

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

October 26, 2009

CALL TO PODIUM:

**Lynn Board, City Attorney
Greg Ossont, Director, Planning
and Code**

RESPONSIBLE STAFF:

**Lynn Board, City Attorney
Greg Ossont, Director, Planning
and Code
Lauren Pruss, Planning Director
Eliza Voigt, Planner**

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District Commission
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input checked="" type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other: Certificate of Approval

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:
Work Session to Discuss Changes to the Historic District Commission (HDC) Composition

SUPPORTING BACKGROUND:
<p>In June 2008, the Maryland Association of Historic District Commissions (MAHDC) visited Gaithersburg as a part of a program to assess how the HDC/HPAC conducts their activities. The purpose of this visit was to provide suggestions to the HDC/HPAC on ways to improve their operations. In December 2008, the MAHDC presented the City with a report and recommendations.</p> <p>Staff reviewed the recommendations and provided a memo to the HDC with a response to each recommendation. City Attorney Board provided a memo on the question of HDC membership. In March 2009, the HDC held a work session on the MAHDC recommendations.</p> <p>At the October 1, 2009 HPAC meeting, the HPAC discussed the composition of the current HDC. The HPAC is in support of changing the current structure of the HPAC and HDC to a single historic preservation commission based on the criteria outlined in the State enabling legislation. Specifically, they are proposing that the Mayor and City Council would no longer serve as the HDC. The HDC would become a separate entity appointed by the Mayor and City Council. The attached memo from HPAC outlines the points which support this decision.</p> <p>The power point presentation highlights the current process for historic area work permits and historic property designations and the proposed changes to this process if the Mayor and City Council no longer serve as the HDC.</p> <p>Attachments: Copy of 10/26/09 Work Session Power Point Presentation HPAC memo to City Manager – 10/2/09 City Attorney memo to Mayor and City Council – 3/23/09 Staff memo to HDC - 3/13/09 Minutes from 3/30/09 HDC Work Session</p>

DESIRED OUTCOME:
Conduct work session and provide staff guidance



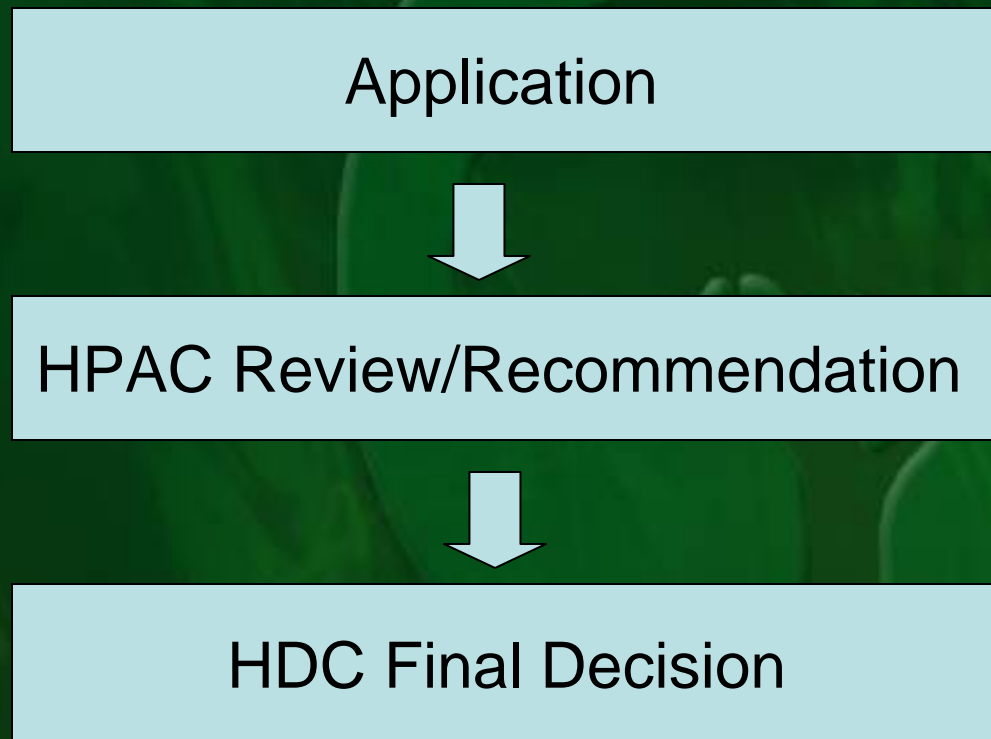
Proposed Changes to the Historic District Commission Composition

Work Session
October 26, 2009

Background/History

- June 2008 - Maryland Association of Historic Districts (MAHDC) site visit
- December 2008 – MAHDC site visit report presented to City with recommendations
- March 2009 - HDC work session on MAHDC recommendations
- October 2009 - HPAC meeting and memo on HDC structure

Current Process for Historic Area Work Permits



Proposed Process for Historic Area Work Permits

Application



HDC Review/Final Decision

Current Process for Historic Designations

HDC, PC, or Owner Initiates Application



HPAC Review/Recommendation



Planning Commission Recommendation



HDC Final Decision

Proposed Process for Historic Designations

M/CC, PC, or Owner Initiates Application



HDC Review/Recommendation



Planning Commission Recommendation



Mayor and City Council Final Decision

Proposed Changes

- Mayor and City Council would not serve as HDC. HDC becomes separate entity
- HDC would review and approve Historic Area Work Permits
- Mayor and City Council retain ability to initiate historic designations
- Mayor and City Council has final approval on historic designations

Guidance to Staff/Next Steps

- Proceed forward with text amendment to implement changes to the historic preservation article
- Hold public hearing on text amendment
- Planning Commission recommendation
- Mayor and City Council action

2008/2009 HAWPS

- 2008 – 10 HAWPs
- 2009 – 11 HAWPs (to date)
- All 21 HAWPs were approved by HDC

Historic Resources



Historic Resources



MEMORANDUM TO: Angel L. Jones, City Manager

FROM: Clark Day, Acting Chair
Historic Preservation Advisory Committee

DATE: October 2, 2009

SUBJECT: Composition of the Historic District Commission

At the October 1, 2009, Historic Preservation Advisory Committee (HPAC) meeting, the HPAC discussed the composition of the current Historic District Commission (HDC). The HPAC is in support of changing the current structure of the HPAC and HDC to a single historic preservation commission based on the criteria outlined in the State enabling legislation Article 66B, Section 8.01 – 8.17. Specifically we are proposing to separate the HDC from the Mayor and Council. The attached document outlines the points which support the HPAC's decision.

Please contact me or HPAC member Joe Coratola if you have any questions.

Attachments

cc: Historic Preservation Advisory Committee members
Greg Ossont, Director, Planning and Code Administration
Lynn Board, City Attorney
Lauren Pruss, Planning Director
Eliza Voigt, Planner

October 2, 2009

City of Gaithersburg HDC Factual Points

1. Historic designation is a zoning overlay, which can only be enacted by the local legislative body upon recommendation by the HDC. The HDC alone cannot designate properties as historic, and the Planning Commission should have the opportunity to review and comment on proposed designations before they are submitted to the Mayor and Council. (Article 66B, §8.02, Annotated Code of Maryland).
2. The City does not currently qualify for the Certified Local Government program, administered by the Maryland Historical Trust and National Park Service because the members do not possess the professional qualifications required for participation. The current process of appointing the Mayor and Councilmembers does not ensure that the City will be able to meet these requirements on an ongoing basis. However, changing the appointment process to allow qualified individuals to be appointed would help the City satisfy the CLG requirements.
3. Simplifying the preservation process to a single HDC body will help create predictability for applicants in the permit approval process. Currently applicants are required to receive approval from two boards – HPAC and HDC – before work may begin. By having a single and separate HDC body, redundancies in the approval process will be eliminated.
4. HDC's decisions must be made within a legal framework established by State law and reinforced by local ordinances. The State enabling legislation defines when HDC's are required to be strict in their decisions and when they may be more lenient. All decisions must be based on design guidelines that the Mayor and Council approve, and all hearings are conducted according to published rules. This creates a checks and balances over the HDC body.



5. Appeals of HDC decisions regarding HAWP's can be made to the Board of Zoning Appeals, or to the Circuit if the applicant so chooses.
6. A separate and single HDC body will reduce the amount of staff members needed to support the HDC. It will reduce staff preparation for meetings and the need for staff to present the applications to multiple preservation reviews (HPAC first then HDC).
7. A single HDC will limit the City's legal exposure by applicants. Our current two body system allows for procedural and substantive mistakes to be made by staff, HPAC members and/or HDC members.
8. Applicant's rights are protect by the binding State regulations over the HDC and will not have any confusion.
9. All public hearings would be transparent and be televised. The current HPAC meetings are not televised; the applicants are required to present their HAWP's to this committee. The applicant is not required to attend the current HDC hearings.
10. In a single HDC body all members would be appointed by the Mayor and confirmed by the Council. All could be interviewed as are appointees to the Planning Commission. If an HDC member does not follow legislative regulation that member can be removed. Currently there is no recourse for an HDC member.
11. The HDC could have a Councilmanic liaison who can speak about an issue with no vote.
12. HDC members should be appointed from different backgrounds and locals in the City such as a member of the Olde Towne Advisory group. All such appointees must still have the required background and qualifications as stated in Article 66B section 8.03 (a).

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

March 30, 2009

CALL TO PODIUM:

Lynn Board,
City Attorney

RESPONSIBLE STAFF:

Lynn Board,
City Attorney

Greg Ossont,
Director of Planning and Code
Administration

AGENDA ITEM:
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<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

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Record Held Open	
Policy Discussion	

TITLE:
Discussion of Membership of the Historic District Commission

SUPPORTING BACKGROUND:
<p>State statute requires members of a local historic district commission to have certain qualifications outlined in the attached Memorandum. The City's Ordinance, §22-224 of the City Code, mirrors the qualification language in the state statute.</p> <p>Historically, the City has appointed the Mayor and Council as the members of the Historic District Commission. This item is intended to seek policy discussion as to whether or not to continue this practice.</p>

DESIRED OUTCOME:
Provide guidance.

MEMORANDUM

TO: Mayor and City Council

VIA: Angel L. Jones, City Manager

FROM: N. Lynn Board, City Attorney

RE: Membership of Historic District Commission

DATE: March 23, 2009

The Maryland Association of Historic District Commissions has raised in its recommendations to the City's Historic District Commission the question of membership of the City's Commission. By practice, the Mayor and City Council have been appointed as members of the HDC.

By state statute (Article 66B, §8.03, of the Annotated Code of Maryland), local district commissions are required to have at least five members, each of whom shall possess "a demonstrated special interest, specific knowledge, or professional or academic training in such fields as history, architectural history, planning, archeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design, or related disciplines." Section 8.03 further provides that each local jurisdiction that creates a historic district commission shall establish and publicly adopt criteria for qualifying as a member of the commission.

The Maryland Court of Special Appeals recently examined the City's practice of appointing the Mayor and City Council as historic district commission members in *Halici v. City of Gaithersburg*, 949 A.2d. 85, 180 Md. App. 238 (2008). The Court in *Halici* held that an ordinance allowing the Mayor and City Council to serve on the Historic District Commission, if they possessed the qualifications set out in the ordinance, did not conflict with the state statutory HDC requirements as long that the qualifications in the local ordinance mirrored the qualifications in the state statute.

MEMORANDUM TO: Historic District Commission (HDC)

VIA: Angel L. Jones, City Manager

FROM: Eliza Voigt, Planner
Planning and Code Administration

DATE: March 13, 2009

SUBJECT: Maryland Association of Historic District
Commissions (MAHDC) Report and Staff
Recommendations

The site visit report from the Maryland Association of Historic District Commissions (MAHDC) was previously distributed to you. Staff has reviewed the recommendations by the MAHDC and has provided a response to each. The report and responses are attached.

Please contact me if you have any questions at 301-258-6330 or evoigt@gaitHERSBURGMD.GOV

Attachments

cc: Greg Ossont, Director, Planning and Code Administration
Lauren Pruss, Planning Director

MAHDC RECOMMENDATIONS TO THE COMMISSION:

1. The HDC's ordinance and Rules of Procedure authorize the City Council to appoint 6 members to the Commission and states that they will elect a Chairman from among them. It does not indicate that these must be City Council and that the Mayor will serve as Chairman, although that has been the practice. The lack of a forthright statement of Gaithersburg's policy regarding appointments to the Commission is troubling. If this is the policy, state it, otherwise you are implying that appointments could come from the general public, which is not the case.

A1. Staff suggests updating the Rules of Procedures for the HDC to clearly state the City's policy on appointments to the HDC.

2. The ordinance uses several terms that are not standard in historic preservation ordinances including "impact review area," and "Historic Preservation Advisory Committee." It would be helpful if these terms were defined in the definitions section of the ordinance so that they will be immediately understood when they appear in the text.

A2. Although these terms are not specifically defined in the definitions section, they are well-defined in the body of the ordinance. Specifically, Section 24-227 defines the Historic Preservation Advisory Committee and Section 24-229 (d) defines the term impact review area. Therefore, staff recommends no changes.

3. The HPAC and HDC should consider reviewing and re-adopting their Rules of Procedures documents so they appear more current. MAHDC recommends that the Rules of Procedure be posted on the web site and made as widely available as possible.

A3. Staff will review the Rules of Procedures this year and propose re-adoption by the HPAC and HDC. The Rules of Procedure are currently posted on the web.

4. MAHDC is concerned that there appears to be an inherent conflict of interest here. Council Members and the Mayor have a stake in seeing the advancement of projects which they may have initiated in their role as government officials. Can they rule impartially on such cases? Gaithersburg should ask its City Attorney to review this provision. The HDC may want to consider limiting its ability to overrule HPAC findings in cases that involve City actions.

A4. This issue has been reviewed by the City Attorney. No changes are recommended.

5. MAHDC recommends that the application be posted either on the website's Documents and Forms Section, and/or on the home pages of the HPAC and HDC. MAHDC recommends that all Commission materials, especially agendas and minutes, ordinances, guidelines, rules of procedure and application forms be made as widely available as possible. Such transparency benefits the Commission in innumerable ways, not the least of which is that it makes the Commission's activities more accessible and understandable to the general public.

A5. All materials, including agendas and minutes, ordinances, guidelines, rules of procedure and application forms are currently posted.

6. MAHDC recommends that a question regarding property easements and deed restrictions be added to the application form. This ensures that prior to HPAC consideration, the property owner has received the necessary approvals from the easement holder. Sample text:

Are there any easements or deed restrictions for the exterior of this property? If yes, submit a letter from the easement holder stating their approval of the proposed work.

A6. Staff recommends updating the application to include this information.

MAHDC further recommends that a question regarding City, State and Federal Tax credits be added to the application form so that applicants can be made aware that different review standards may apply. Sample text:

Do you intend to apply for City, Federal or State Rehabilitation Tax Credits? If yes, have you met with Maryland Historical Trust staff?

- HDC approval does not guarantee approval for tax credits.

A6. Staff recommends updating the application to include this information. Currently, at the time of application and at the HPAC hearing, applicants are made aware of their ability to apply for tax credits. Further, the County tax credit information/application is enclosed when the Certificate of Approval is sent to the applicant.

7. MAHDC recommends that the applicant's rights and responsibilities be made as explicit as possible in all HDC and HPAC materials. Below is sample text that can be included on the application regarding applicant attendance:

The applicant and/or his/her representative need not be present at the hearing at which his/her application will be considered. Please be advised, however, that if the Commission members have questions or require additional information and the applicant is not present, they may reserve the right to postpone action on the application.

A7. Staff recommends that the suggested text be incorporated into the application.

8. MAHDC recommends that the opening statement be transcribed in the minutes so that anyone reviewing the minutes will understand the why the HPAC and HDC is qualified to make decisions and the criteria and procedures they use to make decisions. In addition it is helpful to add the following to the opening statement:

Each application heard today is considered on its own merits and is not to be considered as establishing a precedent for any other application.

A8. Prior to both the HPAC and HDC meetings, the Chair reads a preliminary statement which states why the HPAC and HDC is qualified to make decisions and the criteria and procedures they use to make decisions. Staff suggests that this language be added to the minutes.

9. MAHDC recommends that Gaithersburg explore the possibility of becoming a CLG.

A9. The Certified Local Government Program (CLG) is a preservation partnership between local, state and national governments focused on promoting historic preservation at the local level. Benefits include access to federal funding and technical assistance. Staff recommends that the City work with the Maryland Historical Trust to apply for this certification.



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG

MINUTES OF A CITY COUNCIL WORK SESSION

March 30, 2009

A work session of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Ashman, Drzyzgula, Marraffa, Sesma, and Spiegel. Staff present: City Manager Jones, Assistant City Managers Felton and Tomasello, Planning and Code Administration Director Ossont, Planner Voigt and City Attorney Board.

I. TOPICS OF DISCUSSION:

A. Shady Grove Adventist Hospital

Mr. Dennis Hansen, President of Shady Grove Adventist Hospital and Mr. Robert Jepson, Vice President of Government Relations & Public Policy for Adventist HealthCare provided an update regarding future operations and facility planning for Shady Grove Adventist Hospital.

B. Discussion of Membership of the Historic District Commission

City Attorney Lynn Board provided an overview of the state statutory requirements for selection of members of the Historic District Commission. The Mayor and City Council directed staff to prepare City Code amendments to provide for the appointment of members to the Historic District Commission to be qualified individuals other than the Mayor and City Council and to delete the Historic Preservation Advisory Committee.

C. Maryland Association of Historic District Commission (MAHDC) Site Visit Report and Staff Recommendations

Planner Voigt gave an overview of each of the recommendations made by the MAHDC in their December report to the City. Staff provided a response for each recommendation. Cory Kegerise, Administrator of Local Preservation Programs at the Maryland Historical Trust, provided an overview of the Certified Local Government (CLG) program. Mr. Kegerise provided insight into the CLG program and noted that the current membership of the Historic District Commission does not meet the CLG requirements.

The Mayor and City Council noted that the recommendations related to updating the City web page and adding information to the Historic Area Work Permit (HAWP) applications can be undertaken by staff at this time. The recommendations concerning the membership of the HDC and the historic preservation ordinance will be the subject of a future public discussion and hearing.

II. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:30 p.m.

Respectfully submitted by,
Various City staff