reasonable opportunity for interested

Persons to be heard. If the Chairman is absent for any reason, the Vice-Chairman or another member of the Board will preside.

**4.3 Notice of Public Hearings.**

Except for Project Plans, notice for which is governed by § 59-D-2.22, the Planning Staff must provide written notice to the Applicant and all Persons previously notified at least 10 days before the public hearing on an Application, and post notice on the Board web site, of the hearing date, time, and location. The notice and web posting must specify where and how Persons may examine the Application file.

**4.4 Scheduling Subject to Staff Report.**

Except for Project Plans or in exceptional circumstances as determined by the Chairman or the Board, the public hearing on an Application must be held at least 10 days after the staff report is published on the Board web site. The Chairman must set the date, time, and location of each hearing. For a Project Plan, the public hearing on an Application must be held at least 15 days after the staff report is published on the Board web site.

**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 its reaching a decision. Hearsay evidence, if relevant, may normally be accepted. The Chairman may exclude from evidence any irrelevant, immaterial, or unduly repetitious material. The Chairman must rule on any objections to the admission of any evidence.

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

In order to promote an open public exchange and a collaborative environment in public hearings conducted under these Rules, the Chairman may grant the request of an Applicant or any Person representing an organization or Person offering testimony to offer rebuttal testimony. Rebuttal testimony must be brief and be intended to refute testimony already on the record. The Chairman may allow cross-examination if the matter proposed for cross-examination cannot reasonably be addressed through rebuttal testimony or if the denial of a request to cross-examine would result in undue prejudice under the circumstances. If a request to cross-examine is granted, the questions on cross-examination must (a) be brief, (b) pertain only to that witness's testimony, (c) be interrogatory and not argumentative, (d) not be preceded by statements, and (e) not discuss personality or motives. The Chairman may reject any question as out of order or objectionable.

**4.7 Guidelines for Hearings with Testimonial Evidence.**

The Chairman may set time limits for each segment of a public hearing, including limits on the time for individual speakers and the total time permitted for oral testimony, and deadlines for the filing of written or documentary evidence. Any time limits must consider the total amount of time available to conduct the hearing, the number of Persons who request to be heard, and the overall breadth and complexity of the matters to be considered by the Planning Board. The Chairman must announce any time limits

imposed as soon as possible, but no later than when the hearing is convened. In any hearing where the Planning Board receives testimonial evidence, the order of proceedings must be:

4.7.1 **Opening Statements.** On convening the hearing, the Chairman must briefly explain the purpose of the hearing and give each Board member an opportunity to disclose for the record in reasonable detail the substance any outside communication related to the subject of the hearing.

4.7.2 **Sequence of Testimony.** In most cases, the Board should follow the sequence of presentations shown below. The time limits are guidelines only. The Chairman may increase or decrease any time based on the issue and number of Parties before the Board.

<b><u>Guidelines for Sequence of Public Hearing</u></b>	<b>Time Limit (minutes)</b>
a. Staff Report	10
• Project Description	
• Applicable Regulatory Standards	
• Summary of Staff Analysis and Recommendation	
b. Applicant Testimony	15
• Exceptions Taken to Staff Report (Required)	
c. Government Officials testimony	7
d. Authorized Representatives testimony:	10
• Civic Associations	
• Homeowners Associations	
• Recognized civic entities	
• Other organized parties	
e. Adjoining or Abutting Property Owners testimony (if not already presented)	5
f. Individual Testimony	3
g. Rebuttal testimony as appropriate or reserved	-

4.7.3 **Requests for More Time.** To request more time to present testimony at a hearing, any Person should notify the Chairman’s office as soon as possible of how much time they request to present their testimony at the hearing.



4.7.4 **Duplicative Testimony.** The Chairman may require Persons with comparable positions in support or opposition to divide available time to present testimony, and the Chairman may modify the time limits accordingly. Individuals and organizations that have provided written testimony or materials should avoid duplication in the record by not reading verbatim text as oral testimony; but rather should use their oral testimony to highlight important points or supplement their written testimony with other relevant information.

4.7.5 **Board Questions.** Board members may ask questions at any time during a public hearing. Board members should consolidate the questions to any witness in a manner that is efficient under the circumstances of each hearing.

4.8 **Representation of Organizations.**

Any individual who presents written or oral testimony on behalf of a civic association, homeowners association, civic entity, or other organization must state for the record at the outset of their presentation whether the organization has authorized the substance of that testimony. If an individual does not make this statement before offering oral testimony, the Chairman may impose the time limit that applies to the testimony of Individuals, rather than the limit that applies to Authorized Representatives.

4.9 **Exhibits.**

Any exhibit, model, or demonstrative evidence presented by Planning Staff, the Applicant, or any other Person as an element of its oral or written testimony before the Board, must be assigned an exhibit number by the Chairman and marked and identified for the record by the Planning Staff. The Person presenting an exhibit must provide a brief description of it. The Chairman must rule on the admissibility of each exhibit into the record. Any exhibit allowed to be introduced becomes part of the administrative record. The exhibit or an accurate representation of it must be given to the Planning Staff when it is admitted into the record. Each exhibit entered into the record becomes the property of the Commission and must not be returned. Any Person who expects to present an exhibit or other demonstrative evidence should advise Planning Staff sufficiently before the hearing so that staff can make appropriate arrangements for its presentation.

4.10 **Postponement, Recess, or Continuance of Hearing.**

4.10.1 **Postponement.** Any Board member, Planning Staff, or Party of Record may ask the Chairman to postpone a public hearing. The Chairman may postpone a public hearing in his or her discretion.

4.10.2 **Recess and Continuance.** At any time after convening a public hearing the Planning Board may 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). A motion to recess or adjourn the

hearing and continue it at another time must be approved by a vote of a majority of the members of the Board present and voting. 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 during the public hearing that is continued, the date, time and place of the rescheduled hearing must be published and announced as soon as practicable on the Board web site and mailed to all Parties by Planning Staff.

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

4.11.1 **Board Decisions.** The Planning Board may approve, with or without conditions, or disapprove an Application or make a finding with respect to an alleged Violation, on motion of any Board member. Any motion to approve an Application with conditions must specify the conditions to which the approval is subject.

4.11.2 **Vote and Closing of Record.** If the Board votes to approve, approve subject to conditions, or disapprove an item, the record of proceedings before the Board must be closed.

4.11.3 **Board Resolution.** The Board's adoption of a Resolution embodying its decision is the final action in matters subject to these Rules. The Board's consideration of a Resolution does not reopen the record of any proceeding that was previously closed. Resolutions may be placed on the Board's Consent Agenda for adoption.

4.11.4 **Correcting Errors in Resolutions.** After the Board adopts a Resolution, the Planning Director may note any error in the Resolution and must promptly report the error to the Board and place a corrected Resolution on the Board's Consent Agenda.

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

4.12.1 **Petition to Reconsider.** The Planning Director or any Party may petition the Board to reconsider a Resolution within ten 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 Chairman 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 Chairman 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 the record of the proceeding. A motion to reconsider (a) does not require notice to the public or the Parties other than by publication on the Planning Board agenda, (b) may be taken without the appearance or testimony of the Parties of Record, 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 reconsidered Resolution is void.

4.12.3 **Notice of Public Hearing on Matters Reconsidered.** After the Board reconsiders a Resolution, the Chairman must promptly schedule a public hearing. At least 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.

4.12.4 **Hearing on Matters Reconsidered.** The Board must conduct a public hearing as scheduled. The scope of the hearing must include the reason the Board cited for reconsideration of the Resolution and any other issue that the Board deems to be related.

#### 4.13 **Consent Agenda.**

4.13.1 **Scope of Rule.** The Planning Board may, without holding a public hearing, take any of the following actions in a Consent Agenda:

- a. approve, with or without conditions, an Amendment to a previously approved plan if the proposed Amendment and any conditions are supported by Planning Staff and not opposed by any Party;
- b. adopt a Resolution to take a Board Action that the Board previously approved in substance;
- c. approve a Record Plat of subdivision under § 50-8 of the Subdivision Regulations.

4.13.2 **Notice of Consent Agenda.** The Planning Staff must provide written notice of any item on a Consent Agenda, except Resolutions, by website or other publication readily available to the public at least 10 days before the Board meeting during which the Consent Agenda is scheduled.

4.13.3 **Board Action.** The Chairman must not allow any public testimony or discussion regarding any item on the Consent Agenda, but a Board member may seek clarification regarding a Consent Agenda item from the Planning Staff. The Board must act on all items on a Consent Agenda by a

single motion for approval, but a Board member may move to sever any item as provided in Rule 4.13.4. A Board member must not vote on a Resolution in the Consent Agenda if that member did not participate in or review the record of the underlying Board Action. The vote to approve the Consent Agenda constitutes the approval of each item as if it had been acted on individually.

4.13.4 **Removal of Item from Consent Agenda.** Any item on a Consent Agenda must be severed from the Agenda if any Board member so moves. Any Person may request that an item be severed from a Consent Agenda. After an item is severed, the Board may act separately on the item or, if appropriate, schedule a public hearing on it.

4.13.5 **Abstention.** A Board member may abstain from the vote on any item on the Consent Agenda. The abstaining member should state the reason for abstaining on the record (including, where applicable, the member's absence when the Planning Board considered or voted on the item). A Board member's abstention under this Rule does not require an item to be severed unless the number of members abstaining results in the lack of a quorum to vote on the item.

#### 4.14 **Consent Agenda for Record Plats.**

4.14.1 Each Record Plat appearing on the Consent Agenda must be accompanied by a Certificate of Compliance submitted by the Applicant, together with a brief Planning Staff Report to (a) confirm that the Staff has reviewed the Application for a Record Plat and that the Application conforms to the requirements of any applicable Preliminary Plan of Subdivision, Certified Site Plan, and all other applicable regulations; and (b) express an unqualified Staff recommendation to approve that Final Plat.

#### 4.14.2 **Action on Severed Plat.**

If any Record Plat is severed from the Consent Agenda for Record Plats, a motion to approve, table, or re-refer to the Planning Staff is then in order.

### **CHAPTER V: MISCELLANEOUS REGULATIONS**

#### 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.**

Any 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 does not apply to that

hearing.

5.3 **Parliamentary Rules.**

Parliamentary procedure in a meeting of the Planning Board is informal. However, if required to keep order, the Chairman may apply Robert's Rules of Order to resolve any parliamentary issue not specifically covered by these Rules.

5.4 **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.

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