

# **Running the Meeting: Roles, Rules, Routines**

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**St. Mary's County Planning Commission Training**

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**May 13, 2024**

**St. Mary's County Attorney's Office**



# Building Blocks: Enabling Laws

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- State Law: Md. Land Use § 2-101, et seq.
  - Authority to establish a planning commission; enabling legislation
  - A Planning Commission shall adopt rules of conduct
    - Land Use § 2-105(c)
- Comprehensive Zoning Ordinance: § 20.2, 21.3, 21.4
  - When public hearings are required
  - Notice requirements: publication, mailing, posting
  - Basic rules of procedure
- By-Laws
  - Gap fillers: Robert's Rules of Order



# Robert's Rules of Order

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- RRoO 49:21 – Procedure in Small Boards
  - Less than “about a dozen members”
  - Simplified rules:
    - Members not required to stand to seek floor or speak
    - Motions need not be seconded
    - No limit to number of times a member can speak to a debatable question
    - Informal discussion permitted
    - “When a proposal is perfectly clear to all present, a vote can be taken without a motion.” Voting takes place under same rules as in larger meetings, except a vote by show of hands is allowed
    - Chair “may” speak, debate, and vote on all questions
  - But, back to bylaws: “‘shall’ govern in ... all cases ‘deemed appropriate by the Chair’ and in which they are not inconsistent with these bylaws”



# Participants & What Each Adds to the Meeting

## Planning Commissioners

- Finders of fact and decision-makers; decide, based on evidence in record, if Applicants have satisfied burden
- Ask questions of staff, applicant, and public to build factual record
- Regulate and control meeting (through chair)

## Staff

- Reviews applications prior to meeting for conformity with CZO
- Present staff report offering summary of development application and applicable laws
- Answer questions from PC
- Schedule meeting and handle administrative affairs

## Applicant

- Present and explain development proposal to Planning Commission
- Produce any needed expert witnesses
- Answer questions posed by Planning Commission, public

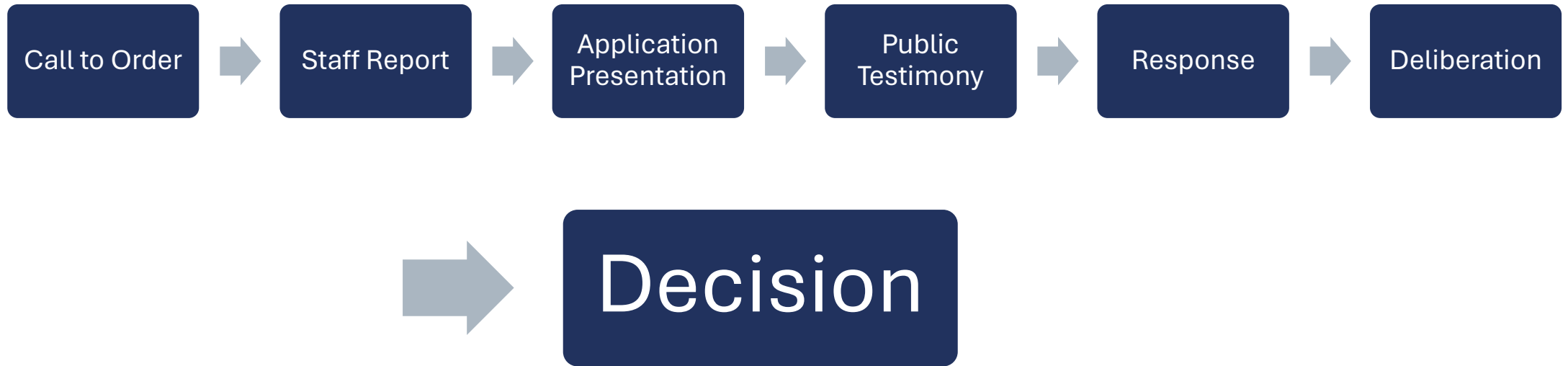
## Public

- Express opinions / comments on the proposal
- Ask questions
- Provide evidence that may not be known to staff/applicant



# Parts of a Meeting

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# Call to Order

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- Matter is announced by chair
- Before matter is called, staff will have:
  - Verified required proper notice was given
  - Uploaded and shared any and all written comments received before deadline
  - Shared all staff reports and supporting documents, and any preadmitted documents, comments, etc. received from Applicant/public, through BoardDocs



# Staff Presentation

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- Staff report is a summary of development application and applicable laws and regulations
- Staff report will include analysis and recommendation of whether development application complies with CZO and comprehensive plan or not
- At conclusion of report, staff answers questions from the Planning Commission
- LUGM delivers staff report; DPW, Metcom, County Attorney typically on hand for any questions that arise



# Applicant Presentation

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- Applicant presents its development proposal to the Commission
- Applicant can be represented by themselves or any authorized agent (corporate officer, engineer, surveyor, lawyer, etc.)
- Commission may ask Applicants questions
- Applicant entitled to higher standards of due process: reasonable right of cross-examination, etc. *Hyson v. Montgomery County Council*, 242 Md. 55 (1966)
- Applicant may make proffers or modifications in response to Commission questions
- Applicant or Commission may suggest continuance to refine proposal or seek additional information





# Public Testimony

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- CZO allows “any person” to appear at a public hearing and submit evidence orally or in writing
  - Chair may exclude testimony that is irrelevant, immaterial, unduly repetitious, or “otherwise inadmissible”
- Generally, three minutes per speaker
- Written comment may be submitted in advance
- Any exhibits, photographs, etc. provided to the Commission must be made part of the record
- Planning Commissioners given opportunity to ask members of the public questions



# Applicant Response

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- On the close of public testimony, Applicant must be offered a chance to reply to testimony made by members of the public
- Members may ask additional follow-up questions with the Applicant
- **At the end of Applicant's response the factual record is closed**



# Deliberation

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- Once the record is closed, members enter deliberation
- Deliberation must be done in open session
- Deliberation must be based on the record
  - Record consists of all evidence adduced during the hearing: staff report, staff testimony, applicant presentation, questioning by Commission, public testimony (oral or written), and any other material put before Commission before deliberation
  - Does not include anything outside of hearing: member's personal familiarity with a site, hearsay, or information not brought up during hearing
- Deliberation allows members to determine amongst themselves what bases there are for findings
- Record can be reopened with sufficient procedural safeguards



# Findings

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- Staff report will include all findings that must be made to support proposed action
- Factual findings must be supported by “substantial evidence”
  - Substantial evidence = evidence “a reasonable mind might accept as adequate;” “fairly debatable” standard. See, e.g., *Armstrong v. Mayor of Baltimore*, 410 Md. 426 (2009), and many, many others
  - This is a very lenient standard; evidence will be construed in light most favorable to Commission.
- Legal interpretations offered little to no deference
  - When interpreting local laws, a court should grant ‘a degree’ of deference to local agencies -- but will never support an erroneous reading of law. *Id.*, and many, many others



# Findings (cont'd)

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- Bases for each finding should be articulated
- Generally, Applicant carries burden of proof. There will always be a burden of production; sometimes there will be also be a burden of persuasion
  - Burden of production = satisfying all minimum requirements
    - “The applicant must submit evidence into the record that the application meets all statutory criteria (and case law) for the hearing authority to grant the request.”  
*Handling the Land Use Case* (2023; Thomson Reuters)
  - Burden of persuasion = in cases where Commission has discretion, Commission is satisfied to its own reasonable degree standards have been met. *Angelini v. Harford County*, 144 Md. App 369 (2002)
    - Look for discretionary language: ‘generally,’ ‘may,’ etc.



# Voting

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- Votes must be in public
- Chair may vote; must vote to resolve tie
- Three ways of voting
  - Denial
  - Approval
  - Approval “with conditions”
- Any conditions must pass constitutional muster; i.e., condition must be within Commission’s jurisdiction; must be causally tied to development; must be reasonably proportionate to expected impact



# After the Meeting

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- Applicant and “any aggrieved person” have a right to appeal any Planning Commission decision to Board of Appeals within 30 days
  - Recommendations are not ripe for appeal
  - Appeals from PC are heard *de novo*; Board of Appeals not restricted to same factual record or exact same issues as brought before PC. BoA must build its own record and base its decision accordingly
- If no appeal, project follows next step in development review process



# Open Meetings Act: Refresher

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- Planning Commission is a public body subject to open meetings acts (state and local)
- Generally, local St. Mary's County Open Meetings Act is more bureaucratic than Maryland Open Meetings Act; some definitions and triggers different
- General rules:
  - If a quorum exists in one place at one time (including email) and talks business = meeting
  - If a quorum serendipitously arrives at the same restaurant, sit together, and never discuss any official business = not a meeting
- Meetings must generally be advertised as soon as reasonable in advance, and at least 48 hours ahead of time
- Meetings must be held in open, with only limited opportunities to enter executive session





**Q & A**