

# Rules of Procedure

## The Montgomery County Planning Board

February 2022

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

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

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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 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 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 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) ~~A~~ Sketch Plan under § 59-7.3.3 of the Zoning Code;
- (c) ~~A~~ Preliminary Plan of Subdivision under § 50-4 of the Subdivision Regulations;
- (d) ~~An~~ Administrative Subdivision under § 50-6 of the Subdivision Regulations;
- (e) —~~A~~ Binding Pre-Preliminary Plan under § 50-5 of the Subdivision Regulations;
- (f) ~~A~~ Site Plan under § 59-7.3.4 of the Zoning Code;
- (g) ~~A~~ Record Plat under § 50-8 of the Subdivision Regulations;
- (h) ~~A~~ Determination of Adequate Public Facilities under Article IV, Chapter 8 or Chapter 50 of the Montgomery County Code;
- (i) ~~A~~ Forest Conservation Plan under Chapter 22A of the Montgomery County Code;
- (j) —~~A~~ Water Quality Plan under Chapter 19 of the Montgomery County Code;
- (k) ~~A~~ Conditional Use under § 59-7.3.1 of the Zoning Code;
- (l) ~~A~~ Special Exception Amendment under § 59-7.7, which allows revisions of old approvals;
- (m) ~~A~~ Variance under § 59-7.3.2 of the Zoning Code;
- (n) ~~A~~ Local Map Amendment for proposed rezoning under § 59-7.2.1 of the Zoning

Code; or

(o) ~~An~~ 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.

~~1.1.1. “**Consent Agenda**” means the portion of a Planning Board Meeting that includes Procedural Matters and Summary Hearing Matters, which may be decided without discussion and may be presented together for approval by a single vote, subject to the provisions in these Rules.~~

“**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.

~~1.1.2. “**Full Hearing**” means a duly noticed public hearing before the Planning Board wherein any Person, including a member of the public, the Applicant or Planning Staff, has the opportunity to present oral or written testimony on a particular Application, and the Planning Board will hear, discuss and consider such testimony, subject to the provisions in these Rules.~~

“**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, ~~or~~ disapproval, continuance or postponemnt 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 ~~as part of the Consent Agenda, Regular Agenda or consideration of individual items.~~

“**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.

“**Procedural Preliminary Matters**” means ~~that~~ 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 Consent Agenda that includes the adoption of resolutions, approval of meeting minutes, approval of requests for regulatory review extensions or hearing dates, and other similar matters consideration, which may be ~~acted on~~ decided without discussion and may be presented together for approval by a ~~singular~~ single vote, ~~unless a Planning Board member requests that an item be removed pursuant~~ subject to the provisions in these Rules.

“**Public Hearing**” or “**hearing**” means a duly-noticed ~~Summary Hearing or Full Hearing~~ 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.

1.1.3. “**Regular Agenda**” means ~~that portion of a Planning Board Meeting that is not part of the Consent Agenda, and includes but is not limited to Full Hearings, worksessions, requests for reconsideration, and other matters to be considered or acted upon by the Planning Board.~~

“**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.

~~1.1.4. “Summary Hearing Matters” means those matters included on the public hearing portion of the Planning Board’s Consent Agenda which includes Applications for which there is no known opposition and that may be acted on by the Board without discussion, based on the evidence in the record, unless a Person, Planning Staff, Applicant or Board member requests that an item be moved to a Full Hearing pursuant to these Rules.~~

“**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: ~~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 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 ~~should~~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 disclose and describe the communications at the earliest opportunity during the Planning Board's consideration of the 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 that is not subject to these *ex parte* rules.

~~CHAPTER 4:~~

~~CHAPTER 5:~~CHAPTER 4: ~~CHAPTER IV: RULES OF PROCEDURE~~ PROCEDURES FOR PUBLIC MEETINGS

5.14.1 Policy and Nature of Planning Board Public Meetings

~~5.2~~

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.



5.2.14.1.1 **Presiding Officer.** The Chair is the presiding officer at any meeting or hearing held by the Planning Board and ~~has broad discretion to~~ must conduct ~~them~~ 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.

5.2.24.1.2 **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.

#### ~~4.1~~ **Public Hearings before the Planning Board.**

#### 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.

~~4.1.1~~ **Summary Hearing Matters.** ~~The Board may place certain Applications or items on the Consent Agenda as part of Summary Hearing Matters, which may be decided without discussion, based on the evidence of record, if there is no request to provide testimony or evidence or to otherwise move the item to a Full Hearing. However, if a request is made pursuant § 4.13.8 of these Rules, no later than 12 noon on the day prior to the scheduled Summary Hearing, to provide oral or written testimony or otherwise remove an Application from the scheduled Summary Hearing to a Full Hearing, a Full Hearing will be scheduled. The Chair will assess, based on the schedule of the Board, whether that Application can be scheduled for a Full Hearing on the same day, or will be scheduled for a later date. Applicants and those requesting removal for a Full Hearing should be prepared to present evidence at the Full Hearing on the same day as the scheduled Summary Hearing.~~

~~4.1.2 **Full Hearing.** The Board may schedule any item for a Full Hearing pursuant to these Rules.~~

**5.34.3 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.

**5.44.4 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.

**5.54.5 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.

**5.64.6 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.

**5.74.7 Guidelines for Full Public Hearings-**

In the Chair's sole discretion, time limits for each segment of a Full 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.

**5.7.14.7.1 -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.

5.7.24.7.2 **Public 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.

**5.84.8 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.

**5.94.9 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.

**5.104.10 Postponement or Continuance of Hearing-**

5.10.14.10.1 **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 ~~of Record~~.

5.10.24.10.2 **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.

5.10.34.10.3 **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.

**5.114.11 Board Vote and Resolution-**

5.11.14.11.1 **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.

**5.11.24.11.3 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.

**5.11.34.11.4 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 ~~placed on approved at~~ a subsequent Board ~~Meeting's Consent Agenda as part of Procedural Matters for adoption~~ Meeting without discussion, or may be approved simultaneously with the Board's decision on a matter as part of a ~~Summary Hearing or Full Public~~ Public Hearing. The Board's consideration of a resolution does not reopen the record of any proceeding that was previously closed.

**5.11.44.11.5 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 ~~place~~ present a corrected resolution ~~on to~~ the ~~Board's Consent Agenda as part of Procedural Matters~~ 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.

## **5.12.4.12 Reconsideration of Resolution.**

**5.12.14.12.1 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.

**5.12.24.12.2 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 ~~Regular~~ 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.

~~5.12.34.12.3~~ **Notice of Public Hearing on Matters Reconsidered.** After the Board votes to reconsider a resolution, the Chair must promptly schedule a ~~Full~~**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.

#### ~~4.2~~ **Consent Agenda.**

~~4.2.1~~ **Scope.** ~~The Board's Consent Agenda includes Procedural Matters and Summary Hearing Matters.~~

#### **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.~~

~~4.2.2~~ **Vote.** At the Chair's discretion, but subject to these Rules ~~and the opportunity for removal to a Full Hearing~~, the Planning Board may take a single vote on all items listed ~~on its Consent Agenda~~ as Preliminary Matters, or vote on each item, or any group of items, separately.

~~5.12.44.13.2~~ **Procedural Matters.** ~~The Board may include the adoption of resolutions, the adoption of meeting minutes, the approval of requests for extension of review or hearing date, and other similar decisions as part of its consideration of Procedural~~ The vote on a motion to approve Preliminary Matters. Any Board member may request that an item be removed from Procedural Matters for the purpose of discussion and/or individual vote, pursuant to § 4.13.7 of these Rules, 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.

~~4.2.3~~ **Summary Hearing Matters.** ~~The Board may consider and take action, based on the record, on certain Applications and/or amendments thereto, as permitted by law and regulations, as Summary Hearing Matters, unless a request is made to remove the item and schedule it for a Full Hearing pursuant to § 4.13.8 of these Rules.~~

~~4.2.4~~ **Notice of Consent Agenda.** ~~The Planning Staff must provide written notice of~~

any item on a Consent Agenda, except for Procedural Matters, by website or other publication readily available to the public, at least ten (10) days before the Board Meeting during which the Consent Agenda is scheduled. For items on the Summary Hearing Calendar, Planning Staff must provide notice as may be required for a particular Application pursuant to applicable laws and regulations, including the Board's Administrative Procedures for Development Review.

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.

~~5.12.54.13.4~~ Board Action.~~Request for Discussion.~~ Discussion regarding any ~~item on the Consent Agenda~~Preliminary Matters is not permitted, ~~but except that~~ a Board member may seek clarification regarding a ~~Consent Agenda item~~Preliminary Matter from the Planning Staff. ~~A~~However, a Board member may move to ~~sever any item from the Procedural Matters portion of the Consent Agenda~~have discussion of a Preliminary Matter as provided in § 4.13.7 of these Rules, or ~~remove any item from the Summary Hearing Matters as provided in § 4.13.8 of these Rules.~~ ~~A Board member must not vote on a resolution that is part of Procedural Matters if that member did not participate in or review the record of the underlying Board Action. The vote on a motion to approve the Consent Agenda, or any subset of items on the Consent Agenda, constitutes the approval of each item covered by the motion.~~5 of these Rules.

~~4.2.5~~ ~~Removal of Item from Procedural Matters.~~ Any item must be severed from the Procedural Matters Motion for a separate vote or discussion if Discussion of Preliminary Matter. If any Board member ~~so moves to have discussion or a separate vote on a Preliminary Matter, such discussion or separate vote must be held.~~ No other Person may request removal of an item from Procedural Matters.

~~5.12.64.13.5~~ Removal of Item from Summary Hearing Matters. ~~Any item scheduled as a Summary Hearing Matter must be removed and scheduled for,~~ other than a Full Hearing when any of the following occurs: i) ~~any Board member requests, may request that a Full Hearing;~~ ii) ~~the Planning Director or Planning Staff request a Full Hearing;~~ iii) ~~the Applicant requests a Full Hearing;~~ Preliminary Matter be opened for discussion or iv) ~~any Person submits a timely request to provide testimony, submit comments or otherwise remove the item to a Full Hearing pursuant to § 4.2.1 of these Rules. When an item is removed from the Summary Hearing Calendar it may be considered at a Full Hearing on the originally scheduled hearing date or may be scheduled for a Full Hearing at a later date, at the discretion of the Chair. Any Person, Staff and Applicant, wishing to participate in the Full Hearing, must be prepared to do so on the day of the originally scheduled Summary Hearing.~~ separate vote.

~~5.12.74.13.6~~ 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. 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.

~~CHAPTER 6:~~CHAPTER 5:~~CHAPTER V:~~ MISCELLANEOUS ~~REGULATIONS~~PROVISIONS

6.15.1 ~~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.

6.25.2 ~~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.

6.35.3 ~~Parliamentary Rules.~~

Parliamentary procedure in a meeting of the Planning Board is informal. The Chair ~~has broad discretion to~~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.

6.45.4 ~~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.

~~6.4.15.4.1~~ 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.

6.55.6 ~~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.