

Date: 15 January 2019

Subject: **Suggested Zoning Board (ZB) and Planning Board (PB) Rules of Procedure (ROP) Revisions**

Dear Council Members,

At the 14 January 2019 Council Monthly Meeting there was conversation regarding the woeful outdated both Zoning Board (ZB) and Planning Board (PB) Rules of Procedure (ROP). As stated the last time the ZB ROP was updated was 26 February 2002 and the PB was last updated 20 September 2007. Below are recommendations for consideration.

**Zoning Board ROP Suggested Revisions:**

**Page 1 – Refer to the title** – Change the “As Adopted February 26, 2002” to reflect the date of when this revision is completed.

**Page 1 – Refer to E. Zoning Counsel** – After the last sentence state – The Zoning Board Chair shall state to the Protestant they (if applicable) are eligible to have a Zoning Counsel as a consultant. Ideally, the ZB Chair should in advance notify the Protestant in advance (possibly 30 days prior to the Hearing) that the Protestant qualifies to have the Zoning Counsel present if desired. The role of the Zoning Counsel should be included in this section to state, “The Zoning Counsel is employed by the County Council on a part-time, contractual basis. The Zoning Counsel appears at all Zoning Board hearings concerning piecemeal zoning map amendments for the purposes of producing evidence and testimony in support of the comprehensive zoning classification of the property and to facilitate the compilation of a complete record. The Zoning Counsel may present evidence and witnesses, examine and cross-examine witnesses, and present argument, however, does not represent the County, is not a party to a case and does not have a right of appeal in connection with any case. The Zoning Counsel may advise citizens individually and is available to speak to any group regarding zoning procedures in Howard County, but cannot engage in the practice of law or render legal advice. Eileen E. Powers is the current zoning counsel.”

**Page 5 – D. Conduct of Hearings – 3b** – Presentation of the findings and recommendations of the Department of Planning and Zoning technical staff report and the Planning Board. Need to include that the public is permitted to question DPZ after such presentation as enacted by the passing of CB16-2018 and state the process the ZB will permit. **Note:** *We would like for the Council to consider reintroducing a Bill to enable the public to have the same opportunity at PB Hearings. CB71-2018 was introduced to rectify the oversight for the same applying at PB Hearings. Unfortunately it was defeated by a 3 to 2 decision where Councilpersons Ball and Terrasa voted in Favor. We also have included this recommendation in our document “Suggested Council Changes for Administrative and Legislative Matters.”*

**Page 7 – Refer to 11. Communication Outside of a Hearing** – state the recourse the party has if this is violated, the process in place to file a complaint, and the penalty if a ZB member is found to be in violation.

**Page 8 – Refer to c. Representation by Attorney-at-Law** -- ... Before the hearing begins the attorney shall give the board written notification of the names and addresses of individuals he or she will be representing and his or her own name, address and telephone number. Suggestion – the Zoning Board

Chair should distribute a form to the respective lawyers or representative to obtain the required information. (I don't believe this requirement was carried-out in the Chapelgate case).

**Page 8 – Refer to E. Time Period** -- What is the recourse when the Decision and Order (D & O) is not issued in the designated time period not to exceed 90 days? In the Chapelgate case the time period was 124 days before the D & O was signed.

Note: Recommend that Mediation not be considered and suggested by the ZB to encourage parties to participate. This occurred in the Chapelgate case before the ZB. This case before the ZB lasted over 2 ½ years. Midway into the case the Chair strongly suggested the Protestants go to Mediation. We stated, “This case is not about Mediation – it is about whether the Petitioner has met the criteria and he has not!” Months later a couple of weeks prior to closing arguments we receive postal mail from the Chair stating to go to Mediation. It was obvious the ZB was reluctant to make a decision so we decided to accommodate their suggestion. We attended Mediation at Howard County Community College. The Mediators could not figure why we were in attendance.

**Added further suggested Revisions on 27 March and Testified to ZB**

- Refer to Page 3 – under 3b – Define the word “substantial.”
- Refer to Page 6 – under b – after the words “related questions” add the wording – “by any signed-up party.”
- Refer to Page 8 – under 14d – Representatives of Association – suggest you use the same form as that used at Public Legislative Hearings.

## **Planning Board ROP Suggested Revisions:**

**Refer to Cover page** – Change the date of “Effective September 20, 2007” to reflect the date of when this revision is completed.

**Add Page Numbers to the document.**

**Refer to the 4<sup>th</sup> sheet** – I.e. Representatives of Associations – A pre-printed form should be located in front of the Hearing room and provided to the parties of interest.

**Refer to the 6<sup>th</sup> sheet** – the table “Key Planning Board Functions” – there is no reference to the Zoning Districts “CEF” and “R-H-ED.” This table should be reviewed for accuracy.

**Refer to 7<sup>th</sup> sheet – A. Types of Cases 1.** – There is no reference to “CEF” and “R-H-D” Zoning Districts.

**Refer to 8<sup>th</sup> sheet – Open Hearings.** – If violated what is the recourse and the procedure for filing a complaint by a given party.

**Refer to 9<sup>th</sup> sheet – 9. Ex Parte Communication** -- If violated what is the recourse and the procedure for filing a complaint by a given party.

**Refer to 15<sup>th</sup> sheet – 3. – Petitions for Development Plan approval** – The Zoning Districts of CEF and R-H-Ed needs to be included.

**Refer to 20<sup>th</sup> sheet – E. Public Participation** – The Board may impose a reasonable time limit for speaking on those who wish to make an oral presentation to the Board. If possible this needs to be stated two weeks in advance so the public can prepare their testimony to meet the Board’s time limit decision.

Hopefully the aforementioned recommended changes will be considered in the interest of attention to detail.

Sincerely,

Stu Kohn  
HCCA, President