



FREDERICK COUNTY GOVERNMENT

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MEMORANDUM

To: Frederick County Planning Commission

From: Kathy L. Mitchell, Assistant County Attorney *KLM*

Date: July 30, 2015

Re: Guidelines for Planning Commission Site Visits

ISSUE: Should the Frederick County Planning Commission desire to conduct a site visit in connection with a certain application, what guidelines should apply to determining which applications warrant a site visit and what rules must be followed to meet Open Meetings Act requirements and ensure a valid record?

BACKGROUND: In March 2015, the Planning Commission discussed issues related to site visits in a closed session. At that time, the County Attorney's Office recommend that site visits not be conducted because site visits: (1) rarely, if ever, help the Planning Commission perform its function of applying the County Code requirements to applications for site plan or preliminary plan approval; (2) can adversely affect the integrity of the record and the validity of the Planning Commission decisions; and (3) could lead to Planning Commission members becoming fact witnesses in a case rather than objective decision-makers.

DISCUSSION:

1. Planning Commission Rules of Procedure

The Planning Commission Rules of Procedure, in §11.3, states that “Commission members take no part in the daily routine of administration of regulations and research of matters of fact, although they do participate in field trips and discussions pertaining to the more significant matters to be considered at Commission meetings.” [Emphasis added.] In practice, the “more significant matters” referred to in this section have been applied to Planning Commission decisions on comprehensive plan updates and comprehensive rezonings.

In addition, §4.8 of the Rules states that:

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 [written comments] or Section 6.6.(d) [written comments] below.

Therefore, if the Planning Commission decides to conduct site visits for applications other than comprehensive plan updates and comprehensive rezonings, the Rules of Procedure will need to be revised.

2. Deciding Which Applications Warrant A Site Visit

Although there have been many discussions about site visits over the past several years, the Planning Commission has so far been unable to articulate how and why a site visit would have assisted the Commission in performing its functions under the Frederick County Code. There might be certain applications with unusual factors such as size, number of dwelling units, uses, degree of public interest etc., but none of these factors would necessarily warrant a site visit. Staff has made an effort to include more aerial photos and similar information to help the Commission better visualize the subject site.

Staff suggests that decisions about site visits should be made on a case by case basis after considering all of the evidence submitted by staff, the applicant and the public. Given the potential issues discussed above in the Background section, the decision to conduct a site visit should be based on a strong showing, and a majority vote, that the information needed to make a decision on a particular application cannot be obtained in any way other than by a site visit.

3. Rules For Site Visits

These Rules are based on those followed by the Frederick County Board of Appeals and on governing case law:

1. The time, place and location for site visits must be advertised on the Planning Commission website, and members of the public must be allowed to attend.
2. Site visits are for visual inspection only.
3. All Planning Commission members must visit the site at the same time in order to observe the same conditions.
4. No questions may be asked of staff, the public, or the applicant/property owner.
5. Commission members may not discuss any aspect of the case or site at any time during the site visit or while traveling to and from the site.
6. If an applicant/property owner, or a member of the public, asks a question or makes a statement during the site visit, staff shall make a record of such statement or question, but no response should be given.
7. Each Planning Commission member shall report his or her visual observations of the site at the beginning of the public meeting at which the application is to be considered.

8. If the Planning Commission relies on any aspect of the site visit in its decision, it must be specifically noted as part of the record.
9. If the Planning Commission relies on any aspect of the site visit in its decision, any Commissioner who did not attend the site visit may not vote on that decision.

RECOMMENDATION: Staff recommends that the Planning Commission utilize site visits only in those rare cases where the site visit is necessary for determining whether or not the application meets the zoning and/or subdivision requirements of the County Code. If a site visit is determined to be warranted by majority vote, then the Commission must follow the Rules set forth in this memorandum. In addition, the Planning Commission Rules of Procedure will need to be amended to include the Rules for site visits.