

MEMORANDUM

January 26, 2012

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Subdivision Regulation Amendment (SRA) 11-02, Minor Subdivisions

Subdivision Regulation Amendment (SRA) 11-02, Minor Subdivisions, sponsored by Councilmember Floreen, was introduced on November 8, 2011.

SRA 11-02 would expand the existing provisions of Chapter 50 for minor subdivisions to allow the Planning Board to approve plats for certain properties in a one-family residential zone the minor subdivision process. Specifically, the expansion would allow consolidation of an existing platted lot and a partition of land created as a result of a deed under the minor subdivision process. Application for this new provision would be permitted provided:

- a. in a one-family residential zone, the partition of land created by deed cannot itself be platted under the area and dimensional standards of the zone;
- b. any conditions applicable to the existing lot remain in full force and effect on the new lot;
- c. any required street dedication is provided; and
- d. the subject lot was not identified as an outlot on a plat.

The Planning Board and Planning Staff recommended approval of ZTA 11-02 as introduced. The Council held a public hearing on January 17, 2012. Both speakers testified in support of SRA 11-02. Other testimony submitted in the record recommended expanding the circumstances under which a lot could use the minor subdivision process.

Issues

What is the history behind the minor subdivision process?

Before 1997, there was no way to avoid the requirements for a preliminary plan and a record plat except to request "variations" from the requirements. The Board was authorized to grant such variations.

Variations could be granted upon a finding that specific conditions or limitations of the land to be subdivided made it impossible or impractical, or would cause a singular and unnecessary hardship, if full conformance with the Chapter were required. Variations were granted in several instances to waive the requirement to submit a preliminary plan. The County Council, upon the recommendation of the Planning Board, found that the need for a majority of these variations could be avoided if a minor subdivision procedure were established. The Council added provisions for minor subdivisions to the Subdivision Regulations in 1997.¹ The minor subdivision process permits recordation of plats for certain types of subdivisions without the prior approval of a preliminary plan. Current subdivisions that are allowed to go straight to record plat approval include:

- Minor lot line adjustments that do not exceed 5% of the combined area of the lots involved
- Conversion of certain outlots into a lot
- Consolidation of recorded lots or parts of lots that were created by deed prior to June 1, 1958
- Further subdivision of commercial, industrial or multi-family residential lots to create ownership or lease lines
- Plats of correction
- Plats for residential lots created from parcels that were created by deed prior to June 1, 1958
- Plats for existing places of worship, private schools, country clubs, private institutions and the like located on unplatted parcels
- Plats for up to five lots in the RDT zone, provided they average 5 acres or less in size
- Plats to record certain parcels that were created by deed after June 1, 1958 that contain a lawfully constructed residential dwelling and meet the requirements of the zone in place when the dwelling was constructed

The same 1997 amendment also created new waiver provisions to address unique circumstances. Planning Staff predicted that, because the provisions for minor subdivisions were limited, there would be future requests to use the waiver provisions to avoid preliminary plan in other instances. The current general waiver provision states:

The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.²

The Planning Board has not considered the cost of the preliminary plan process as a unique circumstance under which it may grant a waiver of the requirement for a preliminary plan.

Why not allow minor subdivisions for any single lot?

As a general matter, the combination of Subdivision Regulation, the Zoning Ordinance, and the Building code would ultimately eliminate the sale of property described by deed (and not by record plat) in the non-agricultural area of the County. Non-agricultural building permits can only be issue on recorded lots. The County preference for recorded lots is to have land records that: 1) allow for accurate map descriptions of property; 2) indicate appropriate dedication of public rights-of-way; and 3) permit a determination that the lot complies with zoning standards. Any change to County Code that makes it

¹ The Planning Staff report includes a more complete history.

² §50-38(a)(1).

easy to deed property and then resolve the issue by an after-the-fact record plat must be done in a limited manner that does not encourage the sale of property with only a metes and bounds description in the deed.

Staff recommends the approval of SRA 11-02. It should not create an incentive for more deeded property.

Should the scope of SRA 11-02 be expanded?

Testimony suggested one other circumstance when a minor subdivision seems in order. A house was constructed on a lot. After 1958 and the construction of a house, part of the lot was sold to a neighbor. The homeowner currently owns part of a lot and would be required to apply for a preliminary plan before being allowed to apply for a record plat. After spending almost \$20,000 and taking 1 year to complete, the homeowner would finally be allowed to demolish the home and apply for a building permit. Some hardships could be avoided by the adoption of the following revisions to SRA 11-02:

(11) Creation of a Lot from a Part of a Lot. A part of a previously recorded lot that was created as a result of a deed transfer of land from the lot, and which contains a legally constructed one-family residential dwelling, may be converted into a lot under the minor subdivision procedures if:

(A) The part of lot is located in a one-family residential zone; and

(B) All applicable conditions or agreements applicable to the subdivision approval creating the original lot will also apply to the new lot. The conditions and agreements may include, but are not limited to, any adequate public facilities agreement, conservation easement, or building restriction lines.

* * *

(e) Lots created under the minor subdivision provisions of sections (1) and (11) may not [A minor lot line adjustment cannot] be used to establish a precedent for a resubdivision that may be filed for other properties located in the same block, subdivision, or neighborhood.

The revision to subsection (e) would be required to maintain the neighborhood standards for resubdivision.³

This packet contains:

SRA 11-02

Planning Board recommendation

Planning Staff recommendation

Circle #

1 – 4

5 – 6

7 – 10

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³ The Subdivision Ordinance has very strict rules concerning resubdividing property. There are 7 separate findings that the Planning Board must make to approve a resubdivision.

Lots on a plat for the resubdivision of any lot, tract or other parcel of land that is a part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

Ordinance No.:
Subdivision Regulation Amend. No.: 11-02
Concerning: Minor Subdivisions
Revised: 10/27/11; Draft No. 1
Introduced: November 8, 2011
Public Hearing: January 17, 2012
Adopted:
Effective:

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

By: Councilmember Floreen

AN AMENDMENT to the Subdivision Regulations to:

- (1) authorize the approval and recordation of a plat for certain properties classified in a one-family residential zone under the minor subdivision procedure under certain circumstances; and
- (2) generally amend the provisions for the application of the minor subdivision process

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Section 50-35A, Minor Subdivisions – Approval
Procedure

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

Sec. 1. Section 50-35A is amended as follows:

Section 50-35A. Minor Subdivisions – Approval Procedure.

(a) *Preliminary Plan Not Required.* The submission of a preliminary subdivision plan, [in accordance with the provisions of] under Section 50-34 and Section 50-35, is not required for:

(1) Minor Lot Line Adjustment.

* * *

(2) Conversion of an Outlot into a Lot.

* * *

(3) Consolidation of Two or More Lots or a Part of a lot into One Lot.

* * *

(4) Further Subdivision of a Commercial, Industrial or Multi-Family Residential Lot to Reflect a Change in Ownership, Deed, Mortgage or Lease Line.

* * *

(5) Plat of Correction.

* * *

(6) Plats for Certain Residentially Zoned Parcels Created by Deed Before June 1, 1958.

* * *

(7) Plats for Existing Places of Worship, Private Schools, Country Clubs, Private Institutions and Similar Uses Located on Unplatted Parcels.

* * *

(8) Plats for Certain Residential Lots located in the Rural Density Transfer Zone.

* * *

(9) Parcels that satisfy Section 59-B-8.1 of Chapter 59 may be platted

28 under the minor subdivision procedure if:

29 * * *

30 (10) Combining a lot and adjoining property. Except in agricultural zones,
31 the Planning Board may approve plats under the minor subdivision
32 process to consolidate an existing platted lot and a partition of land
33 created as a result of a deed, provided:

34 (A) in a one-family residential zone, the partition of land created by
35 deed cannot itself be platted under the area and dimensional
36 standards of the zone;

37 (B) any conditions applicable to the existing lot remain in full force
38 and effect on the new lot;

39 (C) any required street dedication is provided; and

40 (D) the subject lot was not identified as an outlot on a plat.

41 (b) *Procedure for Platting a Minor Subdivision.* The owner of property that
42 satisfies the requirements for a minor subdivision under Section 50-
43 35A(a), above, may submit an application for record plat for approval
44 under Section 50-36 and Section 50-37. In the case of minor
45 subdivisions described in Sections 50-35A, (1), (3) and (4), if no
46 additional development is proposed, then no additional public
47 improvements may be required by the reviewing agencies beyond those
48 required for the original subdivision.

49 (c) Minor subdivision approvals are not subject to the resubdivision criteria
50 of Section 50-29(b)(2).

51 (d) Any lot created through the minor subdivision process and any lot
52 replatted as part of a minor lot line adjustment must satisfy all applicable
53 zoning requirements in Chapter 59.

54 (e) A minor lot line adjustment cannot be used to establish a precedent for a

55 resubdivision that may be filed for other properties located in the same
56 block, subdivision, or neighborhood.

57 * * *

58

59 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of
60 Council adoption.

Approved:

Isaiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the County Council

Date



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

OFFICE OF THE CHAIR

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

January 13, 2012

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: Subdivision Regulation Amendment No. 11-02

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Subdivision Regulation Amendment No. 11-02 at its regular meeting on December 8, 2011. By a vote of 3:0, the Board recommends approval of the subdivision regulation amendment as introduced.

SRA No. 11-02 proposes to expand the existing provisions of Chapter 50 for minor subdivisions to allow the Planning Board to approve plats for certain properties not classified in an agricultural zone under the minor subdivision process. Specifically, the expansion would allow consolidation of an existing platted lot and a partition of land created as a result of a deed under the minor subdivision process.

The provisions by which this particular minor subdivision could occur ensure that:

- a) this minor subdivision won't be used to create larger residential lots in agricultural zones;
- b) in a one-family residential zone the size of the lot being created by this minor subdivision will be limited because the partition of land being added to a lot cannot meet the size requirement by itself to be platted under the standards of the zone;

c) any required street dedications will be provided along the frontage of the lot being created;

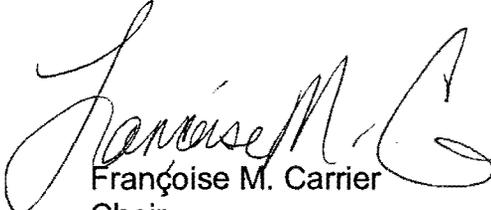
d) development of the resulting lot will continue to be limited by any applicable conditions of subdivision that applied to the original lot; and

e) this minor subdivision is not interpreted to permit a recorded outlot to become a buildable lot.

The Planning Board recommends approval of SRA 11-02 with these protections in place.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing 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 Silver Spring, Maryland, on Thursday, December 8, 2011.



Françoise M. Carrier
Chair

FC: GR





Subdivision Regulation Amendment (SRA) No. 11-02, Expansion of Provisions for Application of Minor Subdivision

DR

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D

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Completed 11/30/11

Description

SRA No. 11-02 proposes to expand the existing provisions of Chapter 50 for minor subdivisions to allow the Planning Board to approve plats for certain properties not classified in an agricultural zone under the minor subdivision process. Specifically, the expansion would allow consolidation of an existing platted lot and a partition of land created as a result of a deed under the minor subdivision process. Application for this new provision would be permitted provided:

- a. in a one-family residential zone, the partition of land created by deed cannot itself be platted under the area and dimensional standards of the zone;
- b. any conditions applicable to the existing lot remain in full force and effect on the new lot;
- c. any required street dedication is provided; and
- d. the subject lot was not identified as an outlot on a plat.

Summary

Staff recommends approval of SRA 11-02, as introduced, to expand the minor subdivision provisions to allow consolidation of an existing platted lot and a partition of land created as a result of a deed under certain circumstances as outlined above.

The Montgomery County Subdivision Regulations, Chapter 50 of the County Code, specify the procedures for approval of subdivisions by the Planning Board. The procedures involve the submission of a preliminary plan for staff review and Planning Board action. The preliminary plan stage of the process is followed by the submission of a record plat which is reviewed by staff, approved by the Planning Board, reviewed by other agencies, and then recorded in the land records of the county.

Years ago, in response to complaints that some types of simple subdivisions did not warrant the time and expense associated with the review of a preliminary plan, the Subdivision Regulations were amended to provide for approval of minor subdivisions. The minor subdivision process specifies certain types of subdivision that may proceed directly to review and approval of a record plat without the prior approval of a preliminary plan. This amendment would expand the process as described above.

The alternative to using the minor subdivision provisions to avoid preliminary plan is requesting a waiver of the requirement. It was, in part, the influx of such waiver requests that prompted the creation of minor subdivisions. *An initial draft of this SRA included a recommendation for a "catch all" waiver provision under the minor subdivision provisions. That recommendation was removed from the amendment prior to introduction and left for more comprehensive discussion as part of another SRA or the Subdivision Regulation Rewrite project.*

Requirements for Subdivision

The Subdivision Regulations generally specify that whenever land in the county is subdivided for any purpose, a plat of such subdivision must be recorded in the land records of the county. They further specify that, with certain exceptions, the Department of Permitting Services must not approve a building permit for the construction of a dwelling or other structure, unless the dwelling or structure would be located on a lot or parcel of land which is shown on a recorded plat. They also prohibit, with certain exceptions, the issuance of a building permit for construction of a dwelling or other structure 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. Together, these requirements result in the need for platting of many properties prior to land development.

In order to provide an orderly basis for the processing of subdivisions prior to approval, the Subdivision Regulations specify that the Board consider such plans in two stages. The first stage of the process, except for specific minor subdivisions, is submittal of a preliminary plan for approval. The second stage is submittal of a final plat for approval and recordation. In approving these applications, the Board must find that proposed subdivision will meet the standards established both, in the Subdivision Regulations, and in the road construction code or other ordinances or regulations. To ensure that these findings can be made, the preliminary plan and final record plat are referred to other county agencies or departments for their review and recommendations prior to Planning Board action.

The scope of preliminary plan review includes: determination of required public and private improvements; design and layout of roads, lots and blocks; the need for public sites and adequate open spaces; and protection of environmentally sensitive areas. In addition, the Board must find prior to approval of a preliminary plan that it will meet requirements of the applicable master plan, has adequate public facilities, and provides for sediment control, forest conservation, and water quality. Preliminary plan review is also a public process, so it includes requirements for pre-submission public meetings, site posting, noticing and public hearing. As such, the review of some preliminary plans can be quite complex and time consuming.

Record plat review includes review of a detailed plat drawing that shows all boundaries, street lines, lot lines and other encumbrances, such as easements, with survey data that is sufficient to locate and reproduce them on the ground. The layout of features on the plat drawing must be in substantial conformance with the applicable preliminary and site plans and their associated conditions of approval, and the plat must not be approved until other supporting plans such as, road and street profiles and storm drainage construction plans have also been approved. A record plat application and initial drawing are reviewed by staff and referred to selected outside agencies and departments prior to the submittal of a final plat mylar. The final plat must be approved by the Planning Board within 30 days of its submittal. A plat may not be recorded until all required public improvements for the subdivision

have been completed or guaranteed. Record plats are approved on the Board's consent agenda and are not noticed to the public.

Minor Subdivisions and Subdivision Regulations Waivers

Prior to the late 90's, there was no way to avoid the two-step subdivision process except to request variations from the requirements which the Board was authorized to grant under the regulations at that time. Variations could be granted upon a finding that specific conditions or limitations of the land to be subdivided made it impossible or impractical, or would cause a singular and unnecessary hardship, if full conformance with the Chapter were required. Such variations were granted in several types of instances to waive the requirement to submit a preliminary plan. Staff at the time pointed out that the need for a majority of these variations could be avoided if a minor subdivision procedure were established. After further review of the issue by the Planning Board and County Council, provisions for minor subdivisions were added to the Subdivision Regulations by amendment in 1997. *The minor subdivision process permits recordation of plats for certain types of subdivisions without prior approval of a preliminary plan.* As of now, these subdivisions include:

- Minor lot line adjustments that do not exceed 5% of the combined area of the lots involved
- Conversion of certain outlots into a lot
- Consolidation of recorded lots or parts of lots that were created by deed prior to June 1, 1958
- Further subdivision of commercial, industrial or multi-family residential lots to create ownership or lease lines
- Plats of correction
- Plats for residential lots created from parcels that were created by deed prior to June 1, 1958
- Plats for existing places of worship, private schools, country clubs, private institutions and the like located on unplatted parcels
- Plats for up to five lots in the RDT zone provided they average 5 acres or less in size
- Plats to record certain parcels that were created by deed after June 1, 1958, that contain a lawfully constructed residential dwelling and meet the requirements of the zone in place when the dwelling was constructed

The same amendment also created new waiver provisions to address unique circumstances. Staff noted at the time that, because the provisions for minor subdivisions were limited, there would be future requests to use the waiver provisions to avoid preliminary plan in other instances. The current general waiver provision of Section 50-38(a)(1) states:

"The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances existing that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest."

In general, staff supports expanding the minor subdivision provisions to include other specific instances that are appropriate for platting without preliminary plan over granting waivers. This is the appropriate mechanism because it bases the decision to eliminate the requirement for preliminary plans on the specific conditions of the subdivision rather than on a judgment based on the case by case argument by the applicants. Also, the review process for an SRA ensures that all who may have concerns about loss

of their authority to review matters associated with preliminary plans agree on what the specific conditions are. The subject SRA was introduced to address a particular type of subdivision that staff had recently discussed with an applicant who had submitted a waiver request. SRA 11-02 as introduced reflects the language modification as recommended by technical staff to address the combining of an existing platted lot with a partition of land created as a result of a deed.

The provisions by which this particular minor subdivision could occur ensure that:

- a) this minor subdivision won't be used to create larger residential lots in agricultural zones;
- b) in a one-family residential zone the size of the lot being created by this minor subdivision will be limited because the partition of land being added to a lot could not by itself be platted under the standards of the zone;
- c) any required street dedications will be provided along the frontage of the lot being created;
- d) development of the resulting lot will continue to be limited by any applicable conditions of subdivision that applied to the original lot; and
- e) this minor subdivision is not interpreted to permit a recorded outlot to become a buildable lot.

Staff recommends approval of SRA 11-02 with these protections in place.

ATTACHMENTS

1. SRA 11-02 as introduced