



Montgomery
County Council

Committee: PHED

Staff: Livhu Ndou, Legislative Attorney
Pamela Dunn, Senior Legislative Analyst

Purpose: Receive briefing and have discussion – no vote expected

Keywords: #SRA, #Rewrite

AGENDA ITEM #3B
September 14, 2021
Worksession

SUBJECT

SRA 20-02, Subdivision Ordinance – Revisions, Clarifications, and Corrections

Sponsor: Council President at the request of the Planning Board

EXPECTED ATTENDEES

Casey Anderson, Chair, Montgomery County Planning Board
Patrick Butler, Chief, Up-County Planning Division, Planning Department
Christina Sorrento, Chief, Intake and Regulatory Coordination (IRC) Division, Planning Department
Neil Braunstein, Plats and Intake Supervisor, IRC, Planning Department
Stephen Smith, Planner Coordinator, IRC, Planning Department

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Planning, Housing, and Economic Development (PHED) Committee unanimously recommends approval of SRA 20-02, with amendments.

DESCRIPTION/ISSUE

SRA 20-02 contains revisions, clarifications, and corrections to Chapter 50 of the County Code.

SUMMARY OF KEY DISCUSSION POINTS

SRA 20-02 would clarify language, correct mistakes, and add necessary missing provisions. While the majority of the proposed changes are minor, several substantive changes are also proposed.

This report contains:

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William Kominers letter	© 57 – 62
Sandy Spring Meadow letter	© 63 – 65

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Worksession

M E M O R A N D U M

September 9, 2021

TO: County Council

FROM: Livhu Ndou, Legislative Attorney
Pamela Dunn, Senior Legislative Analyst

SUBJECT: SRA 20-02, Subdivision Ordinance – Revisions, Clarifications, and Corrections

EXPECTED ATTENDEES

Casey Anderson, Chair, Montgomery County Planning Board
Patrick Butler, Chief, Up-County Planning Division, Planning Department
Christina Sorrento, Chief, Intake and Regulatory Coordination (IRC) Division, Planning Department
Neil Braunstein, Plats and Intake Supervisor, IRC, Planning Department
Stephen Smith, Planner Coordinator, IRC, Planning Department

INTRODUCTION

Subdivision Regulation Amendment (SRA) 20-02, Subdivision Ordinance – Revisions, Clarifications, and Corrections, Lead Sponsor Council President Hucker at the request of the Planning Board, was introduced on December 8, 2020.

Committee Recommendation: On July 12, 2021, the Planning, Housing, and Economic Development (PHED) Committee unanimously recommended approval of SRA 20-02, with amendments.

BACKGROUND

The focus of the SRA is to clarify language, correct mistakes, and add necessary provisions currently missing. While a majority of the proposed changes are minor, several substantive changes are also proposed.

The significant changes include¹:

- new provisions for the approval of flag lots and lots without frontage;
- new exemption from platting requirements for utility and telecommunications structures;

¹ The SRA as introduced included in the list of significant changes “new requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request”; however, the required change to Chapter 50 resulting from Council action on the Growth and Infrastructure Policy had already been made.

- new provisions for vacating an approved subdivision plan;
- new provision for extension of reservation of land for public use;
- new provision to specify an initiation date for the adequate public facilities validity period, similar to the existing initiation date provisions for plan validity;
- new limitation on Planning Board-approved APF extensions to a total of 12 years;
- new provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval; and
- a grandfathering provision to allow applications to be reviewed under the regulations that were in effect at the time of the application's filing.

PUBLIC HEARING

A public hearing was held on February 9, 2021.

Neil Braunstein, Supervisor, IRC, from the Planning Department testified in support. He testified that a comprehensive rewrite of the Subdivision Regulations went into effect in February 2017 and, since that time, Planning Staff and the public noticed items that needed amendment to provide clarification as well as large-scale changes. He testified that the Planning Board had a public hearing and afterwards voted unanimously to approve the SRA.

William Kominers, an attorney from Lerch, Early & Brewer also testified. He testified that he had a number of suggested revisions, but was generally in support of the SRA. He also provided written testimony, which is attached.

DISCUSSION

Minor Changes

Many of the proposed amendments to the Subdivision Regulations are minor. The majority of them are listed here in order:

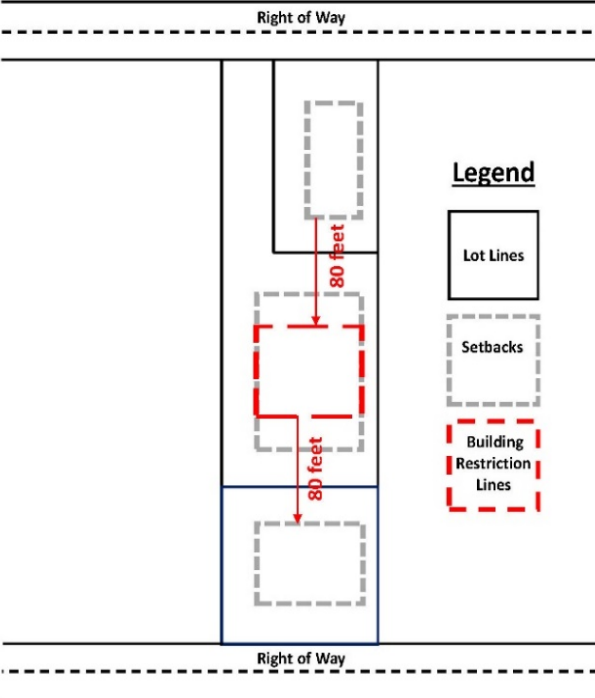
- Remove the definitions for Adequate Public Facilities Ordinance (APFO) and Subdivision Staging Policy.
- Change “Planning Board action” to “Planning Board Action or Director Action”.
- Note where decision-making authority can come from either the Board or the Director.
- Streamline the use of the terms “pre-preliminary plan” and “preliminary plan” by clarifying their definitions and making “preliminary plan” lowercase.
- Correct the title of the Maryland-National Capital Park and Planning Commission.
- Add several definitions, including “Building Envelope”, “Director Action”, “Growth Tiers”, and “Utilities”.
- Clarify that a “land surveyor” means a licensed land surveyor and that an “engineer” means a licensed engineer. Remove any redundancies due to these amended definitions.
- Land partitioned by will is added to the exemptions from approved preliminary plan and recording of a plat.
- Agricultural land used for residential dwellings is only exempt from recordation of a plat before issuance of a building permit if the parcel is eligible to obtain any required sewage disposal permits.
- For preliminary plans, the submitted plans for a public road must be under the design criteria approved by the Department of Transportation.

- The Director must send plans to the Department of Transportation, with reviews consistent with Vision Zero objectives; and to Montgomery County Public Schools for residential development in addition to school site planning.
- Reformat the major and minor amendment section, clarifying the process.
- Septic Tiers will be called Growth Tiers.
- Allow consolidation of a lot with a legally-constructed detached house or existing platted lot with a piece of land created as the result of a deed.
- Add that a plat of correction can be used to revise an easement if necessitated by a State or County agency or public utility.
- Forest Conservation requirements (Chapter 22A) must be satisfied before approval of a minor subdivision plat by the Board.

Major Changes

Flag Lots and Lots Without Frontage

A flag lot is a lot with a narrow strip of land connecting the main portion of the lot to a public or private right-of-way, as shown in the diagram below. While flag lots can allow a more efficient use of land when designing a subdivision, they can change the perceived character of an existing subdivision if created after the land was initially subdivided. Lots without frontage have similar benefits and concerns.² Of note, there are fewer lots without frontage than flag lots because they are limited to no more than two per subdivision under the Subdivision Regulations.



² Lots without frontage are accessed by an easement or private shared driveway.

The Planning Department proposes new provisions to limit the creation of these lots [Lines 319-390]. These provisions will not impact currently-platted flag lots and lots without frontages, only undeveloped lots. First, the Board cannot approve flag lots:

except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide and the Board determines that appropriate separation between building envelopes can be achieved.

[Lines 319-324, 347-352]

This provision prevents a developer from creating flag lots unless there is no other feasible option and “appropriate separation” is still achieved. An “appropriate separation” is defined as at least 80 feet. This is the minimum distance required between the building envelope of the proposed flag lot or lot without frontage and building envelopes on surrounding existing or proposed lots, as shown in the diagram above. The Board may not approve more than two lots without frontage in a subdivision, and those lots must be served by a private driveway that serves no other lots without frontage. For both flag lots and lots without frontage, the Board in its discretion may require additional building restriction lines as follows:

the Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot;

[Lines 336-339, 369-372]

Relevant to flag lots, SRA 20-02 provides a definition for “Building Envelope”.

Building Envelope: The portion of a lot, enclosed by the front, rear, and side setback lines and any additional building restriction lines, in which a structure may be placed.

[Lines 23-25]

An 80-foot separation from the building envelope of the proposed flag lot to the setback of the neighboring property will be restrictive in the higher-density zones. In the R-60 and R-40 zones, which have the smallest setbacks, the front setback is 25 feet, and the rear setback is 20 feet, totaling 45 feet. During the PHED Committee worksession, Planning Staff noted that the Department had been mapping all of the R-60 and R-40 lots, and that this amendment would make clear that flag lots are best placed on larger lots. Planning Staff also noted that this flag lot amendment would give the Board more flexibility in its review of proposed flag lots. While the PHED Committee recommended approval of this amendment, it was emphasized that flag lots should not be banned, and there should be wiggle room to prevent unused land.

Platting Exemption for Utility and Communication Structures

Generally, plats must be recorded before issuance of a building permit. Section 50.3.3.B lists exemptions to this requirement. Utility and communication structures, such as telecommunications towers, do still require a “building” permit, despite not being “buildings”. However, utility rights-of-way are not platted, so requiring a recorded lot for a utility or telecommunications structure that is not habitable, and often in the right-of-way, is inconsistent and creates unnecessary hurdles. Therefore, this SRA includes a platting exemption for utility and communication structures.

9. *Utility and Communication Structures.* The construction of telecommunications towers, antennas, solar arrays, relay stations, or similar facilities, including their associated accessory structures, which are not intended for the shelter, support, or enclosure of

persons, unless otherwise required by the Board or further development of the land requires a subdivision plan.

[Lines 105-110]

Vacating Approved Subdivisions

Currently, there is an informal process where an applicant could request to vacate a previously-approved subdivision plan, or the applicant could just let the validity period expire. This amendment creates a formal process for vacating. By vacating the plan, an applicant will be able to choose a different course of action on the subject property, including no development on the land. Vacating will mean the applicant is not subject to the conditions of approval of the approved subdivision plan, such as a forest conservation plan, if they do not plan on going forward with the preliminary plan or would like to sell and have someone else come in on a new application. Of note, vacating will only be an available option if no plats have been recorded.

K. Vacating an approved subdivision.

- 1. An applicant may request that the approval of a subdivision plan, for which no subsequent plats have been recorded, be vacated.***
- 2. A request to vacate an approved subdivision plan must include proof of ownership and notarized signatures of all property owners or other persons who are authorized by the property owner.***
- 3. The Director must approve the request to vacate the approved subdivision plan if the Director finds that the request is not contrary to the public interest.***

[Lines 302-310]

Extension of Reservation of Land for Public Use

Under Section 50.4.3.D.5, when the Board determines that a tract being subdivided includes land that is necessary for public use but will not immediately be acquired by donation, dedication, purchase, or condemnation when the plat is recorded, the Board may require reservation of that land. Said land can be reserved for rights-of-way, public schools, parks, recreational areas, and other public uses. Large land subdivisions that include land reservation may take many years to proceed. Therefore, SRA 20-02 allows the Planning Board to, at the request of the property owner, extend the reservation period for up to three years.

- vi. Extension. After the initial reservation period, the Board may extend the reservation period upon request of the property owner if the Board determines that the reserved land continues to be necessary for public use. Any extension must not exceed 3 years.***

[Lines 409-413]

Initiation Date for APF Validity Period

Approved subdivision plans have a plan validity period as well as an adequate public facilities (APF) review validity period. Plan validity is the period of time during which a plat must be recorded; APF validity is the period of time in which building permits must be issued. The current time limits are 3 years for the plan validity and 5 years for the APF validity.

Under Section 50.4.2.G, the plan validity period starts on the initiation date which, if no appeal has been filed, is 30 days from the mailing date of the resolution. If an appeal has been filed, the validity period is

tolled until the Court’s final decision. Under Section 50.4.3.J, no initiation date for the APF validity period is specified. According to Planning Staff’s memorandum, the APF validity period starts 30 days before the plan validity period starts and does not have a tolling period for appeals. SRA 20-02 ensures that the APF validity period does not expire due to an appeal by specifying an initiation date for the APF validity period. It also clarifies that if a corrected resolution is issued, the initiation date is the date on the original resolution. Using the date on the original resolution makes sense, since corrections are typically minor.

5. *Validity period.*

- a. Initiation date. The adequate public [[facility]] facilities validity period starts on the later of:
 - i. 30 days from the date of mailing indicated on the written resolution; or
 - ii. if an administrative appeal is timely noted by any party authorized to file an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.
- b. If a corrected resolution is issued, the initiation date remains the date of mailing indicated on the original resolution.

[Lines 572-581]

Limitation on Planning Board APF Extensions

Under current regulations, a subdivision can be granted multiple extensions, in succession, with no limit on the total length of the extension period. According to Planning Staff, if the maximum length of all currently allowable extensions is applied, then the APF validity period could be as long as 36 years. In addition, the County Council can extend the validity period. The issue is that these plans tie up development capacity that other projects might better use. The proposed amendment would limit the total length of new APF validity extensions to 12 years. This does not include special validity period extensions, such as those granted by the County Council.

- h. No combination of extensions of APF validity approved under Section 4.3.J.7 may exceed a total of 12 years from the date of the original APF expiration.

[Lines 656-658]

During the PHED Committee worksession, questions were raised as to why the extension period should still be as long as 12 years. The Planning Board Chair noted that large projects happen in phases, and therefore sometimes need the additional 12 years. He noted that most projects are completed much quicker, and that the Planning Department and Planning Board have triggers along the way so that to get the additional 12-year extension, a developer would have to show that they have been making progress. Planning Staff also noted that many projects would not qualify for the full 12-year extension.

Subdivision of Land within an Approved Cluster Subdivision

SRA 20-02 makes it clear that subdivisions approved under the cluster method of development cannot later be subdivided further. Per Section 4.3.2.B of the Zoning Ordinance, “the cluster method of development provides an optional method of development that encourages the provision of community open space for active or passive recreation as well as the preservation and enhancement of natural resources.” This method allows flexibility in lot layout and for a variety of building types, as well as providing open space for common use. To accomplish this, certain changes in lot area and dimensions are allowed. Due to the changes made under this method of development, which already allows changes in

lot areas and dimensions to create open space, preventing further subdivision of land approved under this method is crucial. SRA 20-02 makes it clear that future subdivision of the land will not be permitted.

On June 7, 2021, a letter was received from the Housing Opportunities Commission of Montgomery County (HOC), owner and developer of the Sandy Spring Meadow subdivision in Sandy Spring.³ This property was originally developed in the 1980s under the R-60 zoning provisions in place at the time. The owners intend to amend the prior cluster development approvals by obtaining approvals under the MPDU Optional Method of Development of the R-60 Zone for a small portion of the existing subdivision. The new plan would remove 11 single-family detached lots and an open space parcel and create a mix of affordable units. Therefore, Planning Staff supported, and the PHED Committee unanimously recommended approval of, the following amendment:

- e. future subdivision of land within the approved cluster subdivision that would result in the creation of additional lots is not permitted after the property is platted[.], except for amendments to cluster subdivisions that were approved prior to October 30, 2014 and that result in land being reviewed and approved as part of an Optional Method MPDU Development application with at least 25% moderately priced dwelling units (MPDUs), provided that the remaining portion of the cluster subdivision complies with all applicable development standards.

[Lines 686-695]

Landscape and Lighting Plans

Landscape and lighting plans will now be required for places of worship and institutional uses.

- N. [[Landscape and Lighting Plans]] *Landscape and lighting plans.*
 - 1. For places of worship and institutional uses, a landscaping and lighting plan, which must also include the parking lot layout, must be submitted for review and approval concurrently with the preliminary plan.

[Lines 697-701]

Approval Procedure for Pre-Preliminary Submissions

For pre-preliminary submissions, an applicant may now choose whether action will be advisory (if reviewed only by the Development Review Committee) or binding (if reviewed by the Board). As this is the pre-preliminary submission, this option can streamline the process and should not have any unintended consequences.

- C. *Action on a pre-preliminary submission.*
At the applicant's discretion, action on a pre-preliminary plan may be either advisory if only reviewed by the Development Review Committee or binding if reviewed by the Board.

[Lines 708-711]

³ That letter is included in this packet.

Administrative Subdivision: Approval Procedures, Required Findings, Plan Certification, Amendments, Validity Period, Revocation, and Vacation of Approval

First, the term “administrative subdivision plan” has been replaced in various places and replaced with “preliminary plan.” This is because an administrative subdivision plan is included as a type of preliminary plan. This does not, however, change the need for separate requirements. Administrative subdivision plans are similar to preliminary plans but they can usually be acted on by the Planning Director instead of the Planning Board. They have a 90-day review period instead of 120 days, simplified procedures, and generally require less time to make a decision.

The current provisions for administrative subdivision plans do not include specific requirements for necessary findings for approval, plan certification, plan validity, revocation of an approved plan, and vacation of an approved plan. Because of this, they have been approved under the provisions and findings for preliminary plans. The creation of separate approval procedures and findings will provide greater clarity for applicants, staff, and the Planning Board. The proposed procedures and findings are still similar but have small modifications to reflect the context of administrative subdivision plans. The amendment adds findings, explains how to establish plan validity and plan certification, and makes it more clear how these approval actions should work.

New provisions are also proposed to specify when an administrative subdivision plan should be acted on by the Planning Board instead of the Planning Director. Specifically, the Director must not act on flag lots or lots without frontage due to their controversial nature. And the Director cannot act on reservation of land for public use, because only the Planning Board has the authority to authorize those.

5. In making the findings required in Subsection 6.3.C, the Director or Board must consider the technical requirements under Section 4.3. In performing this review, the Director is authorized to perform any relevant action that is permissible to the Board under Section 4.3, except for the following:
 - a. Section 4.3.C.1.b, with respect to flag lots;
 - b. Section 4.3.C.1.c, with respect to lots without frontage on a public or private road;
and
 - c. Section 4.3.D.5, with respect to reservation of land for public use.

[Lines 805-814]

Crossing Lot Lines

As noted above, during the public hearing the County Council heard testimony from William Kominers, an attorney with Lerch, Early & Brewer. Planning Staff and Council Staff recommended approval of an amendment suggested on the last page of Mr. Kominers’ letter, which was also referenced during his testimony during the public hearing.⁴ He wrote that an older version of the Subdivision Regulations made clear that building permits must not be approved for buildings or structures that cross a lot line. In SRA 20-02, Section 50.3.2.B states: “A building permit may only be issued for a building located on a lot or parcel shown on a plat recorded in the County Land Records or on a parcel exempt from recording requirements under Subsection 3.3.B.” He argued that use of the word “a” before lot or parcel is not enough to make this restriction clear. Planning Staff agreed that clearer language is appropriate. The PHED Committee unanimously recommended approval of the suggested amendment:

⁴ That letter is included in this packet.

[Construction of a new principal] A building permit may only [occur] be issued for a building located on a lot or parcel shown on a plat recorded in the County Land Records or on a [property that is] parcel exempt from recording requirements under [Section 3.3.B.] Subsection 3.3.B, and in a manner that does not result in the building or structure crossing a lot line.

[Line 85-89]

Additional amendments recommended by the PHED Committee

1. SRA 20-02 refers to the County Growth and Infrastructure Policy. The correct title of this policy is “Growth and Infrastructure Policy”. Therefore, the word “County” has been removed from the following sections:

add a definition for *Building Envelope*, ~~[[County]] Growth and Infrastructure Policy, Director Action, Growth Tiers, Land Surveyor, and Utilities.~~

[Preamble]

~~[[County]] Growth and Infrastructure Policy: The resolution or law approved by the District Council to determine the adequacy of public facilities and services.~~

[Lines 36-37]

all applicable requirements or agreements under the Adequate Public Facilities [Ordinance] provisions in Subsection 4.3.J and the [Subdivision Staging] ~~[[County]] Growth and Infrastructure Policy~~ are satisfied before recording the plat;

[Lines 889-892]

2. As discussed above, SRA 20-02 adds several provisions regarding flag lots. After introduction of the SRA, concerns were raised regarding the clarity of the setback language. Therefore, the following revisions were made:

i. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and;

(a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot ~~[[or]]~~; and

(b) ~~[[that are between the proposed flag lot]] the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts;~~

[Lines 326-335]

iii. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed lot without frontage and;

(a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed lot without frontage ~~[[or]]~~; and

(b) ~~[[that are between the proposed lot without frontage and]] the building envelopes of all lots that are between the proposed lot without frontage and the road from which it is accessed;~~

[Lines 358-368]

3. As noted in footnote 1 above, SRA 20-02 adds a requirement that a new determination of school adequacy must be conducted for any unbuilt dwelling units during review of an APF validity extension request, consistent with the Growth and Infrastructure Policy. This provision already exists in Chapter 50. Currently 50.4.3.J(e) states: “(e) if the remaining unbuilt units would generate more than 10 students at any school serving the development, the Board must make a new adequate public facilities determination for school adequacy for the remaining unbuilt units under the school test in effect at the time of Board review.” Therefore, this additional provision in SRA 20-02 is not needed.

[(e) a new adequate public facilities determination for school adequacy is required for the remaining unbuilt units under the school test in effect at the time of Board review.]

[Lines 637-640]

4. Because a stop work order can also be issued by DPS, the definition of a “stop work order” was revised so that the listed definition applies only to this Chapter.

Stop Work Order: In this Chapter, [[An]] an administrative order issued by an enforcement agent that requires a person to discontinue any further development, construction, or other land disturbance activity authorized by a Planning Board Action or a Director Action until a violation has been corrected.

[Lines 69-72]

5. Due to legal concerns regarding the use of the word “hearing” versus “testimony”, the amendment to change the Planning Board’s approval procedures so that the Board can “hear testimony” on any plat, rather than “hold a hearing” was not recommended.

Planning Board may [hold hearing] hear testimony on any plat. The Board may, upon its own motion, [hold a hearing] hear testimony before acting upon any plat, in accordance with [notice required by] the Board’s Rules of Procedure.

[Lines 989-992]

This packet contains:

SRA 20-02

Planning Board transmittal letter

Planning Staff memorandum

William Kominers letter

Sandy Spring Meadow letter

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Subdivision Regulation Amendment No.: 20-02
Concerning: Subdivision Ordinance –
Revisions, Clarifications, and
Corrections
Draft No. & Date: 4 – 7/26/2021
Introduced: December 8, 2020
Public Hearing: February 9, 2021
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Subdivision Regulations to:

- delete the definition of Adequate Public Facilities Ordinance (APFO)[], Licensed Land Surveyor,][and Subdivision Staging Policy[, and Septic Tiers]];
- amend the definition of Administrative Civil Penalty, Board, Building Restriction Line, Citation, Civil Fine, Enforcement Agent, Engineer, Preliminary Plan, Pre-Preliminary Plan, Centerline of Road;
- add a definition for *Building Envelope*, [[County]]*Growth and Infrastructure Policy*, *Director Action*, *Growth Tiers*, *Land Surveyor*, and *Utilities*;
- amend provisions concerning:
 - filing and approval procedures for preliminary plan submission
 - the lot design of flag lots, frontage on a public or private road, alleys or pedestrian paths for residential lots,
 - the exemption to certain requirements for *Utility and Communication Structures*;
 - the taxing provisions for all public reservations;
 - the extensions for all public reservations;
 - the access easements for alleys;
 - establishing utility easements in a subdivision;
 - adequate public facilities;
 - a residential cluster subdivision;
 - the approval of an administrative subdivision, a minor subdivision or a plat;
 - granting a waiver from any requirement of Chapter 50;
- add a provision for places of worship and institutional uses, that a landscaping and lighting plan be submitted for review and approval concurrently with the preliminary plan; and
- generally amend the provisions governing Chapter 50.

By amending

Montgomery County Code	
Chapter 50.	“Subdivision of Land”
Division 50.2.	“INTERPRETATION AND DEFINED TERMS”
Section 50.2.2.	“Definitions”
Division 50.3.	“GENERAL REQUIREMENTS”
Section 50.3.2.	“Record Plat Required”
Section 50.3.3.	“Exemptions to the Requirements of this Chapter”
Section 50.3.6.	“Submission Procedures for Subdivision Plans”
Division 50.4.	“PRELIMINARY PLAN”
Section 50.4.1.	“Filing and Specifications”
Section 4.2.	“Approval Procedure”
Section 4.3.	“Technical Review”
Division 50.5.	“PRE-PRELIMINARY SUBMISSIONS”
Section 50.5.2.	“Approval Procedure”
Division 50.6.	“ADMINISTRATIVE SUBDIVISION PLAN”
Section 50.6.1.	“Applicability”
Section 50.6.2.	“Filing Requirements”
Section 50.6.3.	“Approval Procedures”
Division 50.7.	“MINOR SUBDIVISION”
Section 50.7.1.	“Applicability”
Section 50.7.2.	“Procedure for Platting Minor Subdivisions”
Division 50.8.	“PLATS – GENERALLY”
Section 50.8.1.	“Filing and Specifications”
Section 50.8.2.	“Approval Procedure”
Section 50.8.3.	“Recording Procedure”
Division 50.9.	“WAIVERS FROM THIS CHAPTER”
Section 50.9.5.	“Procedure for Granting Waivers”
Division 50.10.	“ADMINISTRATIVE PROCEDURES”
Section 50.10.2.	“Bonding and Surety”
Section 50.10.6.	“Enforcement of Chapter”

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by introduced Subdivision Regulation Amendment.</i>
[Single boldface brackets]	<i>Deleted from existing law by introduced Subdivision Regulation Amendment.</i>
<u>Double underlining</u>	<i>Added to the Subdivision Regulation Amendment by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the Subdivision Regulation Amendment by amendment.</i>
* * *	<i>Existing law unaffected by Subdivision Regulation Amendment.</i>

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

1 **Sec. 1. Division 50.2 is amended as follows:**

2 **DIVISION 50.2. INTERPRETATION AND DEFINED TERMS**

3 * * *

4 **Section 2.2. Definitions**

5 All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have
6 the same meanings as the definitions in those Chapters, unless otherwise defined
7 here. In this Chapter, the following words and phrases have the meanings
8 indicated.

9 **A.**

10 [*Adequate Public Facilities Ordinance (APFO)*: Section 4.3.J of this Chapter,
11 which specifies that the Board must find that public facilities will be adequate to
12 support and serve a proposed subdivision before approval.]

13 *Administrative Civil Penalty*: A monetary penalty imposed by the Board after
14 considering the factors in this Chapter for violating a Planning Board [action]
15 Action or Director Action.

16 *Administrative Subdivision Plan*: A preliminary plan [for a proposed subdivision
17 prepared and] submitted for the Director’s approval before the preparation of a
18 plat.

19 * * *

20 *Board*: The Montgomery County Planning Board of the Maryland-National Capital
21 Park and Planning Commission.

22 * * *

23 Building Envelope: The portion of a lot, enclosed by the front, rear, and side
24 setback lines and any additional building restriction lines, in which a structure may
25 be placed.

26 *Building Restriction Line:* A line designating an area in which development or
27 building is prohibited under this Chapter [by the Board under Section 50.4.3.K of
28 these regulations].

29 * * *

30 *Citation:* A document noting a violation of a Planning Board [action] Action or
31 Director Action, seeking to impose a civil fine or corrective action.

32 *Civil Fine:* A requirement to pay a predetermined sum of money specified in an
33 administrative citation for violating a Planning Board [action] Action or Director
34 Action.

35 * * *

36 [[County]] Growth and Infrastructure Policy: The resolution or law approved by
37 the District Council to determine the adequacy of public facilities and services.

38 * * *

39 Director Action: A written decision on a preliminary plan, site plan, or other plan,
40 including all associated terms, conditions, requirements, and other obligations or
41 limits, made by the Director under State law and Chapters 50 and 59, including any
42 regulations approved under State or County law. For the purposes of an
43 enforcement action, a Director Action excludes a decision made by the Director
44 under Chapter 22A.

45 * * *

46 *Enforcement Agent:* The Director, or the Director’s designee responsible for
47 determining compliance with a Planning Board Action or Director Action.

48 *Engineer:* A professional engineer [registered] licensed in Maryland.

49 * * *

50 *Growth Tiers:* Tiers adopted by Montgomery County under Subtitle 5 of the Land
51 Use Article.

52 * * *

53 [*Licensed*] *Land Surveyor:* A land surveyor who is licensed in the State to
54 “practice land surveying” as defined in the Maryland Business Occupations and
55 Professions Code Ann. Section 15-101 [(1995 Repl. Vol.)], as amended.

56 * * *

57 *Preliminary Plan:* A drawing for a proposed subdivision [prepared and] submitted
58 for [Board] approval before the preparation of a plat.

59 *Pre-Preliminary Plan:* A drawing for a proposed subdivision [prepared and]
60 submitted for binding or non-binding advice before the submission of a
61 [Preliminary Plan] preliminary plan.

62 * * *

63 *Road, Centerline of:* A line established as a centerline of a road right-of-way by
64 any State, County, or other official agency or governing body with jurisdiction and
65 shown on an officially adopted plan or recorded plat. In the absence of an official
66 centerline, the Board or Director must establish the centerline with consultation
67 from the applicable agency with jurisdiction over the road.

68 * * *

69 *Stop Work Order:* In this Chapter, [[An]] an administrative order issued by an
70 enforcement agent that requires a person to discontinue any further development,
71 construction, or other land disturbance activity authorized by a Planning Board
72 Action or a Director Action until a violation has been corrected.

73 * * *

74 [*Subdivision Staging Policy:* The resolution or guidelines adopted by the District
75 Council to determine the adequacy of public facilities and services.]

76 * * *

77 Utilities: Water, sewage, gas, electric, energy, telecommunications, telephone,
78 broadband, cable facilities, and similar facilities that serve the public.

79 * * *

80 **Sec. 2. Division 50.3 is amended as follows:**

81 **DIVISION 50.3. GENERAL REQUIREMENTS**

82 * * *

83 **Section 3.2. Record Plat Required**

84 * * *

85 B. [Construction of a new principal] A building permit may only [occur] be
86 issued for a building located on a lot or parcel shown on a plat recorded in
87 the County Land Records or on a [property that is] parcel exempt from
88 recording requirements under [Section 3.3.B.] Subsection 3.3.B., and in a
89 manner that does not result in the building or structure crossing a lot line.

90 * * *

91 **Section 3.3. Exemptions to the Requirements of this Chapter**

92 A. An approved preliminary plan and recording of a plat under this Chapter are
93 not required for the division or conveyance of unplatted land in the
94 following instances:

95 1. *Court action.* Partition of land by will or through action of a court of
96 competent jurisdiction unless or until development of the land is
97 proposed.

98 * * *

99 B. Recordation of a plat before issuance of a building permit is not required for:

100 1. *Agricultural land used for residential dwellings.* An unplatted parcel
101 of agricultural land at least 25 acres in size used for a primary
102 dwelling unit if density and development rights are available and the
103 parcel is eligible to obtain any required sewage disposal permits.

104 * * *

105 9. *Utility and Communication Structures.* The construction of
106 telecommunications towers, antennas, solar arrays, relay stations, or
107 similar facilities, including their associated accessory structures,
108 which are not intended for the shelter, support, or enclosure of
109 persons, unless otherwise required by the Board or ~~[[further]]~~ future
110 development of the land requires a subdivision plan.

111 * * *

112 **Section 3.6. Submission Procedures for Subdivision Plans**

113 * * *

114 E. *Area within pending master plan.* The Board may defer action on a proposed
115 subdivision plan application, if all or any part of the plan is located in the

116 boundaries of a pending master plan or master plan amendment. For
117 purposes of this Section, a pending master plan or master plan amendment is
118 the public hearing draft master plan or master plan amendment.

119 1. The subdivider may resubmit a proposed subdivision plan deferred
120 under this Section to the Board either:

121 a. after the final disposition by the District Council of the pending
122 master plan or master plan amendment; or

123 b. no later than 12 months from the date the Board approves the
124 public hearing draft master plan or master plan amendment,
125 unless there is a determination by the Board that the subdivision
126 plan application presents a substantial conflict with the
127 proposed public hearing draft master plan or master plan
128 amendment, in which case the Board may defer a subdivision
129 plan application for a maximum of 18 months from the date the
130 Board approves the public hearing draft master plan or master
131 plan amendment, but in no event beyond the period in
132 Subsection 3.6.E.1.a.

133 * * *

134 **Sec. 3. Division 50.4 is amended as follows:**

135 **DIVISION 50.4. PRELIMINARY PLAN**

136 * * *

137 **Section 4.1. Filing and Specifications**

138 * * *

139 B. *The drawing.* The subdivider must submit a preliminary plan drawing in a
140 form required by regulations of the Board. Details and information must
141 include:

142 * * *

143 3. certificate of an engineer or [licensed] land surveyor to affirm the
144 accuracy of boundary lines, topographic data, and other engineering
145 or survey data, and to certify that the subdivision plans and supporting
146 documents were prepared in a manner that satisfies all submission
147 requirements and applicable agency standards, policies, and
148 procedures;

149 * * *

150 C. *Supporting information.*

151 * * *

152 4. *Concept road grade and profile.* For a public road, an engineer or a
153 [licensed] land surveyor must prepare conceptual road grade and
154 profile plans under the design criteria [of the Road Design and
155 Construction Code] approved by the Department of Transportation
156 and indicate the percentage of tangent grades, lengths of crest and sag,
157 vertical curves and elevations, and elevations of all intersecting roads.
158 The plan must indicate the direction of water flow. Where the
159 topography makes the determination of the adequacy of the road
160 grades difficult, the Director may require additional supporting
161 information.

162 * * *

163 6. Sight distance evaluation for all [proposed] driveways that will serve
164 new development and [proposed] road intersections prepared under
165 the criteria of the applicable State or County transportation agency.

166 * * *

167 11. *Draft Traffic Mitigation Agreement.* A preliminary plan application
168 for property located in a Transportation Management District (TMD),

169 designated under Chapter 42A, Article II, must contain a draft Traffic
170 Mitigation Agreement (TMAg) or similar plan designated under
171 Chapter 42A prepared by the applicant that meets the requirements of
172 that Article.

173 * * *

174 E. *Hearing date.* The Board must schedule a public hearing to begin within 120
175 days after the date the Director accepts an application. The Director may
176 postpone the public hearing by up to 30 days once without Board approval.
177 The Director or applicant may request one or more extensions beyond the
178 original 30 days with Board approval. The Board must notice the public
179 hearing and indicate the new hearing date on the Board’s agenda. An
180 application that was filed before [{effective date of legislation}] February
181 13, 2017 is not subject to this subsection.

182 * * *

183 **Section 4.2. Approval [Procedure] Procedures**

184 A. Referral of plan. After accepting an application, the Director must send a
185 copy to the Development Review Committee and other reviewing bodies,
186 requesting each agency to submit a recommendation concerning the plan.
187 The Director must send copies, as needed, to:

- 188 1. WSSC, for water and sewer service;
- 189 2. the Department of Transportation, for roads, streets, intersection
190 locations, site access, sight distances, traffic calming, paths,
191 pedestrian and bicycle facilities (including bike share), parking, transit
192 facilities, transportation demand management elements, and storm
193 drainage within County-maintained rights-of-way and easements with
194 all reviews consistent with the objective to achieve Vision Zero goals;

195 * * *

196 9. Montgomery County Public Schools, for school site planning or an
197 application for residential development;

198 * * *

199 B. *Review and recommendation.*

200 * * *

201 2. *Approvals from public agencies.* The following agency approvals are
202 required before the Board approves the preliminary plan:

203 * * *

204 c. *Stormwater management.* The Department of Permitting
205 Services must approve a stormwater management concept plan
206 and floodplain delineation, if required under Chapter 19;

207 * * *

208 F. *Amendments.*

209 1. [A major] Any amendment to an approved preliminary plan must
210 follow the [same] procedures, meet the [same] criteria, and satisfy the
211 [same] requirements of this Division.

212 2. Amendments are classified as [the original preliminary plan] either
213 major or minor.

214 a. A major amendment includes any requests to change density
215 that results in greater adequate public ~~[[facility]]~~ facilities
216 impact; or make major changes to lot configuration or location,
217 or right-of-way width or alignment; or make a change to any
218 condition of approval, except a change to [validity period
219 phasing as permitted in Section 4.2.F.2.] plan validity period or
220 APF validity period.

221 [2. A minor amendment to an approved preliminary plan must follow the
222 same procedures, meet the same criteria, and satisfy the same

223 requirements as the original preliminary plan, except as modified
224 under Section 4.2.F.2.b.]

225 [a]b. A minor amendment to an approved preliminary plan includes
226 any change that does not change density in a manner that results
227 in greater adequate public ~~[[facility]]~~ facilities impact; make
228 major changes to lot configuration or location, or right-of-way
229 width or alignment; or alter the intent, objectives, or
230 requirements of the Board in approving the preliminary plan. A
231 change to plan validity period or APF validity period is a minor
232 amendment.

233 [b. The Board may approve a minor preliminary plan amendment
234 without a public hearing if the Director publishes a report and
235 recommendation on the amendment a minimum of 10 days
236 before the Board meeting. The Director may also]

237 c. The Director may approve a minor amendment to change
238 validity period phasing as permitted in Section 4.2.H.1.b.

239 G. *Plan Validity.*

240 1. *Initiation date.* The plan validity period for preliminary plans starts on
241 the later of:

242 a. 30 days from the date of mailing indicated on the written
243 resolution; or

244 b. [if an administrative appeal is timely noted by any party
245 authorized to file an appeal,] the date upon which the court
246 having final jurisdiction acts, including the running of any
247 further applicable appeal periods, if an administrative appeal is
248 timely noted by any party authorized to file an appeal.

249 If a corrected resolution is issued, the initiation date remains 30 days
250 from the date of mailing indicated on the original resolution.

251 2. *Duration.*

252 a. *Single-phase project.*

253 i. A preliminary plan approved after March 31, 2009 and
254 before April 1, 2017 remains valid for [60 months] 5
255 years after its initiation date.

256 ii. A preliminary plan approved after March 31, 2017
257 remains valid for [36 months] 3 years after its initiation
258 date.

259 b. *Multi-phase project.*

260 * * *

261 iii. The time allocated to any phase must be [60 months] 5
262 years or less after the initiation date for that particular
263 phase for any preliminary plan approved after March 31,
264 2009, but before April 1, 2017, and [36 months] 3 years
265 after the initiation date for that particular phase for any
266 preliminary plan approved after March 31, 2017.

267 iv. The cumulative validity period of all phases must be
268 shorter than or equal to the [APFO] APF validity period
269 which begins on the initiation date of the first preliminary
270 plan approval, including any extension granted under
271 Section 4.3.J.7.

272 * * *

273 H. *Extension of plan validity period.*

274 * * *

275 2. *Effect of failure to submit a timely extension request.*

276 * * *

277 b. Where a preliminary plan has been allowed to expire due to the
278 applicant’s failure to file a timely request for extension, the
279 Board may reinstate the preliminary plan and establish a new
280 validity period if practical difficulty or undue hardship is
281 demonstrated by the applicant. The Board may require the
282 applicant to get a new [APFO] APF review and approval by the
283 Board as a prerequisite or condition of its action to extend an
284 expired plan.

285 * * *

286 5. *Planning Board [action] Action.*

287 * * *

288 c. The Board may only grant an extension to a preliminary plan
289 within the plan’s [APFO] APF validity period, unless a further
290 extension is allowed by law.

291 * * *

292 I. *Effect of failure to timely validate plan or secure an extension.*

293 * * *

294 3. If a preliminary plan or a phase of the plan is not timely validated, any
295 [APFO] APF determination made by the Board associated with the
296 void portion of the preliminary plan is also void. In such event, the
297 applicant loses any further rights to claim any vehicle trips associated
298 with the expired [APFO] APF approval. The filing of a new
299 preliminary plan application does not provide the basis for reclaiming
300 vehicle trips lost by the termination of the [APFO] APF approval.

301 * * *

302 K. *Vacating an approved subdivision.*

- 303 1. An applicant may request that the approval of a subdivision plan, for
304 which no subsequent plats have been recorded, be vacated.
- 305 2. A request to vacate an approved subdivision plan must include proof
306 of ownership and notarized signatures of all property owners or other
307 persons who are authorized by the property owner.
- 308 3. The Director must approve the request to vacate the approved
309 subdivision plan if the Director finds that the request is not contrary to
310 the public interest.

311 * * *

312 **Section 4.3. Technical Review**

313 In making the findings under Section 4.2.D, the Board must consider the following
314 aspects of the application.

315 * * *

316 C. *Lot design.*

317 1. *General requirements.*

318 * * *

- 319 b. Flag ~~[[Lots]] lots.~~ The Board must not approve flag lots, except
320 where unusual topography, environmental conditions, or the
321 position of the tract in relation to surrounding properties and
322 rights-of-way permit no other feasible way to subdivide and the
323 Board determines that appropriate separation between building
324 envelopes can be achieved. In approving a flag lot, the
325 following provisions apply:
- 326 i. in residential zones, the Board must require building
327 restriction lines as needed to provide separation of at
328 least 80 feet between the building envelope of the
329 proposed flag lot and:

330 (a) the building envelopes of all lots that are adjacent
331 to the rear lot line of the proposed flag lot[[or]];
332 and

333 (b) [[that are between the proposed flag lot]] the
334 building envelopes of all lots that are between the
335 proposed flag lot and the road on which it fronts;

336 ii. the Board may require additional building restriction
337 lines to ensure appropriate separation between building
338 envelopes and to provide appropriate location of the
339 building envelope within the lot; and

340 iii. all building restriction lines must be shown on the plat.

341 [b]c. *Lots to abut on a public or private road.* Except as specified
342 below, every lot must abut on a public or private road. A public
343 road must be dedicated or donated to public use or have
344 acquired the status of a public road under Chapter 49. A private
345 road must be shown on a record plat.

346 [i.]The Board [may] must not approve [a maximum of 2] lots
347 that do not abut a public or private road [if], except where
348 unusual topography, environmental conditions, or the position
349 of the tract in relation to surrounding properties and rights-of-
350 way permit no other feasible way to subdivide, and the Board
351 determines that appropriate separation between building
352 envelopes will be achieved. In approving a lot that does not
353 abut a public or private road, the following provisions apply:

354 i. the Board must not approve more than two lots in a
355 subdivision that do not abut a public or private road;

- 356 ii. the lots will be served by a private driveway that serves
357 no other lots without frontage[.];
- 358 iii. in residential zones, the Board must require building
359 restriction lines as needed to provide separation of at
360 least 80 feet between the building envelope of the
361 proposed lot without frontage and:
- 362 (a) the building envelopes of all lots that are adjacent
363 to the rear lot line of the proposed lot without
364 frontage ~~[[or]]~~; and
- 365 (b) ~~[[that are between the proposed lot without~~
366 frontage and]] the building envelopes of all lots
367 that are between the proposed lot without frontage
368 and the road from which it is accessed;
- 369 iv. the Board may require additional building restriction
370 lines to ensure appropriate separation between building
371 envelopes and to provide appropriate location of the
372 building envelope within the lot;
- 373 v. all building restriction lines must be shown on the plat;
374 and
- 375 [ii]vi. ~~[[The]]~~ the access to lots with no road frontage must be
376 adequate to serve the lots for emergency vehicles and for
377 installation of public utilities. In addition, the lots must
378 be accessible for other public services and not
379 detrimental to future development of adjacent lands.
- 380 [c]d. Side lines. Side lines of interior lots must to the extent possible
381 be aligned perpendicular to the road line or radial to a curved road
382 line.

383 [d]e. *Through lots.* The Board must not approve through lots, except
384 where unusual topography, orientation, or the size of the subdivision
385 permit no other feasible way to subdivide.

386 [e]f. *Alley or pedestrian paths for residential lots.* If a mid-block alley
387 or pedestrian right-of-way is provided in a residential subdivision for
388 detached houses, the subdivider must increase the lot widths adjoining
389 the alley or right-of-way to provide for a parallel side building
390 restriction line 15 feet from the alley or right-of-way.

391 D. *Public sites and adequate open spaces.* A preliminary plan must provide for
392 required public sites and adequate open space areas.

393 * * *

394 5. *Reservation.*

395 a. *Procedure.* When the Board determines that a tract being
396 subdivided includes land that is necessary for public use but
397 will not immediately be acquired by donation, dedication,
398 purchase, or condemnation when the plat is recorded, the Board
399 must determine the need to reserve the land. The Board may
400 require a reservation for a period of time [less than] up to 3
401 years for road rights-of-way, public school and building sites,
402 parks, playgrounds, recreational areas, or other public purposes.

403 * * *

404 iii. *Taxes.* The Board must advise taxing and assessing
405 bodies of all public reservations, and such public
406 reservations must be exempt from all [State,] County[,]
407 and local taxes during the reservation period.

408 * * *

409 vi. Extension. After the initial reservation period, the Board
410 may extend the reservation period upon request of the
411 property owner if the Board determines that the reserved
412 land continues to be necessary for public use. Any
413 extension must not exceed 3 years.

414 * * *

415 E. *Roads.*

416 * * *

417 2. *Design standards.*

418 * * *

419 e. *Non-through roads.* The Board must not approve any road that
420 does not connect to another road at its beginning and end,
421 unless a determination is made that:

422 * * *

423 iii. the road, excluding alleys, is properly terminated in a cul-
424 de-sac or other turnaround; and

425 * * *

426 f. *Intersection.*

427 * * *

428 ii. [Proposed] The distance between proposed road
429 intersections, excluding alleys and driveways, must be
430 spaced as shown in the table below, as measured from the
431 centerline of the intersections. When the Board finds that
432 a greater or lesser [spacing] distance is appropriate, the
433 Board may specify a greater or lesser [spacing] distance
434 than otherwise required after considering the

435 recommendation of the transportation agency responsible
436 for maintaining the road.

437 * * *

438 3. *Additional requirements for public roads.*

439 * * *

440 b. *Existing public roads.* In a preliminary plan [or administrative
441 subdivision plan] application containing lots fronting on an
442 existing State, County, or municipally maintained road, the
443 subdivider must provide any additional required right-of-way
444 dedication and reasonable improvement to the road in front of
445 the subdivision, including sidewalks and bicycle facilities, as
446 required by Master Plan, the Road Design and Construction
447 Code or by a municipality, whichever applies.

448 * * *

449 4. *Additional standards for private roads.*

450 * * *

451 d. *Road [[Classifications]] classifications.* When the Department
452 of Transportation determines that the proposed road is not
453 needed to maintain area circulation, provide continuous
454 corridors to serve the general public and quasi-public needs
455 such as communication, utility, and future potential
456 transportation or other systemic needs that serve the public on a
457 long-term basis, and is not needed to be part of the network
458 modeled for area capacity, consideration will be given to
459 making the following roads private:

460 * * *

461 [ix. A private alley will not require an access easement if the
462 alley only serves one building or if the alley is a
463 secondary access to one-family residential dwellings.]

464 * * *

465 5. *Additional roadway provisions.*

466 * * *

467 d. *Road grade approval.* No final grading, sidewalk or pavement
468 construction, or installation of utilities must be permitted in the
469 bed of any proposed public or private road in any preliminary
470 plan [or administrative subdivision plan] until the grade has
471 been approved under this Chapter.

472 e. *Pedestrian paths.* When a pedestrian path is included in a
473 preliminary plan [or administrative subdivision plan], the
474 subdivider must grade and construct the path according to the
475 plan approved by the Board, Department of Permitting
476 Services, or applicable municipality.

477 * * *

478 F. *Water supply and sewage disposal facilities.*

479 * * *

480 3. [*Septic*] *Growth tiers.*

481 * * *

482 d. The Board may approve a subdivision for any number of
483 residential lots that would be served by one or more septic
484 systems on land located in the Tier III or Tier IV area.

485 [e. The Board may approve a minor subdivision that would be
486 served by one or more septic systems on land located in the
487 Tier IV area.

- 488 f. The Board may approve a major subdivision that would be
489 served by one or more septic systems on land in the Tier IV
490 area.]
- 491 [g]e. The official map displaying the Growth Tier areas as allowed
492 under the Maryland Sustainable Growth and Agricultural
493 Preservation Act of 2012 is located on the Planning Department
494 website. The Council may amend the official map either by:
- 495 i. adopting Tiers in a General Plan amendment; or
496 ii. an amendment under Section 10.7.
- 497 The latest version of the map may be accessed from the
498 Planning Department website at
499 www.montgomeryplanning.org.

500 G. *Markers and monuments.*

- 501 1. The subdivider must have metal property line markers, approximately
502 1/2-5/8 inch in diameter and 18 inches in length, or other generally
503 accepted survey markers, placed in the ground at all lot corners,
504 intersections of roads, intersections of roads and alleys with record
505 plat boundary lines, and at all points on road, alley and boundary lines
506 where there is a change in direction or curvature, unless such point
507 coincides with the location of a reference monument. All markers
508 must be properly set in the ground before the roads and alleys are
509 accepted for public maintenance. For projects that do not include
510 public roads, the owner and [licensed] land surveyor must certify to
511 the Department of Permitting Services that all property corner
512 markers have been set by a [licensed] land surveyor.
- 513 2. The [licensed] land surveyor hired by the owner must place markers
514 and monuments in the ground after road grading and paving in the

515 subdivision and grading and landscaping of adjacent lots are
516 completed. The markers and monuments must be located as specified
517 on the plat. The [licensed] land surveyor must certify to the
518 Department of Permitting Services, or other appropriate governmental
519 agency or the municipality that all survey monuments and markers are
520 in place before the County or municipality accepts any road or alley
521 established by the plat for maintenance. The amenity bonds must not
522 be released by M-NCPPC until the [licensed] land surveyor certifies
523 to the Department of Permitting Services that all survey monuments
524 are in place.

525 * * *

526 I. [Public utilities. Pipelines, electric power and energy lines, and
527 telecommunications lines must be provided] Utilities. The developer must
528 ensure the installation of utilities [by the developer] in all subdivisions.

529 1. *Installation.*

530 a. Within the property being subdivided, the developer must
531 install any new [pipelines, electric power and energy lines, and
532 telecommunications lines] utilities underground.

533 * * *

534 2. *Completion.* The Board [may] must not approve a final plat until the
535 developer demonstrates that the applicable utility companies or public
536 agencies are able to provide utility [service] services to the
537 subdivision and installation by the developer has been assured under
538 Section 10.2.

539 3. *Easements.*

540 [a.] The subdivider must establish utility easements[, which must be
541 shown on the record plat,] to allow for installation of all utility

- 542 [lines] facilities servicing the proposed subdivision and the
543 future extension thereof to any property adjoining the
544 subdivision[, which] that:
- 545 [i]a. provide the minimum area needed to maintain each of the
546 [lines] facilities as determined by the Board [with] in
547 consultation [from] with the utility [provider; and]
548 providers;
 - 549 [ii]b. are adjacent to, or accessible from, a road right-of-way[.];
 - 550 c. are available to all utilities; and
 - 551 d. are shown on the record plat.

552 [With County DPS permission] With Department of Permitting Services
553 approval, utilities may be placed within conduit in public road rights-of-way.
554 Utilities placed within private road rights-of-way by a developer must [also]
555 be in conduit.

- 556 [b. When a private road is allowed, the Board must also require the
557 developer to provide to the County an additional public
558 infrastructure area at least 4 feet wide, adjacent to private roads
559 or in other appropriate locations that create contiguous service
560 corridors within the development that connect to and are
561 accessible from a public right-of-way to provide for future:
 - 562 i. relocation of existing utilities permitted to remain in a
563 road right-of-way; and
 - 564 ii. installation of new communication facilities.

565 When a structure is proposed under a private road and the
566 public infrastructure area is located in the road right-of-way, the
567 developer must construct conduits within the infrastructure area
568 to the County's specification.]

569 J. *Adequate Public Facilities [Ordinance] ([APFO]APF).*

570 * * *

571 5. *Validity period.*

572 a. Initiation date. The adequate public [[facility]] facilities validity
573 period starts on the later of:

574 i. 30 days from the date of mailing indicated on the written
575 resolution; or

576 ii. if an administrative appeal is timely noted by any party
577 authorized to file an appeal, the date upon which the
578 court having final jurisdiction acts, including the running
579 of any further applicable appeal periods.

580 b. If a corrected resolution is issued, the initiation date remains the
581 date of mailing indicated on the original resolution.

582 [a]c. A determination of adequate public facilities made under this
583 Chapter is timely and remains valid:

584 i. for 12 years after the [preliminary plan is approved]
585 initiation date for any plan approved after July 24,
586 1989[,] but before October 19, 1999;

587 ii. for no less than 5 and no more than 12 years after the
588 [preliminary plan is approved] initiation date, as
589 determined by the Board when it approved the plan, for
590 any plan approved after October 18, 1999[,] but before
591 August 1, 2007;

592 iii. for no less than 7 and no more than 12 years after the
593 [preliminary plan is approved] initiation date, as
594 determined by the Board when it approved the plan, for

595 any plan approved after March 31, 2009[,] but before
 596 April 1, 2017; [[and]]
 597 iv. for no less than 5 and no more than 10 years after the
 598 [preliminary plan is approved] initiation date, as
 599 determined by the Board when it approved the plan, for
 600 any plan approved after July 31, 2007[,] and before April
 601 1, 2009, or after March 31, 2017[.];and
 602 v. for no less than 5 and no more than 10 years after the
 603 application is approved, as determined by the Board
 604 when it approved the application, for any adequate public
 605 facilities determination made in association with a site
 606 plan under Chapter 59 or building permit under Chapter 8
 607 approved after July 31, 2007 and before April 1, 2009, or
 608 after March 31, 2017.

609 [b]d. If an applicant requests a longer validity period than the
 610 minimum specified in Subsection 4.3.J.5.a, the applicant must
 611 submit a development schedule or phasing plan for completion
 612 of the project to the Board for its approval.

613 * * *

614 6. *Validity period – County arts or entertainment use.*

615 * * *

616 b. The Board must grant an application to extend the validity
 617 period established under this paragraph for an additional 5 years
 618 if:

619 * * *

620 ii. at any time during the [24 months] 2 years before the
 621 application for extension being filed, the vacancy rate for

622 class A office buildings in the Central Business District
623 in which the project is located reaches 10 percent for
624 direct and sublet space combined, as measured by a
625 commercial Multiple Listings Service benchmark; or

626 * * *

627 7. *Extensions.*

628 a. *Application.* Only the Board may extend the validity period for
629 a determination of adequate public facilities; however, a request
630 to amend any validity period phasing schedule may be
631 approved by the Director if the length of the total validity
632 period is not extended.

633 * * *

634 iii. For each extension of an adequate public facilities
635 determination:

636 * * *

637 [(e) a new adequate public facilities determination for
638 school adequacy is required for the remaining
639 unbuilt units under the school test in effect at the
640 time of Board review.]]

641 b. The Board may approve an amendment to the new development
642 schedule approved under [paragraph] Section 4.3.J.7.a.ii if the
643 applicant shows that financing has been secured for either:

644 * * *

645 e. Applications with significant infrastructure investment. The
646 Board may extend [a] an initial determination of adequate
647 public facilities once for up to 12 more years beyond the
648 otherwise applicable validity period if the Board finds that:

649 i. the preliminary plan or APF approval for the
650 development required a significant commitment of funds
651 by the applicant, amounting to at least \$3 million, as
652 adjusted annually from February 2017 by the consumer
653 price index, to comply with specified infrastructure
654 conditions;

655 * * *

656 h. No combination of extensions of APF validity approved under
657 Section 4.3.J.7 may exceed a total of 12 years from the date of
658 the original APF expiration.

659 K. *Environment.*

660 * * *

661 2. *Restriction of subdivision for environmental protection.*

662 * * *

663 b. *Restrictions.*

664 i. *General.* In addition to any requirement imposed under
665 Chapter 22A, the proposed preliminary plan [or
666 administrative subdivision plan] may be restricted under
667 this Section by:

668 * * *

669 L. *Residential cluster subdivision.*

670 * * *

671 2. *Conditions for use.* The use of the cluster method of development is
672 subject to Board approval and the following conditions and
673 requirements:

674 * * *

- 675 c. the open space and green areas proposed by the applicant in the
676 cluster development must comply with the general purpose of
677 cluster development, and the application must include a plan
678 detailing the post-development maintenance responsibilities and
679 use of those areas; [and]
- 680 d. the Board must count the land dedicated to public use for
681 school and park sites in the tract area for the purpose of
682 calculating density, and allow the use of the resulting density
683 development of the remaining land when this can be
684 accomplished in compliance with the purposes of this
685 Section[.]; and
- 686 e. future subdivision of land within the approved cluster
687 subdivision that would result in the creation of additional lots is
688 not permitted after the property is platted[.], except for
689 amendments to cluster subdivisions that were approved prior to
690 October 30, 2014 and that result in land being reviewed and
691 approved as part of an Optional Method MPDU Development
692 application with at least 25% moderately priced dwelling units
693 (MPDUs), provided that the remaining portion of the cluster
694 subdivision complies with all applicable development
695 standards.

696 * * *

- 697 N. [[Landscape and Lighting Plans]] *Landscape and lighting plans.*
- 698 1. For places of worship and institutional uses, a landscaping and
699 lighting plan, which must also include the parking lot layout, must be
700 submitted for review and approval concurrently with the preliminary
701 plan.

702 * * *

703 **Sec. 4. Division 50.5 is amended as follows:**

704 **DIVISION 50.5. PRE-PRELIMINARY SUBMISSIONS**

705 * * *

706 **Section 5.2. Approval Procedure**

707 * * *

708 C. *Action on a pre-preliminary submission.*

709 At the applicant’s discretion, action on a pre-preliminary plan may be either
710 advisory if only reviewed by the Development Review Committee or
711 binding if reviewed by the Board.

712 * * *

713 **Sec. 5. Division 50.6 is amended as follows:**

714 **DIVISION 50.6. ADMINISTRATIVE SUBDIVISION PLAN**

715 * * *

716 **Section 6.1. Applicability**

717 The subdivider may file an administrative subdivision plan application [instead of
718 a preliminary plan] under the following circumstances. [The Director must review
719 the necessary technical requirements of the administrative subdivision plan under
720 Section 4.3.] Administrative subdivision plans may only be used to create lots, as
721 expressly described below.

722 A. *Existing places of worship and institutional uses.* [The Board may approve
723 a] A lot may be created for existing facilities such as[:] places of worship,
724 private schools, country clubs, private institutions, and similar uses located
725 on unplatted parcels, if:

726 * * *

727 3. [requirements for meeting] forest conservation[,] plan approval and
728 stormwater management[,] and environmental protection
729 requirements, if applicable, are satisfied before approval of the plat;
730 * * *

731 6. [the property is the subject of an approved conditional use and] all
732 conditions of [the] any conditional use approval, to which the property
733 may be subject, remain in full force.

734 B. *Subdivision for creation of certain residential lots located in the*
735 *Agricultural Reserve zone. Up to 5 lots for detached houses [are permitted]*
736 may be created under these procedures in the AR zone if:
737 * * *

738 6. forest conservation plan approval and stormwater management and
739 environmental protection requirements, if applicable, are satisfied
740 before approval of the plat.

741 C. *Subdivision for creation of certain residential lots. Up to 3 lots for detached*
742 *houses [are permitted] may be created* in any residential or rural residential
743 zone under these procedures if:
744 * * *

745 5. forest conservation[,] plan approval, stormwater management, and
746 environmental protection requirements, if applicable, are satisfied
747 before approval of the plat.

748 D. *Consolidation of an existing [lots] lot with another lot or [parts] part of*
749 *[lots] a lot in a nonresidential zone. In a nonresidential zone, a lot may be*
750 *created by combining existing adjoining lots, or a lot and a part of a*
751 *previously platted lot, if:*
752 * * *

- 753 4. forest conservation plan, stormwater management, and environmental
754 protection requirements, if applicable, are satisfied before approval of
755 the plat; and
- 756 5. when located in a special protection area, [and] all applicable special
757 protection area requirements and guidelines are satisfied before the
758 Board approves the plat.

759 For the purposes of this section, a part of a lot that qualifies for the
760 exemption stated in Subsection 3.3.B.2 may be used in lieu of a whole lot.

761 E. *Subdivision application for property to be used as Signature Business*
762 *Headquarters under Section 3.5.8.D of the Zoning Ordinance.* A lot or lots
763 created for a Signature Business Headquarters may be approved, if:

764 * * *

- 765 3. forest conservation[,] plan approval, stormwater management, and
766 environmental protection requirements, if applicable, are satisfied
767 before approval of the plat; and
- 768 4. when located in a special protection area, all special protection area
769 requirements are satisfied before approval of the plat [, if the subject
770 property is located in a special protection area].

771 **Section 6.2. Filing Requirements**

772 A. *Filing.* The Applicant must file the administrative subdivision plan and
773 applicable supporting information under Subsection 4.1.C, together with an
774 application form and fee to satisfy Subsection 4.1.A.

775 * * *

776 **Section 6.3. Approval Procedures**

777 * * *

778 B. *Action on an administrative subdivision plan.*

- 779 1. Director Action. An administrative subdivision plan may be approved
780 by the Director without a public hearing if no objection to the
781 application is received within 30 days after the application notice is
782 sent. After receiving the recommendations of the Development
783 Review Committee and other reviewing agencies, and considering
784 correspondence from other interested parties, the Director must
785 approve or disapprove the administrative subdivision plan in writing.
786 [In the alternative, the Director may require that the plan be acted on
787 by the Board. When applicable, the Director must schedule Board
788 action on its next available agenda. If approved, the plan will remain
789 valid under Section 4.2.G, by which time a plat must be recorded.]
- 790 2. Planning Board Action. If an objection is received within 30 days
791 after the application notice is sent, and the Director considers the
792 objection relevant, a public hearing and action by the Board is
793 required. The Director may also require that the plan be acted on by
794 the Board when no objection is received. When applicable, the
795 Director must schedule a Board hearing on its next available agenda.
- 796 3. All necessary improvements to support the development must be
797 completed or assured under Section 10.2.
- 798 [3]4. The Director must take action on an administrative subdivision plan or
799 schedule a public hearing within 90 days after the date an application
800 is accepted. The Director may postpone the public hearing once, by up
801 to 30 days, without Board approval. The Director or applicant may
802 request an extension beyond the original 30 days with Board approval.
803 Any extension of the public hearing must be noticed on the hearing
804 agenda with the new public hearing date indicated.

805 5. In making the findings required in Subsection 6.3.C, the Director or
806 Board must consider the technical requirements under Section 4.3. In
807 performing this review, the Director is authorized to perform any
808 relevant action that is permissible to the Board under Section 4.3,
809 except for the following:

- 810 a. Section 4.3.C.1.b, with respect to flag lots;
- 811 b. Section 4.3.C.1.c, with respect to lots without frontage on a
812 public or private road; and
- 813 c. Section 4.3.D.5, with respect to reservation of land for public
814 use.

815 C. Required Findings. To approve an administrative subdivision plan, the
816 Director or Board must make the following findings:

- 817 1. the layout of the subdivision, including size, width, shape, orientation
818 and density of lots, and location and design of roads is appropriate for
819 the subdivision given its location and the type of development or use
820 contemplated and the applicable requirements of Chapter 59;
- 821 2. the administrative subdivision plan substantially conforms to the
822 master plan;
- 823 3. public facilities will be adequate to support and service the area of the
824 subdivision;
- 825 4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
- 826 5. all stormwater management, water quality plan, and floodplain
827 requirements of Chapter 19 are satisfied;
- 828 6. any burial site of which the applicant has actual notice or constructive
829 notice or that is included in the Montgomery County Cemetery
830 Inventory and located within the subdivision boundary is approved
831 under Subsection 4.3.M; and

832 7. any other applicable provision specific to the property and necessary
833 for approval of the subdivision is satisfied.

834 D. *Plan [[Certification]] certification.*

835 Every administrative subdivision plan approved by the Board or the Director
836 must be certified by the Director to confirm that the plan reflects the
837 approval. Any modification of the plan conditioned by the approval must be
838 included in the plan before receiving the approval stamp. The approved plan
839 must be filed in the records of the Board.

840 E. *Amendments.*

841 Any amendment to an approved administrative subdivision plan must follow
842 the procedures, meet the criteria, and satisfy the requirements of this
843 Division.

844 F. *Plan [[Validity]] validity.*

845 1. *Initiation date.* The plan validity period for administrative subdivision
846 plans starts on the later of:

847 a. *30 days from the date of mailing indicated on the Director’s*
848 *written approval or the Board’s resolution; or*

849 b. *the date upon which the court having final jurisdiction acts,*
850 *including the running of any further applicable appeal periods,*
851 *if an administrative appeal is timely noted by any party*
852 *authorized to file an appeal.*

853 If a corrected resolution is issued, the initiation date remains the date
854 of mailing indicated on the original resolution.

855 2. *Duration.*

856 a. *An approved administrative subdivision plan remains valid for*
857 *3 years after its initiation date.*

- 858 **b.** An administrative subdivision plan is validated when the
859 applicant has secured all government approvals necessary to
860 record a plat, and a plat for all property shown on the plan has
861 been recorded in the County Land Records.
- 862 **c.** Any extension of the validity period must follow the procedures
863 of Subsection 4.2.H.
- 864 **d.** For any action taken by the Director or Board to amend a
865 previously approved administrative subdivision plan, the
866 Director or Board will determine, on a case-by-case basis,
867 whether the validity period should be extended and, if so, for
868 what duration. In making the determination, the Director or
869 Board must consider the nature and scope of the requested
870 amendment.
- 871 **e.** Failure to timely validate or extend the validity period of an
872 administrative subdivision plan is governed by Subsection 4.2.I.

873 **G.** Revocation or ~~[[Vacation of an Administrative Subdivision Plan]]~~ vacation
874 of an administrative subdivision plan.

- 875 **1.** Revocation of an administrative subdivision plan must satisfy
876 Subsection 4.2.J.
- 877 **2.** Vacation of an administrative subdivision plan must satisfy
878 Subsection 4.2.K.

879 **H.** Appeal of an administrative subdivision plan.

880 * * *

881 **Sec. 6. Division 50.7 is amended as follows:**

882 **DIVISION 50.7. MINOR SUBDIVISION**

883 **Section 7.1. Applicability**

884 The submission of a preliminary plan [or administrative subdivision plan] under
885 Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

886 * * *

887 B. *Conversion of an outlot into a lot.* An outlot may be converted into a lot if:

888 * * *

889 3. all applicable requirements or agreements under the Adequate Public
890 Facilities [Ordinance] provisions in Subsection 4.3.J and the
891 [Subdivision Staging] [County] Growth and Infrastructure Policy are
892 satisfied before recording the plat;

893 * * *

894 C. *Consolidation.* Adjoining properties in the Rural Residential or Residential
895 Detached zones, not developed under cluster provisions, may be combined
896 in the following ways:

897 1. by consolidating 2 or more lots into a single lot, consolidating lots and
898 an outlot into a single lot, or consolidating a lot and an abandoned
899 road right-of-way, if:

900 * * *

901 c. [all] any required right-of-way dedication is provided.

902 2. by consolidating [an existing platted lot or] a part of a lot that contains
903 a legally constructed detached house or an existing platted lot[,] with a
904 piece of land created as a result of a deed, if:

905 * * *

906 E. *Ownership Plat.* An ownership plat may be recorded to delineate separate
907 ownership units within a lot approved for any use except for single-unit
908 living as follows:

909 * * *

910 3. Private roads [may] must not be delineated as a separate ownership
911 unit on an ownership plat.

912 * * *

913 F. *Plat of correction.* A plat of correction may be used for any of the following:

914 * * *

915 2. to revise easements to reflect a Planning Board [action] Action, or as
916 necessitated by a State or County agency or public utility;

917 * * *

918 **Section 7.2. Procedure for Platting Minor Subdivisions**

919 The subdivider of a property that satisfies the requirements for a minor subdivision
920 under Section 7.1 may submit an application for record plat for approval under
921 Section 8.1 and Section 8.2.

922 A. *Additional considerations.*

923 * * *

924 3. Any applicable requirements of Chapter 22A must be satisfied before
925 approval of the plat by the Board.

926 * * *

927 **Sec. 7. Division 50.8 is amended as follows:**

928 **DIVISION 50.8. PLATS – GENERALLY**

929 * * *

930 **Section 8.1. Filing and Specifications**

931 * * *

932 C. *Plat drawing.* The plat drawing prepared with the application must be an 18-
933 inch by 24-inch sheet, including a margin of one-half inch outside ruled
934 border lines. It must be accurately drawn to a scale approved by the Board
935 and must include the following:

936 1. *Title block.* The title block must appear in the lower right corner of the
937 sheet and must include the following information:

938 * * *

939 e. name of firm of [licensed] land surveyor who prepared the plat
940 and date of completion; and

941 * * *

942 3. *Surveyor certificate.* Certificate by the [licensed] land surveyor in a
943 form required by the Board, certifying to the accuracy of the plat and
944 to areas included on the plat and dedicated to public use. The
945 certificate must also include conveyance information with recording
946 references of the lands contained in the plat.

947 4. *Owner's Certificate.* Certificate by the owner and all parties of
948 interest, in a form required by the Board, adopting the plat; granting
949 slope, utility, conservation, or any other easements; and establishing
950 building restriction lines that are required to be drawn or noted on the
951 plat per the conditions of the approved [Preliminary Plan or
952 Administrative Subdivision Plan] preliminary plan and dedicating to
953 public use roads, alleys, rights-of-way, and any other areas approved
954 for dedication to public use by the Board. The owner must certify that
955 a [licensed] land surveyor will be engaged to set all property corner
956 markers under Subsection 4.3.G.

957 * * *

958 E. *Other supporting information.* The following supporting information is also
959 required with the plat application.

960 1. *Documents and plans.* The following documents and plans must be
961 submitted:

962 * * *

963 c. copies of approved[, preliminary or] final forest conservation
964 plan[, as appropriate,] or exemption letter; and

965 * * *

966 2. *Preliminary plans using transferable development rights (TDRs).* For
967 a subdivision designated in sewer category 3 conditioned upon
968 approval of a preliminary plan that uses TDRs, a new plat using less
969 than the requisite number of TDRs [may] must not be approved until
970 the sewer category has been reconfirmed by the Council.

971 * * *

972 4. *Plat for a cluster subdivision.*

973 * * *

974 b. Plats may be submitted in phases; however, density on any one
975 plat [may] must not exceed 115 percent of the allowed density
976 of the area included on the plat.

977 * * *

978 **Section 8.2. Approval Procedure**

979 * * *

980 C. *Plat to comply with approved preliminary plan and site plan where*
981 *required.*

982 1. With the exception of a minor subdivision, as defined in this Chapter,
983 no plat may be approved unless it complies with an approved
984 preliminary plan [or an administrative subdivision plan:]; however,
985 the Board may allow for minor modifications from [these plans] the
986 plan which, in its opinion, do not alter the intent of the previous
987 approval.

988 * * *

989 G. *Planning Board may [hold hearing] [[hear testimony]]hold hearing on any*
990 *plat.* The Board may, upon its own motion, [hold a hearing] [[hear
991 testimony]]hold a hearing before acting upon any plat, in accordance with
992 [notice required by] the Board’s Rules of Procedure.

993 * * *

994 I. *Signing.* A plat must be signed by applicable County agencies with review
995 authority before Planning Board [action] Action on the plat, unless the
996 Board specifically permits the signature to be added as a condition of its
997 approval. The plat must be signed by the authorized officers of the Board
998 after the Board acts to approve the plat or, in cases of conditional approval,
999 when the conditions are satisfied.

1000 * * *

1001 **Section 8.3. Recording Procedure**

1002 A. *Processing of plats.*

1003 * * *

1004 2. The official seal of the [licensed] land surveyor who prepared the plat
1005 must be impressed upon the original approved plat and reproductions.

1006 * * *

1007 **Sec. 8. Division 50.9 is amended as follows:**

1008 **DIVISION 50.9. WAIVERS FROM THIS CHAPTER**

1009 * * *

1010 **Section 9.5. Procedure for Granting Waivers**

1011 A. *Referral for recommendations.* The Director must send a copy of each
1012 waiver request to the applicable Development Review Committee agencies
1013 for investigation, report, and written recommendation before acting on the
1014 request. For waivers requested as part of a preliminary plan[, administrative

1015 preliminary plan,] or [pre-application submission] pre-preliminary plan,
1016 those agencies must submit any report and recommendation on the waiver in
1017 the timeframes required for those plans. For separate waiver requests, final
1018 recommendation must be provided to the Director within 30 days after
1019 receiving the request, or the recommendation must be treated as favorable.

1020 * * *

1021 **Sec. 9. Division 50.10 is amended as follows:**

1022 **DIVISION 50.10. ADMINISTRATIVE PROCEDURES**

1023 * * *

1024 **Section 10.2. Bonding and Surety**

1025 A. *Guarantee of completion of improvements before recording final plat.*

1026 1. Before plat recordation, the subdivider must demonstrate to the Board
1027 or [applicable public agency must certify] the Director that the
1028 subdivider has obtained the necessary permits and bonds or provided
1029 other surety that ensures completion of all required public and private
1030 improvements on the land covered by the plat being recorded.

1031 * * *

1032 **Section 10.6. Enforcement of Chapter**

1033 * * *

1034 B. *Administrative citation.*

1035 1. The Director may deliver an administrative citation to a person whom
1036 the Director believes committed a violation of a Planning Board
1037 [action] Action, Director Action, or this Chapter. The Director must
1038 attest to the truth of the facts and allegations in the administrative
1039 citation. An administrative citation issued under this Subsection must
1040 be served on the alleged violator personally, on the alleged violator's

1041 agent at the site of the alleged violation, or by certified mail to the
1042 alleged violator's last known address.

1043 * * *

1044 C. *Notice of ~~[[Hearing]]~~ hearing.*

1045 1. Director may issue a notice of hearing to a person whom the Director
1046 believes committed a violation of a Planning Board Action, Director
1047 Action, or this Chapter. The notice of hearing must be served on the
1048 alleged violator personally, on the alleged violator's agent at the site
1049 of the alleged violation, or by certified mail to the alleged violator's
1050 last known address.

1051 * * *

1052 D. *Civil fine and penalty.*

1053 1. A citation may require the recipient to pay a civil fine for a violation
1054 of a Planning Board [action] Action or Director Action.
1055 2. The fine for each violation of a Planning Board [action] Action or
1056 Director Action is the maximum allowed by the Land Use Article
1057 §23-505 of the Maryland Code for each day that the violation
1058 continues.

1059 * * *

1060 5. In setting the amount of the administrative civil penalty, the Board or
1061 its designee must consider:

1062 * * *

1063 b. the degree of deviation from the approved Planning Board
1064 [action] Action or Director Action;

1065 * * *

1066 F. *Hearing.*

1067 * * *

1068 3. The Board may assign a hearing officer, including a Hearing
1069 Examiner from the Office of Zoning and Administrative Hearings, to
1070 conduct a public hearing and submit a report and recommendation on
1071 any alleged violation of this Chapter or a Planning Board [action]
1072 Action or Director Action. The hearing officer must submit the
1073 required report and recommendation to the Board not later than 30
1074 days after the hearing record closes. The hearing officer may extend
1075 the time to file the report by notifying all parties.

1076 * * *

1077 K. *Exclusive authority*. The Board or its designee has exclusive authority to
1078 enforce violations of a Planning Board [action] Action or Director Action
1079 and any violations of this Chapter. The authority granted in this Chapter
1080 supersedes any other authority to enforce a Planning Board [action] Action
1081 or Director Action granted to any other County or State agency.

1082 * * *

1083 **Sec. 10. Effective Date.** This amendment takes effect 20 days after the date
1084 of Council adoption.

1085 **Sec. 11. Filed Preliminary Plans.** Any preliminary plan application filed
1086 and certified as complete before the effective date of this amendment may, at the
1087 applicant's option, be reviewed under the Subdivision Regulations in effect when
1088 the application was submitted.

1089
1090 *Approved:*

1091
1092 _____
1093 Marc Elrich, County Executive Date

1094 *This is a correct copy of Council action.*

1095

Selena Mendy Singleton, Esq.
Clerk of the Council

Date



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

November 4, 2020

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board recommendation on Transmittal to County Council for Introduction and Review of a Subdivision Regulations Amendment for Modifications, Corrections, and Clarifications, Amending Chapter 50 – the Subdivision Regulations, Affecting the Transfer and Subdivision of Land Within the Montgomery County Portion of the Maryland-Washington Regional District.

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission unanimously voted to transmit the draft Subdivision Regulations Amendment to Chapter 50 – the Subdivision Regulations to the County Council at its regular meeting on October 22, 2020. A previous major update to Chapter 50 adopted by the County Council went into effect in February 2017. The currently proposed draft is intended to correct and clarify language in the 2017 version, as well as make some more substantive changes related to various provisions of the Chapter.

In reviewing the draft SRA, the Planning Board considered the recommendations of staff as well as comments provided from interested parties. Staff made substantial outreach efforts to other agencies, the community, and local legal firms and engaged any party who wished to provide input.

The focus of the SRA is to clarify language, correct mistakes, and add necessary missing provisions. While the vast majority of the proposed changes are minor, several substantive changes are also proposed.

The significant changes include:


- New provisions for the approval of flag lots and lots without frontage.
- New exemption from platting requirements for utility and telecommunication structures.
- New provisions for vacating an approved subdivision plan.
- New provision for extension of reservation of land for public use.
- New provision to specify an initiation date for the adequate public facilities validity period, similar to the existing initiation date provisions for plan validity.
- New requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request.
- New limitation on Planning Board approved APF extensions to a total of 12 years.
- New provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval.

Two additional changes were also introduced during the Planning Board session. The Planning Board voted to include these two additional changes in the draft SRA, as transmitted to the County Council. The two additional changes are as follows:

1. The definition of "Building Restriction Line" at line 27 of the SRA was amended by adding the words "under this Chapter" as shown here - *Building Restriction Line*: A line designating an area in which development or building is prohibited under this Chapter [by the Board under Section 50.4.3.K of these regulations].
2. Section 11, Filed Preliminary Plans, was added at line 1006 of the SRA to allow an applicant of a preliminary plan application that was certified as complete before the effective date of the SRA to have the application reviewed under the regulations that were in effect at the time of the filing, as shown here - **Sec. 11. Filed Preliminary Plans.** Any preliminary plan application filed and certified as complete before the effective date of this amendment may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the forgoing is the recommendation adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, October 22, 2020.



Casey Anderson
Chair



Proposed Omnibus Subdivision Regulations Amendment

- Neil Braunstein, Supervisor, IRC neil.braunstein@montgomeryplanning.org, 301-495-4532
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Completed: 10/9/20

Description

This report provides an overview of the proposed omnibus Subdivision Regulations Amendment that staff recommends be introduced by the County Council. This report is designed to give the Board and general public an overview of changes and provide an opportunity for discussion.

Summary

A comprehensive revision of Chapter 50, the Subdivision Regulations went into effect in February 2017. In the three years since the new chapter has been in effect, it has become clear that an additional amendment is necessary to further clarify language, correct mistakes, and add necessary missing provisions. While the vast majority of the proposed changes are minor, several substantive changes are also proposed, as noted below.

- New provisions for the approval of flag lots and lots without frontage
- New exemption from platting requirements for utility and telecommunication structures
- New provisions for vacating an approved subdivision plan
- New provision for extension of reservation of land for public use
- New provision to specify an initiation date for the adequate public facilities validity period, similar to the existing initiation date provisions for plan validity
- New requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request
- New limitation on Planning Board approved APF extensions to a total of 12 years
- New provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval

The minor changes include clarifications to existing text, changes to improve grammar and provide consistency in capitalization, updated citations for external laws and regulations, and consistency in section numbering.

Discussion of Major Changes

Provisions for Flag Lots and Lots Without Frontage

Flag lots are lots with a narrow strip that connects the main part of the lot to a public or private street right of way. Flag lots can be useful in designing a subdivision by allowing more efficient use of the land, but they can change the perceived character of an existing subdivision when they are created after the land has been initially subdivided. These same concerns also apply to lots without frontage. However, lots without frontage are less prevalent than flag lots, because they are limited to no more than two per subdivision by the current language of Chapter 50.

In order to limit the negative effects of flag lots and lots without frontage, new provisions are proposed that limit the creation of these types of lots.

Section 50.4.3.C.1 Lot Design – General Requirements

b. *Flag Lots.* The Board must not approve flag lots, except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide and the Board determines that appropriate separation between building envelopes can be achieved. In approving a flag lot, the following provisions apply:

i. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot or that are between the proposed flag lot and the road on which it fronts;

ii. the Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot; and

iii. all building restriction lines must be shown on the plat.

[b.] c. *Lots to abut on a public or private road.* Except as specified below, every lot must abut on a public or private road. A public road must be dedicated or donated to public use or have acquired the status of a public road under Chapter 49. A private road must be shown on a record plat.

[i.] The Board [may] must not approve [a maximum of 2] lots that do not abut a public or private road [if], except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide, and the Board determines that appropriate separation between building envelopes will be achieved. In approving a lot that does not abut a public or private road, the following provisions apply:

i. the Board must not approve more than two lots in a subdivision that do not abut a public or private road;

ii. the lots will be served by a private driveway that serves no other lots without frontage[.];

iii. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed lot without frontage and the building envelopes of all lots that are adjacent to the rear lot line of the proposed lot without frontage or that are between the proposed lot without frontage and the road from which it is accessed;

- iv. the Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot;
- v. all building restriction lines must be shown on the plat; and
- vi. The access to lots with no road frontage must be adequate to serve the lots for emergency vehicles and for installation of public utilities. In addition, the lots must be accessible for other public services and not detrimental to future development of adjacent lands.

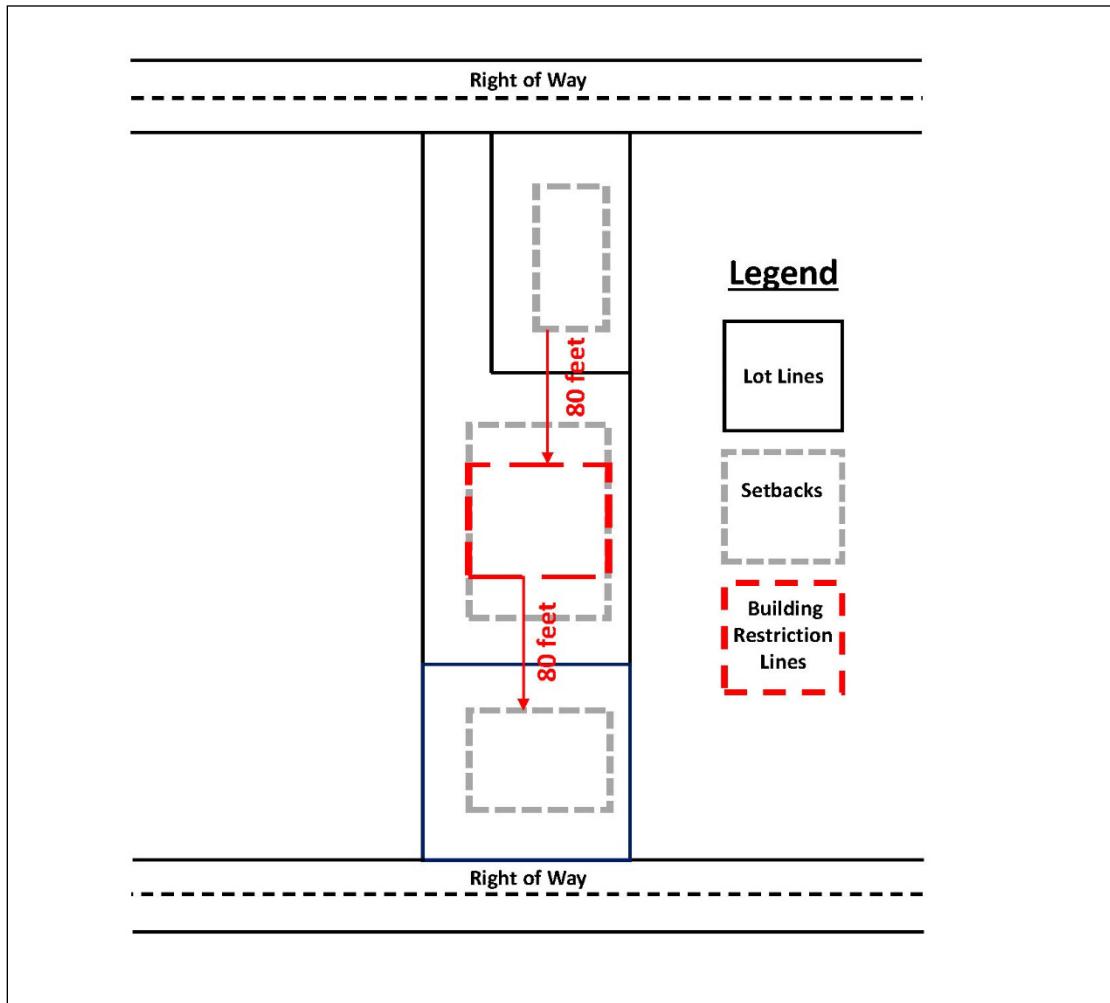


Figure 1 – flag lot with building restriction lines

The proposed provisions require the Planning Board to find that flag lots or lots without frontage are necessary because of unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way that permit no other feasible way to subdivide the property. The Planning Board must also find that adequate separation will exist between the building envelope of the proposed flag lot or lot without frontage and building envelopes on surrounding existing or proposed lots. To provide adequate separation, the proposed provisions require a separation of at least 80 feet between the building envelope on the flag or no-frontage lot and the building envelopes of lots abutting to the front or rear. The Planning Board may also place additional building restriction lines to create greater separation and to control the side-to-side placement of a house on the lot. A definition of building envelope has been added to the definition list in support of this section.

Exemption from platting requirements for utility and telecommunication structures

Generally, Chapter 50 requires that a plat be recorded before issuance of a building permit. However, Section 50.3.3.B lists circumstances in which this requirement does not apply. Utility and telecommunication towers are proposed to be added to the list to clarify that these projects are exempt from platting requirements because they are not buildings.

Section 50.3.3.B Exemptions to Platting Requirements

9. *Utility and Communication Structures.* The construction of telecommunication towers, antennas, solar arrays, relay stations, or similar facilities, including their associated accessory structures, which are not intended for the shelter, support, or enclosure of persons, unless otherwise required by the Board or further development of the land requires a subdivision plan.

Provisions for vacating an approved subdivision plan

New provisions are proposed that create a procedure that allows an applicant to vacate a previously approved subdivision plan. This will allow an applicant to pursue a different course of action on the subject property, including potentially no development, without being subject to the conditions of approval of the approved subdivision plan. Vacation of an approved plan is an available option only if no plats have been recorded.

Section 50.4.2 Approval Procedures

K. *Vacating an approved subdivision.*

1. An applicant may request that the approval of a subdivision plan, for which no subsequent plats have been recorded, be vacated.
2. A request to vacate an approved subdivision plan must include proof of ownership and notarized signatures of all property owners or other persons who are authorized by the property owner.
3. The Director must approve the request to vacate the approved subdivision plan if the Director finds that the request is not contrary to the public interest.

Provision for extension of reservation of land for public use

Section 50.4.3.D.5 provides the Planning Board the authority to reserve land within a subdivision for future public use. Reservation may be used when the land in question is not been dedicated or otherwise acquired at the time of subdivision but is expected to be acquired by a public agency within the next three years following approval of the subdivision. The proposed new language allows the Planning Board to extend a reservation period for up to three years upon the request of the property owner.

Section 50.4.3.D.5.a Reservation – Procedure

vi. *Extension.* After the initial reservation period, the Board may extend the reservation period upon request of the property owner if the Board determines that the reserved land continues to be necessary for public use. Any extension must not exceed 3 years.

Provision to specify an initiation date for the adequate public facilities validity period

When a subdivision plan is approved, it typically has a plan validity period and an adequate public facilities review (APF) validity period. The standard length of these periods has varied over the years – it is currently set at three years for plan validity and five years for APF validity. Plan validity is the period of time during which a plat must be recorded and APF validity is the period of time in which building permits must be issued.

Section 50.4.2.G specifies that the plan validity period starts on the initiation date, which is, if no appeal has been filed, 30 days from the mailing date of the resolution. If an appeal has been filed, then the validity period is tolled until the final decision from the Court. Chapter 50 does not currently specify an initiation date for the APF validity period, which means that the APF validity period starts 30 days before the plan validity period starts and does not have a tolling period for appeals. In order to synchronize these two validity periods and ensure that the APF validity period does not expire due to an appeal, new provisions are proposed in Section 50.4.3J.5 that specify an initiation date for the APF validity period.

Section 50.4.3.J Adequate Public Facilities

5. *Validity period.*

a. *Initiation date.* The adequate public facility validity period starts on the later of:

i. 30 days from the date of mailing indicated on the written resolution; or

ii. if an administrative appeal is timely noted by any party authorized to file an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.

b. if a corrected resolution is issued, the initiation date remains the date of mailing indicated on the original resolution.

Requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request

Section 50.4.3.J.7 specifies procedures for extending the validity period of an adequate public facilities review. With the recently proposed County Growth Policy, the Planning Board added a requirement that a new determination of school adequacy must be conducted for any unbuilt dwelling units during review of an APF validity extension request. That same new requirement is proposed here for consistency.

Section 50.4.3.J Adequate Public Facilities

7. *Extensions.*

a. *Application.* Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.

i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.

ii. The applicant must submit a new development schedule or phasing plan for completion of the project for approval.

iii. For each extension of an adequate public facilities determination:

(a) the applicant must not propose any additional development above the amount approved in the original determination;

(b) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

(c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest; and

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot.

(e) a new adequate public facilities determination for school adequacy is required for the remaining unbuilt units under the school test in effect at the time of Board review.

Limitation on Planning Board approved APF extensions to a total of 12 years

Section 50.4.3.J.7 provides for extensions of the APF validity period, which may vary in length from two and half years to 12 years, depending on a variety of factors. Under the current regulations, a subdivision may be granted extensions in succession, with no limitation on the total length of the extension period. If the maximum length of currently allowable extensions is applied to an APF validity period, it could remain valid for up to 36 years. The additional extensions granted by the County Council would extend the validity period even more, currently up to an additional 10 years.

APF validity periods of this length for projects that are not proceeding in earnest tie up development capacity that might better be used by other projects. Therefore, a new provision is proposed that would limit the total length of any new APF validity extensions to a maximum of 12 years. This is in addition to any special validity period extensions granted by the County Council, such as the five two-year extensions that were enacted in response to adverse economic conditions.

Section 50.4.3.J.7 Adequate Public Facilities – Extensions

h. No combination of extensions of APF validity approved under Section 4.3.J.7 may exceed a total of 12 years from the date of the original APF expiration.

Provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval

With the adoption of the current version of Chapter 50 in 2017, a new type of subdivision plan, called an administrative subdivision plan, came into effect. Administrative subdivision plans are similar to preliminary plans, in that they can be used to subdivide property into a number of lots. However, they are typically acted on by the Planning Director instead of the Planning Board, have a 90-day review period instead of 120 days, have simplified procedures, and generally take less time to reach a decision than preliminary plans.

The current provisions for administrative subdivision plans do not include specific requirements for necessary findings for approval, plan certification, plan validity, revocation of an approved plan, and vacation of an approved plan. Due to this omission, administrative subdivision plans have been approved under the provisions and findings for preliminary plans. While this is legally sufficient, because administrative subdivision plans are a type of preliminary plan, creating separate approval procedures and findings provides greater clarity for applicants, staff, and the Planning Board. The approval procedures and findings are largely the same as those for preliminary plans, with small modifications to reflect the context of administrative subdivision plans.

Section 50.6.3 Approval Procedures

C. Required Findings. To approve an administrative subdivision plan, the Director or Board must make the following findings:

1. the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;
2. the administrative subdivision plan substantially conforms to the master plan;
3. public facilities will be adequate to support and service the area of the subdivision;
4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
5. all stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied;
6. any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M; and
7. any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.

D. Plan Certification

Every administrative subdivision plan approved by the Board or the Director must be certified by the Director to confirm that the plan reflects the approval. Any modification of the plan conditioned by the approval must be included in the plan before receiving the approval stamp. The approved plan must be filed in the records of the Board.

E. Amendments.

Any amendment to an approved administrative subdivision plan must follow the procedures, meet the criteria, and satisfy the requirements of this Division.

F. Plan Validity

1. Initiation date. The plan validity period for administrative subdivision plans starts on the later of:
 - a. 30 days from the date of mailing indicated on the Director's written approval or the Board's resolution; or
 - b. the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods, if an administrative appeal is timely noted by any party authorized to file an appeal.

If a corrected resolution is issued, the initiation date remains the date of mailing indicated on the original resolution.

2. Duration.

- a. An approved administrative subdivision plan remains valid for 3 years after its initiation date.

b. An administrative subdivision plan is validated when the applicant has secured all government approvals necessary to record a plat, and a plat for all property shown on the plan has been recorded in the County Land Records.

c. Any extension of the validity period must follow the procedures of Section 4.2.H.

d. For any action taken by the Director or Board to amend a previously approved administrative subdivision plan, the Director or Board will determine, on a case-by-case basis, whether the validity period should be extended and, if so, for what duration. In making the determination, the Director or Board must consider the nature and scope of the requested amendment.

e. Failure to timely validate or extend the validity period of an administrative subdivision plan is governed by the procedures of Section 4.2.I.

G. *Revocation or Vacation of an Administrative Subdivision Plan*

1. Revocation of an administrative subdivision plan must follow the procedures of Section 4.2.J.

2. Vacation of an administrative subdivision plan must follow the procedures of Section 4.2.K.

In addition to the standard procedures and findings needed for approval, new provisions are proposed to specify circumstances under which an administrative subdivision plan must be acted upon by the Planning Board instead of the Director. Under the existing chapter, the Director may decline to take action on an administrative subdivision plan that generates significant controversy, in which case the Planning Board would act on the plan. The proposed provisions specify that the Planning Board, and not the Director, must act on administrative subdivision plans that include flag lots or lots without frontage (because of their inherently controversial nature) or plans that propose reservation of land for public use (because only the Planning Board is authorized to approve reservations).

Section 50.6.3.B Approval Procedures – Action on An Administrative Subdivision Plan

5. In making the findings required in Section 6.3.C, the Director or Board must consider the technical requirements under Section 4.3. In performing this review, the Director is authorized to perform any relevant action that is permissible to the Board under Section 4.3, except for the following:

1. Section 4.3.C.1.b, with respect to flag lots;

2. Section 4.3.C.1.c, with respect to lots without frontage on a public or private road; and

3. Section 4.3.D.5, with respect to reservation of land for public use.

Recommendation

Staff recommends that the Planning Board request the County Council to introduce the proposed Subdivision Regulations Amendment.

Attachments:

Attachment A: Draft SRA for introduction

William Kominers, Esquire
301-841-3829
wkominers@lerchearly.com

February 5, 2021

VIA ELECTRONIC MAIL

The Honorable Thomas Hucker
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Testimony on Subdivision Regulation Amendment SRA No. 20-02

Dear President Hucker and Members of the Council:

Enclosed is a copy of my written testimony for the public hearing on Subdivision Regulation Amendment SRA No. 20-02. My testimony is generally in support of SRA No. 20-02, but with some suggested changes.

Please place this written testimony in the Record of the public hearing that is scheduled to be held on February 9, 2021.

Please contact me if you have any questions on this material.

Very truly yours,

LERCH, EARLY & BREWER, CHARTERED


William Kominers

WK/paj

Enclosure

cc: Mr. Jeffrey Zyontz
Mr. Neil Braunstein



William Kominers
Attorney
Phone 301-841-3829
wkominers@lerchearly.com

TESTIMONY ON SUBDIVISION REGULATIONS AMENDMENT SRA 20-02
(William Kominers, February 9, 2021)

President Hucker and Members of the Council, I am Bill Kominers, an attorney with the law firm of Lerch, Early & Brewer. I am speaking as an individual on Subdivision Regulation Amendment SRA No. 20-02 (the “Amendment” or “SRA 20-02”).

Set forth below are detailed comments on SRA 20-02 that I expect to work through with your staff. I have been in contact with Planning Board Staff about the SRA as it has worked its way through the process to finally reach you. Staff has been very thoughtful and responsive about issues that I have raised. I appreciate their cooperative approach. I hope this has resulted in a better SRA by virtue of some of the changes already incorporated. That dialogue with Planning Board Staff has continued following introduction of SRA 20-02, as you will see particularly in the suggestion of new text to clarify the restriction on building across lot lines, at the end of this testimony.

Lines 300-308. Section 4.2.K. In Subsection 4.2.K.1, the recording of a plat should not be an impediment to voluntarily vacating a subdivision plan. The APF approval can expire after a plat is recorded and, as a result, the ability to implement the subdivision plan disappears, yet the plat remains recorded. Similarly, in Subsection 4.2.K.3, the necessity for the Director to find that the request to vacate is “not contrary to the public interest” is unnecessary. If the Director does not agree to vacate the approved subdivision, the applicant always has the ability to allow the plan to simply expire by passage of time, creating the same result. Placing these constraints on vacating a plan seem an unnecessary impediment to implement the desire of the applicant. I recommend deleting those constraints.

Lines 432-433. Section 4.3.E.3.b. The term “administrative subdivision plan” is deleted from the text in several places in the Amendment. From conversations with Staff, I believe this is intended to utilize the broad term “preliminary plan,” on the theory that it includes the administrative subdivision plan as a type of preliminary plan. The Staff Report, or legislative history should make clear whether the deletion of the term “administrative subdivision plan” in the various sections is meant to exclude, or merely to subsume the administrative subdivision plan within the broader preliminary plan. But, does this result in each requirement identified for a “preliminary plan” also applying to an administrative subdivision plan? A clear distinction has been made in the case of the new findings now required by Section 6.3.C (Lines 800-818).

Lines 531-543. Section 4.3.I.3.d. This section requires that utility easements be shown on a record plat. While normally desirable, in the case of a development or redevelopment of existing platted property, a new record plat may not otherwise be needed. Complying with this section

may cause replatting the property (with many potential negative consequences) simply to show a new utility easement. The Subdivision Regulations should allow the new utility easement to be shown through the use of easement document, rather than the necessity of being shown on a record plat, in those situations where the property is already platted and is not otherwise intended to be re-platted as a part of the new development approval.

Lines 563-571. Section 4.3.J.5. This Subsection adds an initiation date for the APF validity period, and includes a provision, already present for preliminary plans in Subsection 4.2.G.—that in the event of an appeal being taken, the validity period begins at the end of the appeal. This treats both approvals in the same way and avoids the inconsistency today that the APF validity might be running during an appeal, while the plan’s validity has not yet begun. This is an important, positive change.

Lines 648-650. Section 4.3.J.7.h. The County should not limit the APF validity period for extensions to 12 years. There are many examples in the County of projects that have APF approvals that last well beyond that length of extension period, because of the size and complexity of the project, the unique nature of the project, or similar reasons. The County will be depriving itself of the flexibility to make case by case determination in the future. Flexibility is needed to compete with neighboring jurisdictions to attract and/or to retain major business or developments.

The proposed change will prevent the implementation of many projects that are just the type of economic development, comprising quality jobs and growing numbers of jobs, that the County is or should be seeking. Cutting these projects off because of an arbitrary limitation, seems to be short-sighted. These are often projects that have been providing steady job growth, implemented over time, consistent with market forces. Market forces do not always conform to Montgomery County time schedules, as we can see with the COVID-19 pandemic.

APF approvals today do not cause delay in other projects in the way they did in the past, contrary to the assertion on page 6 of the Planning Board Staff’s October 9, 2020, Memo.

Transportation impacts are no longer the impediment to other developments that they were in the past. Today, there are general financial solutions to inadequate transportation, through funds to support infrastructure (impact taxes, LATIP, White Flint taxing district) rather than causing subsequent applications to be stymied. Likewise, the new Growth and Infrastructure Policy (“GIP”) addresses schools in a comparable way with the Utilization Premium Payment when schools exceed certain levels. So, even school usage will not delay later projects in most of the County under the new GIP. As a result, there is no real need for, or benefit in, limiting duration of APF approvals. On the contrary, continued economic vitality argues for allowing extended time to implement these APF approvals.

Commercial development is not implemented in a continuous straight line, there are peaks and valleys, responding to demands of business and the market. Logical, deliberate buildout can

require more time than planned, as internal and external conditions change. Often this necessitates longer durations and therefore more extensions.

The development horizon for many non-residential development projects extends well beyond 12 years of extensions. Especially with large scale, long-term developments, market conditions, multiple buildings or phases in a project, the logical buildout sequence, internal business decisions and changes of direction, and the external effects of recession or other financial challenges, all cause need for a longer period for implementation and therefore the longer period needed for APF duration.

Commercial projects often have been conditioned on improvements or contributions designed to accommodate the APF impacts of the project. In order to proceed, those requirements must have been fulfilled. Having built or contributed to the improvements, the project has, in good faith, fulfilled its obligations to the County, and addressed its APF-related impacts. The public benefit of obtaining the improvements has already occurred, even though all phases of the development have not yet proceeded. In that interim, the public has had the benefit of use of the improvements, without the corresponding development impacts. But, having provided the improvements needed to address the impacts, there is no reason why the project should not proceed, at whatever time economic and market conditions allow. In fact, it would be inequitable and a breach of trust not to allow the project to go forward, after having provided the facilities required by the regulatory approval. There is a vested contractual interest that must be respected.

Lines 733-736. Section 6.1.D. This Section allows the consolidation of properties within a non-residential zone. The process currently requires that there be one complete lot and then one or more parts of lots. The additional language at Lines 744-745 is beneficial to this Section in clarifying what can constitute a “whole lot,” and I support this addition. This language clarifies that for purposes of this Section, a property qualifies as a “whole lot” if it has qualified for the exemption under Section 50.3.3.B.2.

But even with this additional clarification, the language of Subsection D seems to only do a part of the job. What is the necessity for having at least one “whole” lot involved? Particularly as this provision is restricted to non-residential zones, this Section should allow consolidation of many parts of lots by themselves. Because this consolidation is done as an administrative subdivision, rather than a minor subdivision, it will go to either the Planning Director or the Planning Board for approval. Thus, there will be adequate oversight of the combination of parts of the lots.

The provisions of Subsections 1 and 3 already limit use to the existing development, or, in the event that new development is proposed, require that adequate public facilities have to be demonstrated before the plat is approved. But the consolidation of the parts of lots could occur, limited to the existing approved development, if any. The plat could then be recorded, and when

ready to proceed with new development, the adequate public facilities review could occur at that time, thus, satisfying the intention of Subsection 3.

There seems to be little reason why multiple parts of lots, by themselves, could not be consolidated in this manner, without the need to include an existing whole lot.

Lines 1071-1074. Section 11. The transition treatment, or grandfathering, of pending applications, is addressed in this part of the Amendment. Complete pending applications are allowed, at the applicant's option, to proceed to approval under the law in effect when the application was submitted. This is an important provision to protect good faith filings made far enough in advance to be reviewed and found complete. This provision should explicitly protect those applications as they are amended in the future. For this purpose, in Line 1073, the words "and amended" should be added after "reviewed."

Since the adoption date is unknown, perhaps the protection of Section 11 should extend to applications filed before the effective date that are ultimately found to be complete, even if that occurs after the effective date.

New Addition Proposed—Clarify Prohibition on Buildings Crossing Lot Lines.

The County does not currently allow building across record lot lines. That prohibition was explicitly stated in the "old" subdivision regulations. Section 50-20 (b) was very clear in stating:

"A building permit must not be approved for construction of a dwelling or other structure, except a dwelling or structure strictly for agricultural use, which is located on more than one lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot, except..." (Emphasis Added.)

That explicit language in Section 50-20(b) made it easy to explain why a building could not cross a lot line. The proscription still applies, but the degree of clarity has disappeared from the Subdivision Regulations in the 2017 rewrite, and should be restored through SRA 20-02.

In discussions with Planning Board Staff, they identify Section 50.3.2.B as encompassing the same restriction as the old language. Section 50.3.2.B states:

"Construction of a new principal building may only occur on a lot or parcel shown on a plat that recorded in the County Land Records or on a property that is exempt under Section 3.3.B."

However, imposing the restriction by authorizing construction "on a lot or parcel shown on a plat..." compels a laser-like focus on the word "a" to reach the conclusion that the construction must be limited to only one single lot or parcel. One could readily infer that so long as all of the

multiple affected lots or parcels are each shown on a record plat, construction could occur on all of them (meaning crossing the lot lines that divide them). This is confusing and difficult to explain to those who do not dwell among the minute details of the Code.

I suggest that the clarity of former Section 50-20 (b) be restored through SRA 20-02. To this end, I propose two alternative changes to current Section 50.3.2.B, as noted below. In each case, the underlined language represents the text to be added. I believe that either of these alternatives will avoid confusion in the future.

Alternative 1: “Construction of a new principal building may only occur on a single lot or single parcel shown on a plat recorded in the County Land Records or on a property that is exempt under Section 3.3.B, and in a manner that does not result in the building or structure crossing a lot line.”

Alternative 2: Add the following new sentence after the end of the current text of Section 50.3.2.B: “Provided however, that such construction of a building or other structure must not cross a lot line, except for a dwelling or structure strictly for agricultural use.”

I have shared these two alternative additions with the Planning Board Staff for discussion. Staff has indicated its preference for Alternative 1, with the slight change to remove the reference to “or structure.” In Staff’s view, structures are defined differently than buildings, and the Section is only concerned with buildings.

Thank you for your consideration of my comments. I look forward to discussing this Amendment.



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July 7, 2021

VIA EMAIL AND OVERNIGHT DELIVERY

The Honorable Hans Riemer, Chair
and Members of the Planning, Housing & Economic Development (PHED) Committee
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Subdivision Regulation Amendment No. 20-02 (Subdivision Ordinance, Revisions, Clarifications and Corrections - the "SRA") – Housing Opportunities Commission of Montgomery County's ("HOC") Requested Change to the Residential Cluster Subdivision Provisions

Dear Councilmember Riemer, Friedson and Jawando:

On behalf of the Housing Opportunities Commission of Montgomery County ("HOC"), owner and developer of the Sandy Spring Meadow subdivision in Sandy Spring (the "Property"), we are submitting this letter to request modified language to the residential cluster subdivision provisions in the SRA. More specifically and as described in greater detail below, HOC respectfully requests that proposed Section 50.4.3.L.2.e of the SRA be modified to allow for creation of additional lots with a minimum of 25% Moderately Priced Dwelling Units ("MPDUs") on properties within a cluster subdivision approved prior to October 30, 2014. *See* Page 30 at Lines 678-680 of the SRA.

HOC developed this ±14-acre Property with 30 townhouse dwelling units, 30 single-family detached dwelling units, and abundant green area in the 1980's. The Property was developed as a cluster subdivision under the R-60 Zone pursuant to the Montgomery County Planning Board's (the "Planning Board") approval of Preliminary Plan No. 119821800 and Site Plan No. 819820920. While the Sandy Spring Meadow subdivision has successfully provided affordable housing for families in the Sandy

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Mr. Hans Riemer, Chair
and Members of the PHED Committee
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Spring community over the past several decades, HOC intends to redevelop a small, undeveloped portion of the Property with infill, Missing Middle Housing to allow for a mix of affordable units that will serve the unmet housing demands of a diverse range of County residents and families (the “Missing Middle Pilot Project”). Furthermore, HOC’s proposed Missing Middle Pilot Project at this Property would help to address historical racial justice and equity issues in this portion of the County. HOC recently submitted a Concept Plan application for the Development Review Committee’s review and intends to file preliminary plan and site plan applications for the Missing Middle Pilot Project in the next few months.¹

To bring the Missing Middle Pilot Project to fruition and realize the substantial public benefits desired at the Property, HOC intends to amend the prior cluster development approvals for the Property by obtaining approvals under the MPDU Optional Method of Development of the R-60 Zone for a small portion of the existing subdivision. While 11 single-family detached lots and one open space parcel are proposed to be removed from the existing Sandy Spring Meadow cluster subdivision to allow for the Missing Middle Pilot Project, the remaining portion of the cluster subdivision would comply with all required development standards (including density and green area requirements). Absent the adoption of proposed Section 50.4.3.L.2.e in the SRA, HOC can modify the prior cluster subdivision approval to allow for the contemplated infill redevelopment because there are no limitations on creating additional lots under the applicable provisions of the Zoning Ordinance, Subdivision Regulations or prior development approvals granted by the Planning Board. Moreover, HOC’s Missing Middle Pilot Project is consistent with the land use goals and recommendations identified in the 2015 Sandy Spring Rural Village Plan.

As drafted, Section 50.4.3.L.2.e of the SRA provides that “future subdivision of land within the approved cluster subdivision that would result in the creation of additional lots is not permitted after the property is platted.” Since HOC intends to re-subdivide a parcel that is located within an approved cluster subdivision to create additional lots under separate, new MPDU Optional Method of Development applications for the Missing Middle Pilot Project, we respectfully request that the PHED Committee recommend and support modified language for Section 50.4.3.L.2.e in the SRA. More specifically, we ask that this proposed limitation on creating additional lots that are part of an approved cluster subdivision only be applied prospectively to development projects that have yet to obtain cluster subdivision approvals, but that amendments to cluster subdivision approvals that predate this proposed change be exempt from this limitation. Consistent with the established principle in Maryland that “all statutes are presumed to operate prospectively,” HOC requests that the Section 50.4.3.L.2.e be modified to exempt amendments to cluster subdivisions that were approved prior to October 30, 2014 (i.e., the effective date of the Zoning Rewrite) that result in the creation of a minimum of 25% MPDUs. *McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 159 (2010). Such a change is necessary to ensure that the SRA does not apply retroactively to properties that were previously developed under the cluster method without this restriction and that are capable of accommodating

¹ The DRC reviewed Concept Plan Application No. 520210260 on July 6, 2021.

Mr. Hans Riemer, Chair
and Members of the PHED Committee
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infill redevelopment with substantial MPDUs. More specifically, we request that the following language be added to Section 50.4.3.L.2.e (in **underline and bold**):

“e. future subdivision of land within the approved cluster subdivision that would result in the creation of additional lots is not permitted after the property is platted, **except for amendments to cluster subdivisions that were approved prior to October 30, 2014, and that result in land being reviewed and approved as part of an Optional Method MPDU Development application with at least 25% moderately priced dwelling units (MPDUs).**”

Thank you for consideration of HOC’s request, and if you have any questions or require any additional information, please do not hesitate to contact us.

Very truly yours,

Selzer Gurvitch Rabin Wertheimer & Polott, P.C.

C. Robert Dalrymple

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Matthew M. Gordon

Matthew Gordon

cc: Montgomery County Councilmembers
Livhu Ndou, Legislative Attorney
Pamela Dunn, Legislative Analyst
Zach Marks, HOC