

**RESOLUTION No. HDCR-1-15
CITY OF GAITHERSBURG
31 South Summit Avenue**

**HISTORIC DISTRICT COMMISSION
RESOLUTION TO REPEAL AND REENACT WITH AMENDMENTS
RULES OF PROCEDURE**

WHEREAS, the General Assembly of Maryland has under Md. Land Use Code Ann., §8-201. authorized and empowered municipal corporations to create a Historic District Commission, with powers and duties as codified in Md.;Land Use Code Ann., Title 8, §8-101 et seq., including §8-205; and

WHEREAS, the Mayor and Council of the City of Gaithersburg have created and established an Historic District Commission by ordinance, codified in City Code §24-239; and

WHEREAS, the Historic District Commission is authorized and required to adopt rules of procedure under Md. Land Use Code Ann., §8-203(a) and City Code §24-225.1; and

WHEREAS, the Historic District Commission has adopted Rules of Procedure to govern the proceedings of the Commission; and

WHEREAS, pursuant to § J of the Rules of Procedure, the Historic District Commission may amend the Rules:

NOW, THEREFORE, BE IT RESOLVED, by the Historic District Commission of the City of Gaithersburg, Maryland, that the Historic District Commission hereby repeals and reenacts with amendments the Historic District Commission Rules of Procedure as follows:

**THE RULES OF PROCEDURE FOR THE
CITY OF GAITHERSBURG HISTORIC DISTRICT COMMISSION**

A. PURPOSE

The purpose of these rules is to establish procedures for organizing the business of the Gaithersburg Historic District Commission, hereafter referred to as HDC, in its efforts to (1) safeguard the heritage of the city by preserving sites, structures, or districts that reflect elements of cultural, social, economic, political, archaeological, or architectural history; (2) strengthen the local economy; and (3) promote the preservation and appreciation of those sites, structures, and districts for the education and welfare of the residents of the city, as provided by Gaithersburg City Code §24-223. As such, these rules include processes for applications for historic designation of sites, resources, or districts; demolitions; alterations; and for Certificates of Approval and tax credit eligibility.

B. GENERAL RULES

The HDC shall be governed by the terms of the Historic Preservation Ordinance, as contained in the Gaithersburg City Code Article XII, and by Maryland Land Use code Annotated, by §8-101 et seq. For procedures not covered by these rules, the HDC shall follow the current edition of Robert's Rules of Order.

C. MEMBERS, OFFICERS AND DUTIES

The HDC shall be composed of at least five (5) five members and one (1) alternate, a majority of which members shall be residents of the City of Gaithersburg and all of whom are qualified consistent with the provisions of Maryland Land Use Code Annotated § 8-202. At least two members of the Commission shall possess professional or academic training in one or more of the stated fields in accordance with the minimum professional requirements of the United States Secretary of the Interior for certifying local governments under 36 C.F.R. Part 61. The terms of appointment of members are three years in length as per City Code § 24-225(b), established by the Historic Preservation Ordinance. Members of the commission are eligible for reappointment, and any vacancy on the commission shall be filled by the Mayor and City Council for the unexpired term of the particular position.

1. **Procedure for Use of Alternate Historic District Commissioner.** The HDC Alternate shall serve to consider an application in the place of any regular member of the Commission who is absent, disabled from service, or recused from deciding a specific matter based on a conflict or for any other reason. In such instances, the Alternate Member shall have all the powers, duties, and responsibilities of a regular member and shall fully participate in all matters before the Commission.
 - a. When a full complement of HDC members is present, the HDC Alternate shall not participate in any regulatory matter coming before the HDC, but may participate on all matters and proceedings that are not regulatory in nature. Regulatory matters involve quasi-judicial proceedings in which the HDC exercises final decision-making authority on an application or the authority to make a recommendation to the final decision-making authority on an application. Such applications may include permits, tax credits, or other final actions. Non-regulatory matters involve all other matters not involving a specific application coming before the HDC including, but not limited to, matters involving the rendition of Code or process change recommendations to the Mayor and City Council, City Board of Appeals, or other agencies of the City government, discussion of HDC processes or internal rules, selection of HDC officers or adoption of HDC rules and procedures of general applicability.
2. **Chair.** A Chair shall be elected annually by the members of the HDC. The Chair shall preside at all meetings and decide all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the HDC in session at the time.
3. **Vice Chair.** A Vice Chair shall be elected by the HDC from among its members in the same manner as the Chair. The Vice Chair shall serve as Acting Chair in the absence of the Chair, and, at such times, shall have the same powers and duties as the Chair.
4. **Interim Chair.** The Interim Chair will serve as Acting Chair in the absence of both the Chair and Vice Chair. The Interim Chair shall be the member who has longest continuous service on the HDC.

5. **Staff Liaison.** A member of the Planning and Code Administration staff, designated by the Director of Planning and Code Administration, shall serve as Staff Liaison to the HDC, attending all HDC meetings but not serving as an HDC member. The Staff Liaison, subject to the direction of the Chair of the HDC, shall keep all records, conduct all correspondence of the HDC, and generally supervise the clerical work of the HDC. These records will be available to the public in accordance with the Maryland Public Information Act, Maryland General Provisions Code Ann., §4-101 *et seq.* The Staff Liaison shall not be eligible to vote upon any matter.
6. **Recording Secretary.** A recording secretary shall take minutes of the meetings, and record and transcribe all public hearings. A staff liaison or city staff member may perform these duties.
7. **Elections.** The election of Chair and Vice Chair shall be held at the HDC's first meeting of each calendar year.
8. **Ethics Laws.** HDC members are subject to the City's Ethics Code, Chapter 7A of the City Code, and shall recuse themselves from participating in a hearing, consideration, or determination of any case in which they have a conflict of interest. If City staff or HDC members have questions as to whether a conflict of interest exists, they should contact the City Attorney's Office for guidance.
9. **Qualification to Vote.** No HDC member shall vote on any matter deciding an application unless that member shall have attended the HDC's previous deliberations on such application, or shall otherwise have reviewed the entire audio and/or video record, including any transcript and minutes as defined by City Code §24-1.
10. **Impartiality Required; Ex Parte Communication.** Each HDC member shall act in a fair and impartial manner and shall not show any favoritism. HDC members may visit sites which are the subject of an application before the HDC, but no HDC member shall discuss *ex parte* any proposed application, pending application, or an application that may be subject to reconsideration with any parties prior to the HDC's deliberations on such application, provided, however, that members may seek and/or receive information pertaining to the application from staff prior to the hearing. At the beginning of each public hearing, any HDC member having had prior communication, should disclose such action stating the nature of the exchange and disclose any special interest.
11. Each member of the HDC shall be thoroughly familiar with statutes, laws, preservation criteria, ordinances, and rules of procedure relating to preservation of historic resources and the HDC.
12. HDC members may visit sites which are the subject of an application but should report the date and time of the visit at the hearing on the application so that it is included in the record.

D. MEETINGS

1. **Regular Meetings.** The HDC shall hold meetings once during each calendar month as needed to entertain matters presented to the HDC. Meetings shall be held in City Hall or at such other place and on such date and at such time as shall be publicly announced. All meetings shall conform to the Maryland Open Meetings Act, as described below in subsection 5.
2. **Special Meetings.** Special meetings of the HDC may be called at any time by the Chair. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given by the staff liaison or by the Chair, to each member of the HDC and the general public, provided that this requirement may be waived by action of a majority of all members for publicly specified good cause.
3. **Cancellation of Meetings.** Whenever there is no business for the HDC, the Chair may dispense with a regular meeting by giving notice to all the members not less than twenty-four (24) hours prior to the time set for the meeting.
4. **Quorum.** A quorum shall consist of a majority of the members of the HDC.
5. **Conduct of Meetings.** The HDC will conduct its meetings in accordance with the Maryland Open Meetings Act, Md. General Provisions Code Ann., §§ 3-301 et seq. as amended. Polling opinions for purposes of decision making outside of the public meeting on matters regarding applications is prohibited, and meetings shall be open, allowing for public attendance as provided by Md. General Provisions Code Ann., § 3-303, as amended, except when an exception applies that would allow a meeting to be closed as permitted under Md. General Provisions Code Ann., § 3-305, as amended. In the event of a closed meeting:
 - a. The HDC's agenda will, if the possibility of a closed meeting is known at that time, note that the meeting is to be closed, citing the reason(s) permitting such closure under Md. General Provisions Code Ann., § 3-305(b), as amended, subject to HDC approval.
 - b. If the possibility of a closed meeting is not known before the meeting or not otherwise included on the agenda, a motion can be made during the meeting following the same process as in subsection (a) above.
 - c. In all instances, the HDC will start the meeting in open session and then consider a motion to close the meeting for the permitted purpose(s), as required under Md. General Provisions Code Ann., § 3-305(d), as amended.
 - d. At the next meeting, the HDC will, if the closed meeting is approved, identify the closed meeting, the vote to close the meeting, the authority under which the meeting was closed, what was discussed at the closed meeting while protecting any applicable privacy, privilege or confidentiality and identify any outcome, including any votes taken during the closed meeting, as required under Md. General Provisions Code Ann., § 3-305(d), as amended.

e. The HDC will ensure that minutes are taken of each meeting, as required under Md. General Provisions Code Ann., § 3-306(c)(2), as amended, which are subject to approval by a majority vote of members at the next meeting.

6. The order of business at regular meetings shall be as follows:

- (a) Call to order;
- (b) Approval of minutes of previous meeting;
- (c) Consent agenda;
- (d) Public hearings;
- (e) Courtesy reviews;
- (f) Updates; and
- (g) Adjournment.

7. **Preliminary Statement.** The following statement shall be noted on the agenda of each HDC meeting: This Commission is empowered to meet and act under Article XII of the City Code of Gaithersburg. The technical qualifications of the staff of this Commission and the members of the Commission are on file with the City of Gaithersburg, are available on request to any applicant, and are hereby made a part of the legal record of each and every application heard today. Each application heard today is considered on its own merits and is not to be considered as establishing a precedent for any other application.

8. **Procedure for Hearing Cases.** Hearings are open to the public, and notice of the hearing shall be posted at City Hall in addition to other notice requirements under these rules, Maryland law, and the City code.

a. For good cause shown or by application of one of the parties, the HDC may set another time for a hearing as it deems necessary and appropriate. Parties seeking a postponement or continuance must submit a written request to the HDC, with service to any known opposing party, no less than four (4) business days prior to the scheduled hearing date.

b. The procedure for hearing cases shall be as follows:

- i. Introduction of the public hearing by the HDC Chair
- ii. Check for conflicts of interest and disclosure
- iii. Call staff to present facts of the application
- iv. Call upon applicant or representative and any witnesses to explain request, answer questions
- v. Public comment in favor of application may speak
- vi. Public comment opposed to application may speak
- vii. Rebuttal remarks by applicant
- viii. Staff recommendation, if any
- ix. Consideration of application by Commission
- x. Discuss with respect to City Code and, if relevant, guidelines for the respective district and the U.S. Secretary of the Interior's Standards
- xi. Discuss modifications/conditions that Commission may recommend

- xii. Close the record
 - xiii. Final action (motion) by HDC or deferment
- c. In all cases, the HDC shall inquire fully into the facts, regulate the course of the hearing and admit or deny into the record documentary or other evidence. As such, the HDC shall have the authority to rule on offers of proof, receive relevant evidence, and exclude incompetent, immaterial and unduly repetitious evidence. The HDC shall dispose of, or rule upon, procedural requests and order hearings consolidated or reopened.
- i. Any person opposing the application may present a statement under such time restraints as the Chair imposes for public comment, and the Chair shall, upon request, permit the applicant and opposing party to cross examine witnesses. In such a contested case, all testimony shall be taken under oath.
 - ii. Examination of Witnesses – Both sides and the HDC members are entitled to examine witnesses who testify in the hearing, which includes the right to conduct direct testimony of witnesses called by a party and the right to cross-examine witnesses called by the adverse party. Cross-examination should be limited and directed to information and evidence presented by the witness.
 - iii. Rules of Evidence – Formal rules of evidence before the HDC are relaxed, but certain rules will be followed, where relevant and particularly in hearing contested cases, as indicated below:
 - 1. All evidence and exhibits shall be subject to admission into the record by the HDC. Evidence and exhibits shall be duly numbered, made a part of the record, and included in the case file.
 - 2. Hearsay evidence, if relevant and not found unreliable, will normally be accepted into the record.
 - 3. Incompetent, irrelevant, immaterial, or unduly repetitious evidence should be excluded from the record.
 - 4. The HDC may receive documentary evidence in the form of copies or excerpts.
 - 5. Objections must be made at the time the information, testimony, or exhibit is presented, or shall be waived, and will only be sustained for the most compelling reasons so that the purpose of providing wide latitude to the witnesses will be served.
 - 6. Objections to testimony by a party or introduction of exhibits must be made at the time the information or exhibit is presented or the objection will be considered waived.

7. The HDC may take administrative notice of matters of common knowledge or expertise in reaching a decision on a case.
8. Sequestration of Witnesses – The HDC may, before any testimony is taken, on its own initiative or upon the request of the applicant or opposing party order witnesses excluded so that they cannot hear the testimony of other witnesses. The applicant and opposing party may not be excluded.
9. Nondisclosure – The Commission may order a witness and any other persons present in the hearing room not to disclose to any other person the nature, substance, or purpose of his or her testimony, exhibits, or other evidence introduced during his/her testimony.
10. Burden of Proof – The applicant has the burden of proof to show by a preponderance of the evidence that his or her application should be granted. A preponderance of the evidence means that the evidence, when considered and compared with that opposed to it, shows it is more likely than that the applicant's request should be granted. If the evidence is evenly balanced, then the finding must be that the applicant's request is denied.

E. APPLICATION PROCEDURES FOR HISTORIC AREA WORK PERMITS, PRELIMINARY AND COURTESY REVIEWS, DEMOLITION PERMITS AND TAX CREDITS

1. **Filing of Application.** A complete application must be filed with the Planning and Code Administration at least fifteen (15) business or working days, as defined by City Code § 24-1.1, prior to the next meeting of the HDC accompanied by sketches, drawings, photographs, specifications, description, building location plat, and any other supporting documentation of the proposed project as required in the application for historic area work permits. This deadline may, in the discretion of the Planning and Code Administration Director or his or her designee, be waived for applications not requiring substantial review, and applications requiring additional reviews may require more time before the application can be placed on the HDC agenda. No application will be considered complete and subject to public proceedings until all required submissions are received.
2. **Notice to Neighboring Properties and Other Required Parties.** After scheduling a public meeting, notice thereof shall be accomplished by city staff, by ordinary mail, being given to property owners within two hundred (200) feet of the property that is the subject of the application, not less than seven (7) calendar days prior to the meeting at which the matter is to be heard, and to those citizens or organizations that the city manager or designee determines may have an interest in the proceedings. In addition, notice shall be accomplished by posting an appropriate sign on the site and publication at least once, not less than seven (7) days prior to the meeting.

3. **Preliminary Consultations.** It is the practice of the HDC to encourage preliminary consultations prior to submission of formal applications in cases involving new structures or extensive alterations and/or additions to existing structures. The HDC expects that the HDC Staff Liaison will meet informally with the applicant or agent at an early stage in the design process to advise the applicant concerning the historic preservation guidelines, the nature of the area where the proposed construction is to take place, and other relevant factors.
 - a. The HDC may also, in its discretion, schedule time at a regular meeting for preliminary review of a draft application.
 - b. Notice required under Section (E)(2) need only be provided to owners of property adjacent to the property that is the subject of the application.
 - c. During the preliminary consultation, HDC members shall refrain from any indication of formal approval or disapproval of the proposal. No advice or opinion given, or reported as having been given, in such informal meeting shall be in any way official or binding upon the HDC or the applicant in deciding the formal application..
4. **Courtesy Reviews.** The Historic District Commission may review and make recommendations to the Planning Commission on applications for site development plan approvals, including amendments and modifications thereto, involving the construction, alteration, reconstruction of, or additions to existing buildings or structures or demolition thereof on a site located within courtesy review areas as stated in the Historic Preservation Master Plan Element.
 - a. The courtesy review areas include, but are not limited to, Olde Towne, and the subdivisions of Observatory Heights and Realty Park.
 - b. Notice should be provided as required under Section (E)(2)
5. **Tax Credits.** The Historic District Commission shall review and make recommendations to the County and State on applications for property tax credits, which shall include, where applicable, a finding and certification that the applicant is eligible for the tax credit. No notice under Section (E)(2) needs to be provided to neighboring or adjoining property owners.
6. **Public Hearings.** HDC will hold a public hearing on the applications. The agenda for the public hearing and all background information related to the application shall be made available to the general public prior to the hearing.
 - a. No formal rules of evidence for hearings will apply beyond the rules and processes in Section (D)(8), above, as the HDC considers the application and evidence for whatever weight the HDC finds warranted.
 - b. Only information and evidence related to the application will be considered, and the HDC may exclude repetitive information and evidence.

- c. The applicant has the burden of proof to show by a preponderance of evidence (meaning, it is more likely than not) that the application should be granted, but City staff may assist in ensuring sufficient information is presented to the HDC.
 - d. The HDC shall, in a contested matter involving opposition to an application, require testimony under oath.
 - e. If the applicant fails to appear, the HDC may proceed to consider or may dismiss the application.
- 7. Time for Decision.** The HDC shall act within forty-five (45) days from receipt of a complete application as determined by city staff, or within fifteen (15) days of closing the record, as provided in City Code §24-227.1(d), except when the time limit has been extended by mutual agreement between the applicant and the HDC.
- 8. Review Criteria.** The HDC shall review the application, and, in doing so, shall apply the review criteria contained in the City Code Article XII Preservation of Historic Resources, Maryland law, including the Maryland Land Use Code Annotated, §8-101 *et seq.*, the U.S. Secretary of the Interior's Standards for Rehabilitation, the Maryland Preservation Commissions Handbook, and the City's adopted Historic District Guidelines.
- 9. Approved Application.** If the application is approved, the HDC staff liaison shall transmit a Certificate of Approval clearly describing the nature of the approved work. A copy of this information shall be forwarded at the same time to the City's Permitting and Inspections Division, which is responsible for the enforcement of the provisions of this ordinance.
- 10. Denied Application.** If an application is denied, written reasons for denial shall be mailed by the staff liaison to the applicant in a timely manner.
- 11.** If the HDC denies an application for a Certificate of Approval, a new application affecting the same property may be submitted within one year of the denial only if either a substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration, or relocating a structure or other conditions related to the district, or surrounding uses have changed substantially.
- 12.** The HDC shall use all reasonable efforts to expedite any concurrent process with the State Historic Preservation Office, if such a process is desired by the applicant for the purpose of securing both a Certificate of Approval and a federal historic preservation tax credit or other approval.

F. MODIFICATIONS OF APPLICATIONS

An approved or pending application within the authority of the HDC may be modified by a written request from the applicant. Such a request shall include a description of the proposed change and shall be accompanied by elevations, plans, or sketches where necessary. If the HDC finds that the modification constitutes a substantial change, which might affect surrounding property owners, it shall notify affected property owners before taking action on the modification. The HDC shall thereupon treat the request in the same manner as any other application.

G. CLOSING THE RECORD

Unless otherwise determined by the HDC, the record will remain open until the HDC orally votes to close the record or to approve or deny the plan. If the HDC closes the record by duly adopted motion prior to the vote to approve or deny the plan, no additional evidence will be received except (a) for good cause shown as to why the evidence was not presented while the record was open and (b) a showing that the evidence is material and relevant.

H. VOTE

The vote of a majority of those members present and voting shall be sufficient to decide matters before the HDC provided a quorum is present. A motion fails with a tied vote.

I. CONDITIONAL APPROVAL

The HDC may affix or establish necessary conditions to its approval of any matter to come before the Commission, which shall be enforced by the City Manager, or his or her designee, as provided by the City Code, Article XII Preservation of Historic Resources, including City Code §§24-227.1(f)(5) and 24-227.2(f), to the extent reasonably necessary to assure that work in accord with the permit shall proceed and be performed in a manner not injurious to those characteristics and qualities of the historic resources which are of historical, architectural, archaeological, or cultural value, as provided by City Code § 24-227.1(f)(3).

J. RECONSIDERATION

Section 11 – Reconsideration

A. A request for reconsideration of any matter in which the HDC has final decision-making authority may only be made by an aggrieved party, must be in writing, and unless waived by the HDC for just cause, must be received by the HDC no later than seven (7) days after the date of the final decision. The request must specifically state the basis upon which the aggrieved party contends the HDC's decision should be reconsidered. The HDC may grant a request to reconsider, provided sufficient grounds are demonstrated. Such grounds may include:

1. a clear showing that the action of the HDC did not conform to relevant law or its rules of procedure;
2. evidence indicating that certain pertinent and significant information relevant to the HDC's decision could not reasonably have been presented at the hearing before the HDC or otherwise included in the record, together with a statement detailing why such information was not timely presented; or

3. such other appropriate compelling basis as determined by the HDC. The fact that a party raises an issue worthy of reconsideration does not itself require the HDC to reconsider a prior action.

B. If a request for reconsideration is timely received, City staff shall place the written request for reconsideration on the agenda of the HDC for the next regular meeting of the HDC. HDC members may question staff or any interested party then present to clarify points raised in the written request; otherwise, testimony need not be received. At such time, HDC members shall determine whether the written request raises a proper and sufficient basis for reconsideration. Any HDC member who:

1. voted in the majority on the action drawn into question, and
2. believes an issue warranting reconsideration has been raised, may then move to reconsider the action. If no such member remains on the HDC, the Chair may make the motion on his/her own initiative or at the request of any HDC.

C. If a motion to reconsider has been duly adopted by the HDC, the prior final decision of the HDC shall be void and the record before the HDC shall be automatically reopened. The HDC shall schedule a hearing for a subsequent date and time, providing all parties of record at least ten (10) days advance written notice of the hearing.

D. A timely filed request for reconsideration shall not operate to extend any time for appeal provided by applicable law so long as the HDC holds a regular meeting within fourteen (14) days after the decision which is the subject of the reconsideration request. If the HDC does not hold a regular meeting within fourteen (14) days after the decision which is the subject of the timely filed reconsideration request, then the time for appeal is automatically extended until the expiration of three (3) calendar days after the HDC next holds a regular meeting.

J. APPEALS

Appeals from HDC decisions approving or denying an application may be filed by any party aggrieved by an HDC decision within seventeen (17) days from the date on which the decision is made public and mailed to the applicant as provided in Rule (E)(9). Such appeal shall be to the City Board of Appeals and thereafter, to the circuit court of the county, which will review the decision based on the record of the proceedings before the HDC.

J. AMENDMENTS

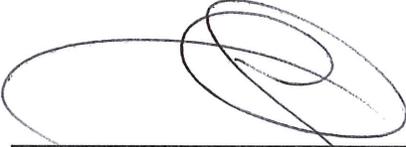
These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than a simple majority of the members of the HDC, provided that such amendment shall have first been presented to the membership in writing at a regular or special meeting preceding the meeting at which the vote is taken.

K. RECORDS RETENTION

All HDC agendas, minutes, documents related to any meeting, background materials, investigation materials, or hearing materials shall be maintained by the HDC Staff Liaison in accordance with the applicable Records Retention Schedule. These records will be available to the public in accordance with the Maryland Public Information Act, Maryland General Provisions Code Ann., §4-101 *et seq.*

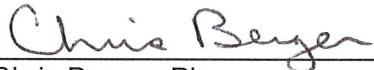
ADOPTED by the Historic District Commission on the 24th day of September, 2015.

Commissioners Kirtz, La France, Ventola, Weich, and Wessell being present and voting in favor of the action.



Chris Kirtz, Chair
Historic District Commission

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the Historic District Commission in public meeting assembled on the 24th day of September, 2015.



Chris Berger, Planner
Staff Liaison to the Historic District Commission