

## Rules of Procedure

### The Montgomery County Planning Board

~~CHAPTER 1: CHAPTER I: AUTHORITY, PURPOSE, AND SCOPE~~

~~1. Authority, Purpose and Scope.~~

February 2022

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## CHAPTER 1: AUTHORITY, PURPOSE AND SCOPE

### 1.1 Authority-

These ~~rules~~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 ~~Maryland Code Article 28~~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.

~~§ 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/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 (a) 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, Special Building Permit, Forest Conservation Plan, Water Quality Plan, Adequate Public Facilities Determination, or any Amendment to any of them; and (b) 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. The (which is reviewed under the Planning Board may, in its- 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, apply- of the Chair, and if consistent with applicable laws or regulations, these Rules may be used as a guide to the conduct of other matters 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 II:~~

**CHAPTER 2: DEFINITIONS**

**2.1 Definitions.**

~~Applicability.~~ In these Rules the following definitions apply.

~~1.1. Definitions.~~

“**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 ~~Chapter~~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) A Project Plan for approval of a proposed development~~ Amendment under § 59-~~D-~~
- (a) 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 Ordinance Code in effect on October 29, 2014;
- ~~(b) A Preliminary Sketch~~ Plan (under § 59-7.3.3 of the Zoning Code;
- ~~(b)(c) Preliminary Plan of Subdivision or Re-subdivision) for approval of proposed development~~ under § 50-~~344~~
- ~~(d) — A Administrative Subdivision under § 50-6 of the Subdivision Regulations;~~
- ~~(e)(e) Binding Pre-Preliminary Plan for approval of a proposed development~~ under § 50-~~33A or § 50-35A(a)(8)5~~ of the Subdivision Regulations;
- ~~(d)(f) A Site Plan under § 59-D-7.3.4 of the Zoning Ordinance Code;~~
- ~~(e)(g) A Record Plat for a proposed development~~ under § 50-8 of the Subdivision Regulations;
- ~~(f)(h) A determination of adequate public facilities~~ Determination of Adequate Public Facilities under Article IV, Chapter ~~8~~ 8 or Chapter 50 of the Montgomery County Code;
- ~~(g)(i) A Forest Conservation Plan under Chapter 22A of the Montgomery County Code;~~
- ~~(h)(j) — A 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.

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

~~1.1.2 — “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.~~

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

“**Day**” means a calendar day.

“**District Council**” means the Montgomery County Council, sitting ~~in its capacity~~as the District Council for that portion of the ~~regional district under § 8~~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 ~~has achieved party status~~ participates in a proceeding ~~governed~~ 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 ~~persons~~ 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, ~~or disapproval,~~ continuance or postponement of any Application; or (b) the ~~imposition by recommendation of the Planning Board of a Plan to the Hearing Examiner,~~ Board of Compliance Appeals or Corrective Order based District Council on a determination of Violation 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, ~~or an alleged Violation.~~

“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 28 of the Annotated Code of Maryland ~~Code~~, 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 § ~~7-116(h)~~ 23-207 of the Regional District Act ~~or~~, § ~~50-41.10.6~~ of the Subdivision Regulations, § ~~59-A-7.8.1~~ or § 59.7.3, § 59-D-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 III:~~

**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 ~~alleged Violation~~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) ~~Maryland Code Article 28, § 2-115~~§ 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 ~~should~~must ensure that the public, the Applicant, and any interested ~~Persons have~~Person has 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~~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 ~~Rule~~§ 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 ~~decided under~~subject to these ~~Rules, ex parte rules, every Person, whether it be the Planning Board deals with Persons who are directly affected by its decision (such as general public or 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 Planning Board. To that end, Planning Board members must avoid communicating with Applicants or any other ~~Persons~~Person, outside of the Commission, about a pending Application subject to these ex parte rules, except at Planning Board ~~meetings~~Meetings when the Application is considered. ~~The Planning Director must regularly publish a roster of pending Applications and as set forth in appropriate detail to avoid violations of this Rules section.~~

~~3.2.1.~~—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 ~~or alleged Violation~~ subject to the *ex parte* rules, except during the Planning Board ~~meeting~~ Meeting when the Application ~~or alleged Violation~~ 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

- 3.2.3 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~~ subject to the ex parte rules outside of a Planning Board meeting Meeting, the member must disclose and describe the communications at the earliest opportunity during the Planning Board's consideration of the proposal Application. Further, any such written communications should be forwarded to the Chair's office.
- 3.2.5 **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 other than an Application or alleged Violation covered by that is not subject to these Rules ex parte rules.

## CHAPTER 4: ~~CHAPTER IV: RULES OF PROCEDURE~~ PROCEDURES FOR PUBLIC HEARINGS MEETINGS

### 4.1 Policy and Nature of ~~Public Hearings before the 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 the relevant 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 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 ~~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.

4.1.1 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 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~~ The Board welcomes testimony from the public and interested Persons at its hearings. ~~If any~~ whether it is in-person or by videoconference, teleconference or other electronic means. Any Person who 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 provide oral testimony. ~~The Board 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 leave the ~~record~~ 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 ~~repetitious oral testimony, repeating what others have already said.~~ Because hearings conducted under these ~~rules~~ Rules are quasi-judicial in ~~character~~ nature, those ~~presenting testimony~~ participating in the hearing are advised to observe general rules of decorum and address only the issues relevant to the decision before the Board.

**4.1 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~~ entitled to notice at least ten (10) days before the ~~public hearing~~ Public Hearing on an Application, and post notice on the Board ~~web site, website~~ of the hearing date, time, and ~~location, 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 for Project Plans or~~ in exceptional circumstances as determined by the ~~Chairman or the Board, the public hearing~~ 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~~ Staff report is published on the Board ~~web site website, unless~~ otherwise required by law or regulation including the Planning Board's Administrative Procedures for Development Review. The ~~Chairman~~ Chair 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.~~ Public Hearing.

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

Any ~~public hearing~~ 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~~ 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. ~~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~~ The Chair will rule on requests for cross-examination 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~~ 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 ~~be intended~~ limited to ~~refutation of~~ refutation of testimony or other material 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~~ 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 ~~Chairman~~ Chair may reject any question as out of order or objectionable.

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

~~The Chairman may set~~In the Chair's sole discretion, time limits for each segment of a ~~public hearing~~Public Hearing may be set, 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 the order of proceedings must be:

- 4.1.1—**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.

**Sequence of Testimony.** In most cases, the Board should follow the sequence of presentations shown below. The time limits are, questions, statements, and testimony. These guidelines only. The Chairman may increase or decrease any time based will be posted on the issue Board's website and number/or outside of Parties before the Board hearing room.

**Guidelines for Sequence of Public Hearing**

|  | T<br>i<br>m<br>e<br>L<br>i<br>m<br>i<br>t<br>(<br>m<br>i<br>n<br>u<br>t<br>e<br>s<br>) |
|--|--|
| Staff Report                                   | 1  |
| •—Project Description                          | 0  |
| •—Applicable Regulatory Standards              |  |
| •—Summary of Staff Analysis and Recommendation |  |
| Applicant Testimony                            | 1  |
| •—Exceptions Taken to Staff Report (Required)  | 5  |
| Government Officials testimony                 | 7  |
| Authorized Representatives testimony:          | 1  |
| •—Civic Associations                           | 0  |
| •—Homeowners Associations                      |  |
| •—Recognized civic entities                    |  |
| •—Other organized parties                      |  |

~~Adjoining or Abutting Property Owners testimony (if not already presented) 5~~

~~Individual Testimony 3~~

~~Rebuttal testimony as appropriate or reserved -~~

~~4.1.2 **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.~~



~~4.7.1 **Duplicative Testimony. The Chairman 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 require Persons with comparable positions in support or opposition to divide available time to present testimony, and the Chairman take the oath or affirmation in writing as part of the process of signing up to testify.~~

~~4.7.14.7.2 **Limits on Testimony.** The Chair may modify the time limits accordingly. Individuals and organizations that 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 **verbatim text as oral** from their written testimony; but rather should use their oral testimony to highlight important points or supplement their written testimony with other relevant information.~~

~~4.1.3 **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 an organization, including but not limited to a civic association, homeowners or homeowner's association, civic entity, or other organization 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. ~~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 video or audio recording, or other~~ demonstrative evidence presented by 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 Applicant, or any other Person as an element of its oral or written testimony exhibit or evidence to be presented. The Chair will rule, at or 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 Public Hearing, on the admissibility of each any exhibit submitted 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 exhibitor other material entered into the record becomes the property of the Commission and must will 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 Staff's presentation is not subject to this section.

#### **4.10 Postponement, Recess, or Continuance of Hearing-**

Postponement.

4.10.1 ~~Postponement.~~ ~~Any~~ 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 of Record may ask the Chairman to postpone a public hearing. The Chairman may postpone a public hearing in his or her discretion.

4.1.4 ~~Recess and~~ Continuance. At any time after convening a ~~public hearing~~ 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). ~~A motion to recess or adjourn the~~

4.10.2 ~~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,~~ 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 ~~published and announced~~ provided in the same manner as soon as practicable on the Board web site and mailed to all Parties by Planning Staff ~~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, ~~or disapprove, or make a recommendation on~~ an Application ~~or make a finding with respect to an alleged Violation,~~ 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.

4.11.24.11.3 **Vote and Closing of Record.** If the Board votes to approve, approve subject to conditions, or disapprove an ~~item~~ 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.

4.11.34.11.4 **Board Resolution.** The Board's adoption of a ~~Resolution~~ 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~~ 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.~~

4.11.44.11.5 **Correcting Errors in Resolutions.** After the Board adopts a ~~Resolution~~ resolution, the Planning Director ~~may note any error in the Resolution and~~ must promptly report ~~the any~~ error discovered in the resolution to the Board and ~~place present~~ a corrected ~~Resolution on the Board's Consent Agenda.~~ 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 ~~a Resolution~~ 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~~ resolution. Any request for reconsideration must be in writing, and be filed with the Planning Director. The ~~Chairman~~ 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 ~~Chairman~~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 ~~on~~as part of the Planning ~~Board agenda~~Board's 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~~applicable previously adopted resolution is void.

4.12.3 **Notice of Public Hearing on Matters Reconsidered.** After the Board ~~reconsiders~~votes to reconsider a ~~Resolution~~resolution, the ~~Chairman~~Chair must promptly schedule a ~~public hearing~~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~~resolution; (b) the date of the hearing; and (c) a reasonable summary of the reasons for reconsideration.

~~4.1.5—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.~~

#### ~~4.2—Consent Agenda:~~

~~4.2.1—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.~~

~~4.2.2—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 Board Action. The Chairman must not allow any public testimony or discussion—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.

~~4.2.3—Board Request for Discussion. Discussion regarding any item on the Consent Agenda, but Preliminary Matters is not permitted, except that a Board member may seek clarification regarding a Consent Agenda item Preliminary Matter from the Planning Staff. The Board must act on all items on a Consent Agenda by a~~

~~4.12.44.13.4~~ single motion for approval, but However, a Board member may move to ~~sever any item~~ have discussion of a Preliminary Matter 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.~~ 5 of these Rules.

~~4.12.54.13.5~~ Removal Motion for Discussion of Item from Consent Agenda. ~~Any item on a Consent Agenda must be severed from the Agenda if Preliminary Matter.~~ If any Board member ~~so~~ moves ~~Any~~ 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 ~~an item~~ a Preliminary Matter 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~~ opened for discussion or separate vote.

~~4.12.64.13.6~~ Abstention. A Board member may abstain from the vote on any ~~item on the Consent Agenda. The abstaining member should~~ Preliminary Matter, but must 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 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.

#### ~~4.3~~ Consent Agenda for Record Plats.

~~4.3.1~~ 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.

#### ~~4.3.2~~ 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:~~

## ~~CHAPTER 5: MISCELLANEOUS~~ REGULATIONS 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.

~~Any~~ 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 ~~does~~ not ~~apply to that~~applicable.



~~hearing.~~

### **5.3 Parliamentary Rules:**

~~Parliamentary procedure in a meeting of the Planning Board is informal. However, if required~~The Chair must conduct meetings in a manner that provides interested Persons notice of matters to keep order, be decided and the Chairman may apply Robert's Rules of Order opportunity to resolve any parliamentary issue not specifically covered by 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.

### **5.45.6 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.

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