

RULES OF PROCEDURE

of the

TOWN OF MOUNT AIRY  
PLANNING COMMISSION

EFFECTIVE OCTOBER 28, 2019

FOREWORD

The Rules of Procedure are issued to assist the Mount Airy Planning Commission in the orderly and efficient conduct of all matters with which the Commission is concerned. In all matters not provided for in these Rules, the applicable rules in the current edition of Robert's Rules of Order Newly Revised govern. All meetings and workshops of the Town of Mount Airy Planning Commission are subject to the Maryland Open Meetings Act.

OBJECTIVE

The Mount Airy 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 Town for the benefit of its present and future inhabitants. The Commission will conduct its business in accordance with the provisions of the Land Use Article of the Annotated Code of Maryland, the Town of Mt. Airy Code, as well as these rules of procedure.

Though this Commission recognizes that its powers and responsibilities within the Town do not extend to land outside the Town, the Commission will, where appropriate, assist and coordinate its activities with Frederick and Carroll County and its planning and zoning agencies, and on request provide staff assistance to those agencies within the limits of available resources. With the Counties, the Commission seeks out mutual cooperation.

SECTION 1 -DEFINITION

"Authorized Member" shall mean one of the members appointed by the Mayor with confirmation by the Town Council, one of whom is a Town Councilmember to serve in an ex officio capacity concurrent with his/her official term, and one of whom is designated as an alternate who shall serve in the absence or recusal of any member of the commission, except that the alternate shall be considered an "Authorized Member" only in the absence or recusal of another Authorized Member.

The word "Commission" shall refer to the Town of Mount Airy Planning Commission, and consists of the Authorized Members, one of whom shall be designated an alternate who may serve in the absence or recusal of any member of the commission.

## SECTION 2 - OFFICERS AND COMMITTEES

- 2.1 The Commission shall organize annually in the month of November and elect a Chairman and Vice-Chairman.

The Chairperson or in the Chairperson's absence, the Vice-Chairperson, shall preside at all meetings or hearings of the Commission. In the absence of an officer, the member with most current continuous Planning Commission service shall preside. The presiding officer shall decide on all points of order and procedure, consistent with these rules and the Land Use Article of the Maryland Code.

- 2.2 A designated member of the Town Council shall serve as a member of the Commission who shall count toward quorum at Commission meetings and shall vote on Commission decisions in cases of tie votes, and serve in an ex-officio capacity concurrent with his/her official term.
- 2.3 Ad-hoc committees may be appointed by the Commission for special purposes or study.

## SECTION 3 - MEETINGS

- 3.1 Regular meetings shall typically be held on the last Monday of each month. Observed holidays, or other conflicts, may on occasion alter the regular course of Commission meetings. Advance notice will be provided to the general public at the monthly meeting preceding the regular meeting date to be scheduled outside of its regular course. In all other cases (except in the instance of inclement weather) the staff shall give each member 48 hours or more notice of any change of date of the meeting.
- 3.2 Special meetings and workshops may be called by the Chairman or in the Chairperson's absence the Vice-Chairperson. 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.
- 3.3 Attendance – It shall be the duty of each member to attend all meetings. A member is required to contact the town planner, chair or vice-chair, to notify them of a planned absence.

## SECTION 4-VOTING

- 4.1 A quorum shall consist of four Authorized Members of the Commission. A presiding officer must be present to conduct a meeting. No official business can be conducted without the presence of a quorum.
- 4.2 The order of business shall be in accord with the agenda as approved or modified as the first order of business.
- 4.3 Questions put to a vote are decided by a majority of the members present and voting. 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 by the Applicant.
- 4.5 Members recusing themselves from a commission matter shall leave the dais of the Planning Commission for the duration the matter is being considered. Members are encouraged to consult the Town Attorney or Chairman of the Ethics Commission as to the propriety of their voting on any matter which may involve an actual or perceived conflict of interest.
- 4.6 In order to be eligible to vote, a member should attend all relevant meetings or review the audio, video or transcript of any meetings from which the member was absent. It is a member's obligation to be familiar with any proceedings of any prior meeting on a topic that comes to the Commission for a vote.
- 4.7 The Commission's votes shall be recorded on each motion. Each member shall either vote on each motion (affirmative or negative) or abstain from voting by indicating a desire to abstain. The chair shall announce the results of each vote. All votes will be a voice vote of either positive, negative, or abstention unless a raising of hands (counted vote) is requested by the Chair.

## SECTION 5 -CONDUCT OF COMMISSION MEMBERS

- 5.1 Speaking for the Commission - A member will not appear to speak

for the Commission except as authorized by the Commission. This includes any public or private statement concerning Commission affairs.

- 5.2 Ethics Ordinance – Commission members are subject to and must comply with the Town's Ethics Ordinance.
- 5.3 Conduct at meetings – Members shall conduct themselves at Commission meetings in a fair, understanding, and courteous manner. They shall be considerate of all individuals, attitudes, and differences of opinion involved in official Commission business. It is the presiding officer's responsibility to manage the meetings in a manner that is consistent with these rules of conduct.
- 5.4 Being recognized - Commission members shall only speak after being recognized by the chair. Any member may raise "point of order" if they feel that the item being discussed is inconsistent with the agenda item being discussed or is otherwise not in conformance with the conduct of the Commission's business at hand. It is the presiding officer's responsibility to rule as to whether the "point of order" is valid.
- 5.5 Ex-parte communications –
- 5.5.1. Purpose. It is important to maintain the impartiality and integrity of the Planning Commission. It is also important that Planning Commission decisions be based solely on information presented in public documents and during open and public meetings so that all parties receive the same information at the same time. Receiving communication outside Planning Commission meetings denies participants the opportunity to respond to all information upon which Commission members may base their decisions.
- 5.5.2. Definition. An *ex parte* communication includes an oral or written communication, whether in person, written or verbal, by phone, email, text, private messaging, other social media, etc., not on the public record to which reasonable prior notice to all parties or interested persons is not given. It can further be described as a process in which an interested person and the public are not informed of the time, place, or location of a communication, or that a communication process was going to take place; consequently, the interested person and the public are not afforded an opportunity to participate. These types of situations are typically viewed as showing favoritism or prejudice and may give rise to unfairness or bias and/or perceptions thereof.
- 5.5.3. General rule. Commission members shall refrain from *ex-parte* communication (meaning communication that occurs outside a formal Planning Commission meeting) regarding matters that may come before the Commission for decision.

5.5.4 Quasi-judicial proceedings. *Ex-parte* communications are strictly forbidden when the Commission is adjudicating a matter in its quasi-judicial role, *e.g.*, when it hears zoning map amendment petitions, text amendments, development plan review and requests under the provision of the Md. Land Use Article.

5.5.4.1 Remedy: A Planning Commission (PC) member must recuse him/herself from discussion **and** voting on matters before the commission when s/he has engaged with an applicant/party (under this section) in any manner, including discussion, strategizing, providing advice, or any other substantive involvement.

5.5.5 Types of proceedings. *Ex-parte* communications are also discouraged and should, to the extent possible, be avoided when the Commission is acting in its legislative or advisory roles, *e.g.*, when it provides recommendations concerning proposed legislation or otherwise conducts business other than for the purpose of review or enforcement of the provisions of the Md. Land Use Article.

5.5.5.1 Remedy: Planning Commission members receiving *ex-parte* communications shall advise all Commission members through the Town Planning Administrator's office prior to the next scheduled Planning Commission meeting or make a statement in person at the beginning of such meeting.

5.5.6 Advocacy -- If a PC member has ever publicly advocated a specific position on a party's behalf - whether while a commission member or prior to being a commission member - the commission member shall recuse him/herself from discussion and voting on such position if the party makes an application which comes before the commission. This should not, however, be interpreted to prevent a commission member – acting in his/her official capacity – from expressing his/her opinion or interpretation of the law regarding an application, so long as the member is not acting, and has not previously acted, on an applicant's behalf. For example, the PC member can express an opinion or legal interpretation during a PC meeting or at a town council meeting if council is holding a hearing subsequent to a PC recommendation.

5.5.6.1 Timing/Remedy:

5.5.7.1.1 While a Commission Member: If a PC member has, **while a member of the commission**, engaged in any activities in subsection 5.5.6, the member shall recuse him/herself no matter how long ago such activities occurred.

5.5.7.1.2 While Not a Commission Member: If a current PC member has, while **not** a member of the commission, engaged in any advocacy described above, upon any indication that the party has or plans to make an application to the commission, the commission member shall immediately disclose his/her activities and the extent thereof to the commission. If the applicant is already in the process with the Planning administrator or the application is before the commission at the time the commission member is appointed, the member shall immediately disclose his/her activities and the extent thereof to the commission.

5.5.7.1.2.1 Requirement of recusal: Notwithstanding 5.5.7.1.2 above, the PC member shall recuse him/herself if the activities in which s/he engaged occurred at any time during the past five years, beginning at the time the party/applicant initiated its plan or any time thereafter, or within the prior two years, whichever is greater.

5.5.7 Other types of proceedings. Ex-parte communications are also discouraged and should, to the extent possible, be avoided when the Commission is acting in its legislative role, e.g., when it participates in plan development and implementation activities or when it reviews items or business not associated with the review or enforcement of the provisions of the Md. Land Use Article.

5.5.7.1.1 Remedies:

5.5.7.1.1.1 Planning Commission members receiving ex-parte communications shall advise all Commission members through the Town Planning Administrator's office prior to the next scheduled Planning Commission meeting or make a statement in person at the beginning of such meeting.

5.5.8 Alternatives to *ex parte* communications:

5.5.8.1 As an alternative to ex-parte communications, the public is encouraged to provide requests, comments or recommendations in writing to the Town Planning Administrator, or speak publicly at a Planning Commission meeting. In this way, all interested parties, the public and Commission members will hear the same information simultaneously.

5.5.8.2 Persons who are considering bringing a development proposal before the Commission are encouraged to approach the Town Planning Staff informally as early as possible to receive non-binding feedback on the matter of how best to proceed and what to present with regard to the potential application.

## SECTION 6 - MEETING PROCEDURES

6.1 All agenda items that require an advertised public hearing shall be preceded by notices as prescribed by law in Land Use Article of the Maryland Code and the Town of Mount Airy Municipal Code.

6.2 Commission meetings shall be subject to the Maryland Open Meetings Act (Annotated Code of Maryland - Maryland State Government - Title 10. Governmental Procedures Subtitle 5. Meetings. Any person is entitled to appear 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 sessions for discussion of those items as permitted under the Maryland Open Meetings Act.

6.3 Recording of Proceedings - It shall be the duty of the Administrative

Assistant, or other designee, assisted by the Commission's staff, to keep a true and accurate record of all proceedings at all meetings and public hearings. Minutes shall be prepared, distributed to the individual members, and if approved by the Commission, placed in a record book or file. The Chairperson or Vice Chairperson shall sign the minutes, resolutions, and other official documents, as adopted or approved.

- 6.4 Anyone may appear in his/her own behalf or be represented by an agent or attorney at a Commission meeting. In the absence of any appearance by or on behalf of the Applicant the Commission will proceed to dispose of the matter on record before it or the Commission may by consensus postpone indefinitely the item and it will only be rescheduled upon proper request by the Applicant.
- 6.5 Unless the Chairperson, or Vice-Chairperson in his or her absence, otherwise directs as set forth below, the ordinary order of hearing and time limits for testimony, except as provided in Section 6.6, shall be as follows:

**Staff Report & Recommendation**

The Applicant or the Applicant's Agent or Attorney (15 minutes)

Public Comment (3 minutes per individual or 10 minutes per organization)

Applicant's Rebuttal (10 minutes);

It is the presiding officer's responsibility to notify the speaker of their time limit prior to the testimony and to notify them when their time has expired. If the Chairperson, or in his or her absence, the Vice-Chairperson, so directs as set for the below, the public record may remain open for not longer than ten (10) days after the conclusion of a hearing. Submissions on the record during this time frame shall be made **in accordance with the presiding officer's instructions and shall be posted to a public site and/or shall otherwise be available to the public.**

Additional time for any speaker to address pertinent issues or make a public presentation may be requested in writing at least 7 days (one week) in advance of the meeting. Decisions on whether to grant the additional time shall be made by the Chairperson or in their unavailability, by the Vice-Chairperson. The additional time granted shall be defined at the time of approval and must be contained in the approved agenda.

6.6 Special Rezoning Meetings - In order to efficiently review rezoning cases in accordance with the Town's Zoning Chapter, the following special meeting procedures shall apply.

6.6.1 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 Staff Planner.

6.6.2 Applicant testimony, the staff report, and reviewing agency comments will be presented to the Planning Commission at the Public Hearing held for this purpose.

6.6.3 Unless the Chairperson, or in his or her absence, the Vice-Chairperson, otherwise directs as set forth below, 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**

**The Applicant or the Applicant's Agent or Attorney (20 minutes)**

Public Comment (3 minutes per individual or 10 minutes per organization)

Applicant's Rebuttal (10 minutes)

If the Chairperson, or in his or her absence, the Vice-Chairperson, so directs as set for the below, the public record may remain open for not longer than ten (10) days after the conclusion of a hearing. Submissions on the record during this time frame shall be made in accordance with the presiding officer's instructions and shall be posted to a public site and/or shall otherwise be available to the public.

Additional time for any speaker to address pertinent issues or make a public presentation may be requested in writing at least 7 days (one week) in advance of the meeting. Decisions on whether to grant the additional time shall be made by the Chairperson or in their unavailability, by the Vice-Chairperson. The additional time granted shall be defined at the time of approval and must be contained in the approved agenda.

6.7 Planning Commission shall base its findings and recommendations on the information presented and within the time limits as required in the Zoning Ordinance.

6.8 The Commission may postpone to a time certain any case due to lack of quorum or for further study and information as determined by the Commission but in no event longer than six (6) months, except where otherwise provided by law.



- 6.9 The Commission may require any additional relevant Planning materials in the form of maps, charts, reports, and studies, in order to reach a decision.
- 6.10 The presiding officer shall administer oaths to witnesses who testify and will allow reasonable cross-examination/testimony of interested parties at a time and in a manner considered reasonable by the presiding officer under the circumstances. An issue may be postponed for one month to achieve this information if in the presiding officer's opinion such information would provide new or relevant information related to the matter under consideration.

#### SECTION 7- PROCEDURE IN BRINGING MATTERS BEFORE THE COMMISSION

- 7.1 The agenda shall be prepared by the staff who will consult with the Chairperson 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 Chairperson of their request at least 14 days prior to the meeting.
- 7.2 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 Chapter of the Mt. Airy Code"; and rules, regulations and ordinances of the Town. All such matters shall be handled with as much dispatch as possible.
- 7.3 Any agenda item continued by the Commission shall not be rescheduled for 60 days unless otherwise provided by a majority vote of the Commission, or otherwise provided by law.

#### 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 Town Council shall be in the form of a letter or memorandum of recommendation to the Town Council or, if required by applicable law, memorandum setting forth the Commission's Findings and Decision. 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 Chairman may delegate some of its authority to the vice-chair or Staff Planner in order to expeditiously and efficiently perform the work of the Commission.

#### SECTION 10-COMMISSION - STAFF RELATIONSHIPS

- 10.1 The Staff Planner or his/her designees is the normal contact for all routine

communications between Commission members and the staff. The Staff Planner is also the normal contact for preliminary/final plats and site plan agenda items. Commission members take no part in the daily routine or 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. Issues of conflict in this realm can be raised to the Commission or Chairman for direction.

- 10.2 Matters of policy and important changes in the administration of the Commission's affairs are developed by the Staff Planner on behalf of the Commission and presented for resolution to members at regular meetings.


#### SECTION 11-AMENDMENTS

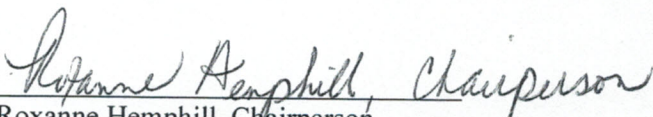
Amendments to these rules of procedure may be introduced at any meeting and recorded in the minutes. The Commission will then vote on any such amendments at any subsequent regular meeting with passage requiring majority vote of the membership.

The foregoing is a true and correct copy of the Rules of Procedure of the Town of Mount Airy Planning Commission as adopted by majority vote of the Planning Commission on the 28th day of October, 2019.


ATTEST:

TOWN OF MOUNT AIRY, MARYLAND  
PLANNING COMMISSION

  
\_\_\_\_\_  
John Breeding, Town of Mount  
Airy Community Planning Director

By:   
\_\_\_\_\_  
Roxanne Hemphill, Chairperson

Approved as to legal form and sufficiency  
This ~~28~~ of ~~November~~, 2019  
*OCTOBER*

  
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Thomas V. McCarron, Town Attorney

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