



FREDERICK COUNTY PLANNING COMMISSION

January 8, 2020

TITLE: Amendments to the FCPC Rules of Procedure

FILE NUMBER: N/A

REQUEST: The Planning Commission will consider revisions to its Rules of Procedure, specifically to add provisions allowing the Director of Development Review to sign minor subdivision plats, Preliminary Plans, and Final Plats on behalf of the Planning Commission.

PROJECT INFORMATION:

ADDRESS/LOCATION: N/A
TAX MAP/PARCEL: N/A
COMP. PLAN: N/A
ZONING: N/A
PLANNING REGION: N/A
WATER/SEWER: N/A

APPLICANT/REPRESENTATIVES:

APPLICANT: N/A
OWNER: N/A
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: Mike Wilkins, Director, Development Review and Planning

RECOMMENDATION: Approve the proposed changes to the Rules of Procedure.

ATTACHMENTS:

EXHIBIT 1- Revised Rules of Procedure

BACKGROUND

Section 9 of the Planning Commission's Rules of Procedure states:

The Commission may delegate some of its authority to the Chairman in order to expeditiously and efficiently perform the work of the Commission. This would include such items as the signing of subdivision plats and letters when the Commission has approved such documents. In the absence of the Chairman, the Vice-Chair, or Secretary may perform this work in order to expeditiously dispose of these administrative matters.

Frederick County has implemented a new Development Review and Permitting software program. This new program requires the electronic submittal of development plans, thus eliminating paper signature sets on most application types. The new approval stamping and signature process is electronic and requires training and access to the new software programs.

Other counties in Maryland require the Director of Planning or Development Review (department names vary) to sign plans that have received Planning Commission approval. For example, plans in Washington County and Carroll County are signed by the Director of the appropriate Department, not by a member of the Planning Commission.

Staff presented these changes to the FCPC at their December 11, 2019 public meeting, where the FCPC voted in favor of moving forward with a public hearing on the proposed amendments to the Rules of Procedure at its January 8, 2020 Planning Commission meeting. The required 14 day public notice was met via advertisement in the Frederick New Post.

DISCUSSION

A final draft of the amended Rules of Procedure is attached. The only change is the addition of a new sentence at the end of Section 9, as shown in **bold** below, and the removal of text as shown in strikethrough below:

The Commission may delegate some of its authority to the Chairman in order to expeditiously and efficiently perform the work of the Commission. This would include such items as the signing of ~~subdivision plats and~~ letters when the Commission has approved such documents. In the absence of the Chairman, the Vice-Chair, or Secretary may perform this work in order to expeditiously dispose of these administrative matters. **The Director of Development Review is authorized to sign minor subdivision plats, and to sign preliminary subdivision plans and final subdivision plats that have been approved by the Commission.** (01-20-99) (09-15-04)(__ - __ -19)

RECOMMENDATION

Staff recommends that the Commission approve the proposed changes.

RULES OF PROCEDURE

of the

FREDERICK COUNTY PLANNING COMMISSION

December 11, 1973, as adopted with Amendments to _____, 2019

EFFECTIVE _____, 2019

Sections with Substantive Amendments noted by date (00-00-00)

FOREWORD

The Rules of Procedure are issued to assist the Frederick County Planning Commission, its staff and other County agencies in the orderly and efficient conduct of all matters with which the Commission is concerned.

OBJECTIVE

The Frederick County Planning Commission seeks to conduct all business which may properly come before it by law or custom to secure the harmonious development of the entire County for the benefit of its present and future inhabitants. The Commission will conduct its business in accordance with the applicable provisions of the Land Use Article of the Annotated Code of Maryland as well as these Rules of Procedure. (01-20-99)

SECTION 1 – DEFINITIONS

- 1.1 The word “Commission” shall refer to the County Planning Commission.
- 1.2 “Recognized Organization” shall mean any group that has provided to the Commission all of the following: (a) a copy of its bylaws, which must be adopted at least 90 days prior to the Commission meeting, and (b) a formally executed resolution from their board of directors (or similar governing body) authorizing the person(s) speaking on behalf of the organization for that matter. (10-19-05)
- 1.3 “Regular Meeting” shall mean a meeting at which a majority of the membership of the Commission (a quorum) is present.
- 1.4 “Rules” shall mean these Rules of Procedure.

SECTION 2 – OFFICERS AND COMMITTEES

- 2.1 The Commission shall organize annually in the month of September and confirm the election of a Chairman, Vice-Chairman and Secretary. (10-19-05). Except to the extent a Commission member refuses to accept the position, the order of succession shall be as follows: (1) the Chairman shall be the member with highest current continuous Commission service; (2) the Vice-Chairman shall be the member with second highest current continuous Commission service; and the Secretary shall be the member with third highest current continuous Commission service. When determining the order of succession, Commission members who

have not served as an officer during their current term shall take precedence over those who have previously served as an officer during their current term of continuous service. (09-13-17).

- 2.2 The Chairman or in the Chairman's absence, the Vice-Chairman or Secretary, shall preside at all meetings or hearings of the Commission. In the absence of an officer, the member with most current continuous Commission service shall preside. The presiding officer shall decide on all points of order and procedure, subject to these Rules, unless otherwise directed by a majority of the Commission members present. (01-20-99) (10-19-05)
- 2.3 The Secretary shall sign plats and other documents required to be signed by the Planning Commission. In the absence of the Secretary, either the Chairman or the Vice-Chairman shall sign these documents. (09-13-17)
- 2.4 Special committees may be appointed by the Commission for special purposes or study.

SECTION 3 – MEETINGS

- 3.1 Regular meetings shall be held on the 2nd and 3rd Wednesdays of each month. If additional time is needed, the (4th) Wednesday shall also be set aside as a regular meeting date. The staff shall give each member 48 hours or more notice of change of date of the meeting. (02-14-79) (01-20-99) (09-15-04)
- 3.2 Special meetings and workshops may be called by the Chairman or in the Chairman's absence the Vice-Chairman. Reasonable notice of a special meeting shall be given each member, 48 hours or more before said meeting. Meetings requiring advertisement or other notice may be called only after the appropriate notice or advertisement is provided. (01-20-99)
- 3.3 Attendance – It shall be the duty of each member to attend all meetings. Should any member be absent from one-half or more of all meetings held during the year, the Commission shall recommend to the County Executive that the member's resignation be requested, unless determined by vote of a majority of Commission members that there is a sufficient excuse for non-attendance.

SECTION 4 – VOTING

- 4.1 A quorum shall consist of a majority of the existing membership of the Commission.
- 4.2 The order of business shall be in accordance with the agenda.
- 4.3 Questions put to a vote are decided by a majority of the members present and voting, assuming a quorum is present. No decision may be made in the absence of a quorum.
- 4.4 A tie vote by the Commission shall be interpreted as a failure to approve the motion upon which the vote was taken. Additional motions may then be

proposed. If a tie vote remains on an advisory matter, the Commission's action shall be deemed as "No Recommendation". If a motion cannot be approved on non-advisory matters (i.e., subdivision, site plan, etc.) then the matter shall be deemed "not approved" but may be brought back before the Commission on another date at the request of the Applicant. (01-20-99)

- 4.5 No member shall vote on a matter in which he or she has personal involvement or as otherwise specified in the County's Ethics Ordinance. Members recusing themselves from a Commission matter shall leave the room for the duration of the matter being considered. Members are encouraged to consult the Commission's counsel as to the propriety of their voting on any matter which may involve a conflict of interest. (01-20-99) (10-19-05)
- 4.6 In order to be eligible to vote, a member must attend all relevant meetings or review the audio, video or transcript of any meetings from which the member was absent. (01-20-99)
- 4.7 Members' votes shall be recorded on each motion. A member present but not voting in an audible or visible manner shall have his or her vote counted as affirmative, unless the member specifically signifies a negative or other vote or abstention. The Chairman shall announce the results of each vote. (01-20-99) (09-15-04)
- 4.8 As required by law, decisions of the Commission will be made based on the evidence and information presented at the Commission's public meeting or hearing, and evidence submitted in accordance with Section 6.5.(b) below or Section 6.6.(d) below. The Commission 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. (08-13-14)(09-13-17)

SECTION 5 – CONDUCT OF COMMISSION MEMBERS

- 5.1 Speaking for the Commission – A member will not speak or appear to speak for the Commission except as authorized by the Commission. In any public or private statement concerning Commission affairs, members will carefully indicate whether they are speaking for the Commission or for themselves.
- 5.2 Ethics Ordinance – Commission members are subject to and must comply with the County Ethics Ordinance. (01-20-99)
- 5.3 Conduct at meetings – Members shall conduct themselves at Commission meetings in a fair, understanding, and gracious manner. They shall seek to be considerate of all individuals, attitudes, and differences of opinion involved in official Commission business.
- 5.4 Being recognized – Commission members shall only speak after being recognized by the Chairman. (09-15-04)

- 5.5 Ex Parte Communications - It is important to maintain the impartiality and integrity of the Commission; it is also important that Commission decisions be based on information presented in public documents and during open and public meetings. Therefore, Commission members shall refrain from ex parte communications (meaning communications that occur outside a formal Planning Commission meeting) regarding matters that are likely to come before the Commission for decision. If a Commission member receives an unsolicited communication(s) about a pending application or decision outside of a Commission meeting, the member must disclose and describe the communications at the earliest opportunity during the Commission's consideration of the application or decision. Subject to the applicable provisions of the Maryland Open Meetings Act, Section 11.2 of the Rules, and the County's Ethics Ordinance, nothing in this section applies to or otherwise restricts any member of the Commission from communicating with any other Commission member or staff member, including the Commission's legal counsel, for the purpose of obtaining information or advice. (09-13-17)

SECTION 6 – MEETINGS

- 6.1 All agenda items that require an advertised public hearing shall be preceded by notices as prescribed by law and these Rules. Public notices shall appear in a local newspaper of general circulation at least 14 days before the meeting date unless otherwise specified by the law. Written notice, if required, shall be given to adjacent property owners at least 7 days before the hearing date. (04-12-77) (09-15-04)
- 6.2 Commission meetings shall be public meetings and subject to the Maryland Open Meetings Act. Any person is entitled to appear before and be heard by the Commission before it reaches a decision on any matter. Except as otherwise permitted by the Maryland Open Meetings Act, voting shall be held during a public meeting and the Commission shall keep an open record of its resolutions, proceedings and actions, which shall be available for public inspection during business hours. Nothing contained herein shall be construed to prevent the Commission from holding closed session meetings for discussion of items as permitted under the Maryland Open Meetings Act. (04-12-77) (01-20-99)
- 6.3 Recording of Proceedings – It shall be the duty of the Secretary, assisted by the Commission's staff, to keep a true and accurate record of all proceedings at all meetings and public hearings. A video or audio recording may be accepted as the official record. Minutes shall be prepared, distributed to the individual members, and if approved by the Commission, placed in a record book or file. The Secretary or presiding officer at the meeting shall sign the minutes, resolutions, and other official documents, as adopted or approved.
- 6.4 Anyone may appear on his or her own behalf or be represented by an agent or attorney at a Commission meeting. In the absence of any appearance on behalf of the Applicant, the Commission will proceed to dispose of the matter on record before it or may table the item. A tabled item will only be rescheduled upon submission of a proper request by the Applicant.

- 6.5 The ordinary order of hearing and time limits for testimony (EXCEPT AS PROVIDED IN SECTION 6.6) shall be as follows:
- Staff report and recommendations
 - Applicant and/or the Applicant’s agent or attorney (15 minutes)
 - Public comment (3 minutes per individual or 10 minutes per Recognized Organization.
 - Applicant’s rebuttal (5 minutes)
- a) Additional time for the Applicant’s or public presentation may be requested in writing at least 15 days in advance of the meeting. Decisions on whether to grant the additional time requested shall be made by the Commission by majority vote. (01-20-99) (10-19-05)
- b) Written comments must be filed and received by the Frederick County Division of Planning and Permitting by hand delivery, overnight service, mail, fax, or electronic mail at least 48 hours in advance of the Commission meeting in order to be considered by the Commission in making its decision. (08-13-14)(09-13-17)
- 6.6 Special Rezoning Meetings – In order to efficiently review rezoning cases in accordance with Section 1-19-3.110 et seq. of the Zoning Ordinance, the following special meeting procedures shall apply.
- a) As required in the Zoning Ordinance a public hearing shall be held on rezoning applications. All review of rezoning cases shall take place in a public meeting or workshop. The order of the agenda of cases shall be determined prior to the meeting by the Director of Planning.
- b) Applicant testimony, the staff report, and reviewing agency comments will be presented to the Commission at the public hearing held for this purpose.
- c) Public testimony will be permitted in connection with review of rezoning applications during public hearings held for this purpose. The date and time of these hearings will be advertised no less than 14 days in advance of the hearings. The ordinary order of hearing and time limits for testimony shall be as follows:
- Staff report & Recommendation
 - Applicant and/or the Applicant’s agent or attorney (30 minutes).
 - Public comment (3 minutes per individual or 10 minutes per recognized organization).
 - Applicant’s rebuttal (5 minutes) (09-15-04)
- d) Written comments must be filed and received by Frederick County Division of Planning and Permitting by hand delivery, overnight service, mail, fax, or electronic mail at least 48 hours in advance of the

Commission meeting in order to be considered by the Commission in making its decision. (08-13-14)(09-13-17)

- e) The Commission shall base its findings and recommendations on the information presented at the meeting or hearing and within the time limits as required in the Zoning Ordinance.
- 6.7 The Commission may postpone or continue any case due to lack of a quorum or for further study and information until a time as determined by the Commission, but in no event shall the postponement or continuance exceed six (6) months, except where otherwise provided by law and/or as required by these Rules. (01-20-99) (10-19-05)
- 6.8 The Commission may require any additional relevant Planning materials in the form of maps, charts, reports, and studies, in order to reach a decision. (01-20-99)
- 6.9 Cross-Examination - The Chairman will allow reasonable cross-examination of witnesses at a time and in a manner allowed by law and considered reasonable by the Chairman under the circumstances. (01-20-99)
- a) Cross-examination is designed to permit a full and true disclosure of the **facts** of the case, with due regard for the circumstances of each particular case, the nature of the proceedings, and the character of the rights which may be affected by it. The Commission shall allow cross-examination, in a manner best calculated to afford all parties an opportunity to present their positions and to serve the ends of justice and fairness.
 - b) The right to cross-examine witnesses shall be extended to those persons who are parties to the proceedings before the Commission or who have a cognizable interest in the outcome of the proceedings as determined by the Chairman. The Chair shall also permit a representative or representatives of these persons with the opportunity to conduct cross-examination.
 - c) A person or party wishing to cross examine a witness or panel of witnesses shall make the request known prior to or immediately after the time that the witness or panel of witnesses has concluded their testimony; the failure to make such a timely request shall be deemed a waiver of the right to cross examine.
 - d) Cross-examination **must** be: (i) brief; (ii) in the form of a question; and (iii) relevant to the testimony given by the witness. The questions **must not**: (i) be argumentative; (ii) be preceded or followed by a speech or testimony; or (iii) discuss personality or motives.
 - e) The rules of evidence applicable to administrative hearings as set forth by the Court of Appeals of Maryland shall apply generally. The scope of cross-examination may be limited by the Chairman, so as to limit cumulative, repetitive or irrelevant questions. (08-13-14)

6.10 Consent Agenda.

- a) The Planning Commission may from time to time receive items on a Consent Agenda as determined by Staff. Consent Agenda items will not be individually discussed, but will be voted upon in the form of one motion.
- b) Commission members wishing to individually discuss one or more of the Consent Agenda items shall make this request to the Chair. The item will be removed from the Consent Agenda, and be placed on the regular agenda, subject to discussion by the Commission. If additional information is needed to make a decision on the item, then a majority of the Commission can approve postponing the item as necessary to receive the additional information. (09-13-17)

6.11 The Commission may vary any of these meeting procedures by a majority vote of members present and voting (if a quorum is present), except where otherwise provided by law. (01-20-99) (09-15-04) (09-13-17)

SECTION 7 – PROCEDURE IN BRINGING MATTERS BEFORE THE COMMISSION

- 7.1 The agenda shall be prepared by the staff who will consult with the Chairman on such matters of the agenda as may be appropriate. Members of the Commission who wish to add to the agenda shall first notify the Chairman of their request at least 15 days prior to the meeting. Miscellaneous items shall be submitted to the appropriate division 45 days in advance of the desired meeting date for consideration. (04-12-77) (01-20-99) (10-19-05)
- 7.2 All applications for Zoning Map and Floating Zone Reclassifications, Zoning Text Amendments, Planned Unit Development (PUD), Mixed Use Development (MXD) or Comprehensive Plan Amendments must be filed at least sixty (60) days in advance of a public hearing by the Commission. A copy of the Planning Staff Report on these matters shall be available for public inspection at least ten (10) calendar days prior to the scheduled Public Hearing (08-12-75) (04-12-77) (01-20-99)
- 7.3 Petitions or requests for action on public ways, grounds, spaces, buildings, structures, utilities or any other item which do not require public notice (advertising), must be filed at least 45 days in advance of the scheduled Commission meeting. (04-12-77) (10-19-05)
- 7.4 In rezoning cases, the Commission shall submit its report and recommendation to the County Council in accordance with the procedures established in the Zoning Ordinance. (04-12-77)
- 7.5 Miscellaneous requests and petitions shall, from time to time, come before the Commission, either upon the initiation of an individual or agency or by reference from the governing body. In all cases, the Commission shall be guided by the principles set forth in the Comprehensive Plan; the Subdivision Regulations the Zoning Ordinance; and other applicable rules, regulations and ordinances of the

County. All such matters shall be handled with as much dispatch as possible. Miscellaneous requests shall be submitted to the appropriate division 45 days in advance of the desired meeting date for consideration unless otherwise waived for an agency or governing body by the Division Director. (04-12-77) (10-19-05)

- 7.6 Withdrawal. Any item placed on the Commission's monthly agenda and then withdrawn by the Applicant shall not be rescheduled until 60 days have elapsed, unless otherwise provided by majority vote of the Commission. (01-20-99)
- 7.7 All applications for preliminary subdivision plan approval must be filed in accordance with the Subdivision Regulations. Applications for Preliminary Subdivision Plans shall be reviewed by the Commission each month. The following subdivision application cases may also be reviewed by the Commission at any of the regular monthly meetings: Subdivision cases pertaining to 1) Appeals from staff decisions; 2) Continuance of a case by the Commission; or 3) when requested by the Commission. (02-11-75) (02-11-76) (04-12-77) (4-11-79)
- 7.8 Any agenda item continued by the Commission shall not be rescheduled for less than 60 days unless otherwise provided by a majority vote of the Commission, or otherwise provided by law. (10-19-05)

SECTION 8 – FINAL DISPOSITION OF COMMISSION MATTERS

- 8.1 The disposition of all formal petitions and requests before the Commission requiring further action by the County Council shall be in the form of a letter of recommendation to the County Council.
- 8.2 In all matters, the Applicant shall be notified by letter of the action taken by the Commission.

SECTION 9 – DELEGATION OF AUTHORITY

- 9.1 The Commission may delegate some of its authority to the Chairman in order to expeditiously and efficiently perform the work of the Commission. This would include such items as the signing of ~~subdivision plats and~~ letters when the Commission has approved such documents. In the absence of the Chairman, the Vice-Chair, or Secretary may perform this work in order to expeditiously dispose of these administrative matters. The Director of Development Review is authorized to sign minor subdivision plats, and to sign preliminary subdivision plans and final subdivision plats that have been approved by the Commission. (01-20-99) (09-15-04)(__-__-19)

SECTION 10 – RELATIONSHIPS WITH OTHER PLANNING COMMISSIONS, AGENCIES AND GOVERNMENT BODIES

- 10.1 Though this Commission recognizes that its powers and responsibilities within the County do not extend to land within incorporated municipalities or to counties whose boundaries adjoin Frederick County, the Commission will, where appropriate, assist and coordinate its activities with these municipalities and

counties and their planning and zoning agencies, and on request, will provide staff assistance to those agencies within the limits of available resources. With those municipalities and counties that have planning staff, the Commission seeks out mutual cooperation.

SECTION 11 – COMMISSION – STAFF RELATIONSHIPS

- 11.1 The Commission endorses the provisions of Title VI of the Civil Rights Act of 1964 pertaining to equal opportunity in employment. (01-20-99)
- 11.2 The Director of Planning or his or her designee(s) is the normal contact for all routine communications between Commission members and the staff. The Director of Development Review is the normal contact for preliminary/final plats and site plan agenda items.
- 11.3 Commission members take no part in the daily routine of administration of regulations and research of matters of fact, although they may participate in field trips and discussions pertaining to the more significant matters to be considered at Commission meetings. (10-19-05)
- 11.4 Matters of policy and important changes in the administration of the Commission's affairs are developed by the Director of Planning on behalf of the Commission and presented for resolution to members at regular meetings.

SECTION 12 – AMENDMENTS

Amendments to these Rules may be introduced at any meeting of the Commission and voted upon at any subsequent regular meeting, passage requiring a majority vote of the membership, provided public notice is advertised in the newspaper at least fourteen (14) days prior to the vote on the amendment(s). (3-14-74) (09-15-04)

SECTION 13 – VARIANCE

Upon unanimous agreement of the members present at a regular meeting, these Rules may be modified for extenuating circumstances or as provided for in Sec. 6.11. (01-20-99)

The foregoing is a true and correct copy of the Rules of Procedure of the Frederick County Planning Commission as amended through the 13th day of September, 2017.

ATTEST:

Sharon Suarez, Secretary

Carole Jaar Sepe, Chair