

Ordinance No. 15-67
Subdivision Regulation Amend. No. 05-03
Concerning: Adequate Public Facilities
- Validity Period
Revised: 3-17-06 Draft No. 3
Introduced: October 11, 2005
Public Hearing: December 6, 2005
Adopted: March 21, 2006
Effective: April 10, 2006

**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: Council President at the request of the Planning Board

AN AMENDMENT to the Subdivision Regulations to:

- (1) clarify the validity period of a finding of adequate public facilities by the Planning Board, and the process and standards to extend a finding of adequacy;
- (2) repeal certain temporary provisions regarding findings of adequate public facilities; and
- (3) update obsolete language and make corrective and stylistic changes.

By amending the following sections of the Montgomery County Code, Chapter 50:

Section 50-20, Limitations on issuance of building permits

Section 50-35, Preliminary subdivision plans – 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>

OPINION

Subdivision Regulation Amendment (SRA) No. 05-03 was introduced on October 11, 2005, to clarify the validity period of a finding of adequate public facilities by the Planning Board, and the process and standards to extend a finding of adequacy; repeal certain temporary provisions regarding findings of adequate public facilities; and update obsolete language and make corrective and stylistic changes.

The Montgomery County Planning Board in its report to the Council recommended that the SRA be approved with modifications.

The County Council held a public hearing on December 6, 2005, to receive testimony concerning the proposed SRA. The SRA was referred to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation.

The Committee held a worksession on March 13, 2006, to review the amendment. The Committee unanimously recommended enactment of the amendment with further amendments.

The District Council reviewed Subdivision Regulation Amendment No. 05-03 at a meeting held on March 21, 2006, and supported the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 05-03 will be approved as revised.

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. Sections 50-20 and 50-35 are amended as follows:**

2 **50-20. [Limitations] Limits on issuance of building permits.**

3 (a) [[A]] The Department of Permitting Services must not approve a
 4 building permit [[must not be approved]] for the construction of a
 5 dwelling or other structure, except [structures or dwellings] a dwelling
 6 or structure on a farm strictly for agricultural use, unless [such] the
 7 dwelling or structure [is to] would be located on a lot or parcel of land
 8 which is shown on a plat recorded in the County plat books [of the
 9 county], and which has access as prescribed in [Sec.] Section 50-
 10 29(a)(2). [; provided, that such] However, the Department may issue
 11 a building permit [[may be issued]] for [the following]:

- 12 (1) A parcel covered by an exception specified in Section 50-9 [of
 13 this chapter];
- 14 (2) A parcel covered by a valid site plan approved [no more than
 15 four years prior to] after October 8, [1985] 1981, under
 16 Division 59-D-3, on which construction had begun [as of that
 17 date] by October 8, 1985, or on the medical center; or
- 18 (3) A parcel covered by a special exception approved under
 19 Division 59-G-1, which was being implemented as of October
 20 8, 1985.

21 (b) A building permit [may] must not be approved for the construction of
 22 a dwelling or other structure, except [those] a dwelling or structure
 23 strictly for agricultural use, which is located on more than one [(1)]
 24 lot, which crosses a lot line, which is located on the unplatted
 25 remainder of a resubdivided lot, or which is located on an outlot,
 26 except [as follows] a building permit:

- 27 (1) [A building permit was] applied for on or before February 1,
28 1985[.];
- 29 (2) [A building permit] approved after February 1, 1985, for
30 development that crosses a lot line where a wall is located on,
31 but not over, the lot line and there are projections for the roof,
32 eaves, and foundation footings which project not more than 2
33 feet across the vertical plane of the lot line; and projections for
34 sills, leaders, belt courses and similar ornamental features
35 which project not more than 6 inches across the vertical plane
36 of the lot line[.];
- 37 (3) [A building permit may be approved] for an aboveground or
38 [an] underground public facility or amenity that crosses the
39 vertical plane of any lot line, as projected below grade, if shown
40 on a CBD Zone Project Plan for optional method development,
41 approved in accordance with the procedures of Division 59-D-2
42 [of the Montgomery County Code]; or if shown on a
43 Development Plan approved in accordance with the procedures
44 of Division 59-D-1 [of the Montgomery County Code.];
- 45 (4) [A building permit may be approved] for an underground
46 parking facility that crosses the vertical plane of any lot line, as
47 projected below grade, ~~[[and]]~~ or extends into a public right-of-
48 way if that extension is approved by the appropriate public
49 agency[.];
- 50 (5) [A building permit may be approved] for the reconstruction of a
51 one-family dwelling that is located on [part(s)] ~~[[all or]]~~ part of
52 a previously platted [lot(s)] lot, recorded by deed [prior to]
53 before June 1, 1958, [in the event that] if the dwelling is

54 destroyed or seriously damaged by fire, flood or other natural
 55 disaster[.] or;

56 (6) [A building permit may be approved] for an addition to an
 57 existing one-family dwelling, a porch, deck, fence or accessory
 58 structures associated with an existing one-family dwelling
 59 located on [part(s)] ~~[[all or]]~~ part of a previously platted [lot(s)]
 60 lot, recorded by deed [prior to] before June 1, 1958.

61 (c) (1) Words and phrases used in this subsection have the meanings
 62 indicated in Section 8-30.

63 (2) Except as provided in [paragraph (4) of] this subsection and
 64 Article IV of Chapter 8, the Department of Permitting Services
 65 may issue a building permit ~~[[may be issued]]~~ only if the
 66 Planning Board has made a timely determination of the
 7 [existence of adequate] adequacy of public facilities to serve the
 68 proposed development ~~[[has been made]]~~ under this Chapter.
 69 ~~[[This subsection does not apply to]]~~ However, the Department
 70 may issue a building permit for any proposed development that
 71 is:

72 (A) exclusively residential on a lot or parcel recorded before
 73 July 25, 1989, or otherwise recorded in conformance
 74 with a preliminary plan of subdivision approved before
 75 that date; or

76 (B) otherwise exempt from the requirement for determining
 77 adequacy of public facilities before a preliminary plan of
 78 subdivision is approved.

79 (3) A determination of adequate public facilities made under this
 80 Chapter is timely and remains valid:

81 [(i)] (A) For [twelve (12)] 12 years [from] after the date of
 82 preliminary plan approval for [plans] any plan approved
 83 on or after July 25, 1989, but before October 19, 1999[.];
 84 [However, an adequate public facilities determination for
 85 an exclusively residential subdivision remains valid after
 86 twelve (12) years if fifty (50) percent of the entire
 87 subdivision has received building permits and the
 88 developer submits a letter of intent to develop the
 89 remainder by a specified date;]

90 [(ii) Until July 25, 2001, for a preliminary plan of subdivision
 91 that allows nonresidential development which was
 92 approved on or after January 1, 1982, but before July 25,
 93 1989;] and

94 [(iii)] (B) For no less than 5 and no more than 12 years, as
 95 determined by the Planning Board at the time of
 96 subdivision, for [projects] any plan approved on or after
 97 October 19, 1999.

98 (4) The Planning Board may extend a determination of adequate
 99 public facilities for an exclusively residential subdivision
 100 beyond the otherwise applicable validity period if the
 101 Department has issued building permits for at least 50 percent
 102 of the entire subdivision [[has received building permits]]
 103 before the application for extension is filed. The Board may
 104 approve one or more extensions if the aggregate length of all
 105 extensions for the development do not exceed:

106 (A) 2½ years for a subdivision with an original validity
 107 period of 5 years; or

108 (B) 6 years for a subdivision with an original validity period
 109 longer than 5 years.

110 [(iv)] (5) The Planning Board may extend a determination of adequate
 111 public facilities for a preliminary plan of subdivision [that
 112 allows] for nonresidential development [may be extended by
 113 the Planning Board] beyond the otherwise applicable validity
 114 [periods in (i), (ii) and (iii)] period if:

115 (A) [At] at least [forth percent (40%)] 40% of the approved
 116 development has been built, is under construction, or
 117 building permits have been issued, such that the
 118 cumulative amount of development will meet or exceed
 119 [the percentage requirement of this paragraph] 40%;

120 (B) [All] all of the infrastructure required by the conditions
 1 of the original preliminary plan approval has been
 122 constructed, or payments for its construction have been
 123 made; and

124 (C) [The] the development is an "active" project, [as
 125 demonstrated by] meaning that either occupancy permits
 126 have been issued or a final building permit inspection has
 127 been passed for at least 10 percent of the project [having
 128 been completed] within the [last four] 4 years before an
 129 extension request is [made] filed, or occupancy permits
 130 have been issued for at least 5 percent of the project
 131 [having been completed] within the [last] 4 years before
 132 an extension request is [made,] filed if 60 percent of the
 133 project has been built or is under construction. If
 134 occupancy permits are not typically issued for the type of

135 development for which an extension is requested, a part
 136 of the development can be treated as complete when its
 137 final inspection has been approved. The Board may treat
 138 a building as complete even if occupancy permits have
 139 been issued for only part the building.

140 [(v)] (6) For any development [projects consisting] that consists of
 141 more than one preliminary plan, the requirements in [(iv) (A)
 142 through (C) above] paragraph (5) apply to the combined
 143 project. A project consists of more than one preliminary plan if
 144 the properties covered by the preliminary plans of subdivision
 145 are contiguous and:

- 146 (A) were owned or controlled by the same applicant at the
 147 time of subdivision, and approved contemporaneously, or
- 148 (B) were owned or controlled by different applicants at the
 149 time of subdivision, but covered by a single approved
 150 comprehensive design plan [approved by the Planning
 151 Board].

152 [(vi)] (7) Submittal and review requirements for extensions of
 153 adequate public facilities determinations.

- 154 (A) A new development schedule or phasing plan for
 155 completion of the project must be submitted to the
 156 Planning Board for approval;
- 157 (B) [No] no additional development beyond the amount
 158 approved in the determination of adequate public
 159 facilities for the preliminary plan of subdivision may be
 160 proposed or approved;

161 (C) [No] no additional public improvements or other
 162 conditions beyond those required for the original
 163 preliminary plan may be required by the Planning Board;
 164 and

165 [(D) If the preliminary plan is for a development project
 166 located in an area that is subject to a moratorium under
 167 the Annual Growth Policy, a traffic mitigation program
 168 must be in place, or the project must otherwise be subject
 169 to existing traffic mitigation requirements of the Code.]

170 [(E)] (D) [An] an application for an extension must be filed
 171 with the Planning Board before [the expiration of] the
 172 validity period for which the extension is requested has
 173 expired.

4 [(vii)] (8) The length of [the] any extension of the validity period, or
 175 all extensions taken together if more than one extension is
 176 allowed, under [(iv) above] paragraph (5) must be based on the
 177 approved new development schedule under [(vi) (A) above]
 178 paragraph 7(A), but must not exceed 2 ½ years for [projects up
 179 to] any development with less than 150,000 square feet, or 6
 180 years for [projects] any development with 150,000 square feet
 181 or greater. The extension expires if the development is not
 182 proceeding in accordance with the phasing plan[,] unless the
 183 Board has approved a revision to the schedule or phasing plan
 184 [is approved by the Planning Board].

185 (9) The Planning Board may approve one or more additional
 186 extensions of a determination of adequate public facilities, up to

- 187 the time period allowed under paragraph (8), beyond any
188 extension allowed under paragraph (5), if:
- 189 (A) no more than 30% remains to be built of either the entire
190 approved development or the share of the development to
191 be built by that applicant; or
- 192 (B) the applicant will commit to reduce the amount of unbuilt
193 development by at least 10%, and the validity period for
194 the amount to be reduced will expire as scheduled.
- 195 (10) The Planning Board may extend a determination of adequate
196 public facilities once for up to 12 more years beyond the
197 otherwise applicable validity period if the Board finds that:
- 198 (A) the preliminary subdivision plan for the development
199 required a significant commitment of funds by the
200 applicant, amounting to at least \$2,500,000, to comply
201 with specified infrastructure conditions;
- 202 (B) the applicant has met or exceeded the required
203 infrastructure conditions during the original validity
204 period; and
- 205 (C) the applicant's satisfaction of the required infrastructure
206 conditions provides a significant and necessary public
207 benefit to the County by implementing infrastructure
208 goals of an applicable master or sector plan.
- 209 [(viii)] [(9)] (11) [An] The Board may approve an amendment to the
210 new development schedule approved under [subsection (vi)
211 (A)] paragraph 7(A) [may be approved by the Planning Board]
212 if [documentation is provided to show] the applicant shows that
213 financing has been secured for either:

214 [(1)] (A) completion of at least one new building in the next
215 stage of the amended development schedule; or
216 [(2)] (B) completion of infrastructure required to serve the next
217 stage of the amended development schedule.

218 [(4)] Paragraph (2) of this subsection does not apply to:

219 (i) Proposed development that is exclusively residential on a
220 lot or parcel recorded before July 25, 1989, or otherwise
221 recorded in conformance with a preliminary plan of
222 subdivision approved before that date;

223 (ii) Proposed development that is otherwise exempted from
224 the requirement for adequate public facilities for
225 preliminary plan of subdivision approval under this
226 chapter or other law; and

7 (iii) Proposed nonresidential development on a lot or parcel
228 recorded before January 1, 1982, or otherwise in
229 conformance with a preliminary plan of subdivision
230 approved before January 1, 1982, if it is registered and
231 otherwise satisfies the requirements of article IV of
232 chapter 8. On or after July 25, 2001, a new adequate
233 public facilities determination is required.]

234 [[10]] (12) The validity period of a finding of adequate public
235 facilities is not automatically extended under any circumstance,
236 including when an applicant has completed all conditions
237 imposed by the Planning Board at the time of preliminary plan
238 approval to meet adequate public facilities requirements.

239 ~~[(5)]~~ ~~[[11]]~~ (13) If a new adequate public facilities determination is
240 required under this subsection, the procedures [set forth] in
241 Section ~~[[8-34]]~~ 8-32 apply.

242 **50-35. Preliminary subdivision plans - Approval procedure.**

243 * * *

244 (h) Duration of Validity Period and Actions Required to Validate the
245 Plan.

246 (1) Initiation Date. For preliminary plans the initiation date for
247 commencing the period during which time a plan must be
248 validated~~[[,]]~~ is the later of:

249 ~~[[a.]]~~ (A) 30 days from the date of mailing of the written
250 opinion, as such date is printed on the opinion; or

251 ~~[[b.]]~~ (B) ~~[[in the event]]~~ if an administrative appeal is
252 timely noted by any party authorized to take an appeal,
253 the date upon which the court having final jurisdiction
254 acts, including the running of any further applicable
255 appeal periods.

256 (2) Duration of Validity Period.

257 ~~[[a.]]~~ (A) An approved preliminary plan for a single phase
258 project remains valid for 36 months from its Initiation
259 Date. ~~[[Prior to the expiration of]]~~ Before the validity
260 period expires, the applicant must have secured all
261 governmental approvals necessary as condition precedent
262 for plat recordation and a final record plat for all property
263 delineated on the approved preliminary plan ~~[[has]]~~ must
264 have been recorded among the ~~[[Montgomery]]~~ County
265 Land Records.

266 **[[b.]] (B)** An approved preliminary plan for a multi-phase
 267 project remains valid for the period of time established in
 268 the phasing schedule approved by the Planning Board.
 269 Each phase must be assigned a validity period, the
 270 duration of which must be proposed by the applicant as
 271 part of an application for preliminary plan approval or an
 272 application for preliminary plan revision or amendment,
 273 reviewed by staff, and approved on a case-by-case basis
 274 by the Planning Board, after **[[giving consideration to]]**
 275 considering such factors as the size, type, and location of
 276 the project. The time allocated to a phase must not
 277 exceed 36 months from the initiation date associated with
 278 that particular phase. The cumulative validity period of
 9 all phases may not exceed the APFO validity period
 280 which runs from the date of the initial preliminary plan
 281 approval including any extensions granted **[[pursuant to]]**
 282 under Section 50-20(c)**[[(3)(iv)]]** (5). Validation of a
 283 preliminary plan for a phase occurs upon the recordation
 284 of a final record plat for all property delineated in that
 285 particular phase of the approved preliminary plan.

286 **[[c.]] (C)** The applicant must propose a phasing schedule
 287 before the Planning Board acts on the preliminary plan or
 288 site plan, if applicable.

289 (3) Extension of Validity Period.

290 **[[a.]] (A)** A request to extend the validity period of an
 291 approved preliminary plan that does not contain a
 292 phasing schedule must be submitted in writing and

293 received by the Planning Board ~~[[prior to]]~~ before the
294 previously established validity period ~~[[expiration]]~~
295 expires. The written submission must specify in detail all
296 grounds and reasons purported by the applicant to
297 support the extension request and must include a
298 declaration that states the anticipated date for validating
299 the plan. The applicant ~~[[will]]~~ must certify that the
300 requested extension is the minimum additional time
301 required for validation.

302 ~~[[b.]]~~ (B) The failure to submit a detailed, written request in
303 a timely fashion voids all non-validated portions of the
304 preliminary plan and, where applicable, an approved site
305 plan ~~[[approval]]~~.

306 ~~[[c.]]~~ (C) ~~[[In instances where]]~~ If a preliminary plan has
307 been allowed to expire due to applicant's failure to file a
308 timely request for an extension, the Board on a case-by-
309 case basis in unusual situations may require submission
310 and approval of a new plan, including a new APFO
311 review; or, where practical difficulty or undue hardship is
312 demonstrated by the applicant, may reinstate an expired
313 plan and establish a new validity period for the plan. The
314 Board, when considering a request to extend an otherwise
315 expired plan, may require the applicant to secure a new
316 APFO review and approval by the Board, as a
317 prerequisite or condition of its action to validate and
318 extend the expired plan. Only the Planning Board is
319 authorized to extend the validity period.

320 [[d.]] (D) Grounds for Extension of the Validity Period of a
 321 Preliminary Plan. The Planning Board may only grant a
 322 request to extend the validity period of a preliminary plan
 323 if the Board is persuaded that:

324 i. delays, subsequent to the plan approval by the
 325 government or some other party, essential to the
 326 applicant's ability to perform terms or conditions
 327 of the plan approval, have materially prevented
 328 applicant from validating the plan, provided such
 329 delays are not created or facilitated by the
 330 applicant; or

331 ii. the occurrence of significant, unusual, and
 332 unanticipated events, beyond applicant's control
 3 and not facilitated or created by applicant, have
 334 substantially impaired applicant's ability to
 335 validate its plan and that exceptional or undue
 336 hardship (as evidenced, in part, by the efforts
 337 undertaken by applicant to implement the terms
 338 and conditions of the plan approval in order to
 339 validate its plan) would result to applicant if the
 340 plan were not extended.

341 The Planning Board, in considering a request for
 342 an extension, may condition the grant of an
 343 extension on a requirement that the applicant
 344 revise its plan to conform with changes to
 345 applicable laws or regulations [[that may have
 .6 occurred]] since [[the time of]] the plan [[approval

347 and]] was approved that are intended to [[have
348 application]] apply to the project.

349 The Planning Board, in considering a request for
350 an extension, may deny the request if it [[is
351 persuaded]] finds that the project, as approved and
352 conditioned, is no longer viable. In considering
353 the viability of a project, the Board must consider
354 such factors as whether the project is capable of
355 being financed, constructed, and marketed within a
356 reasonable time frame and demonstrated by the
357 applicant upon request by the Planning Board or its
358 staff.

359 The Planning Board must determine whether a
360 request for an extension should be granted after
361 public hearings for which notice was duly given.

362 The requirements for noticing and conducting a
363 public hearing must follow the requirements for
364 reviewing a preliminary plan.

365 The applicant bears the burden of establishing the
366 grounds in support of the requested extension.

367 [[There should be no presumption by the]] An
368 applicant must not presume that the Board will
369 approve an extension [[will be granted by the
370 Planning Board]].

371 If voting to approve an extension, the Board may
372 only grant such minimal time it determines to be
373 necessary for the applicant to validate its plan. The

374 Board ~~[[will]]~~ must not grant an extension to a
 375 preliminary plan which has the effect of carrying
 376 the plan's validity period beyond any established
 377 APFO validity period, unless otherwise allowed by
 378 law. An applicant may request, and the Board may
 379 approve, one or more extensions. Once a phasing
 380 schedule is approved by the Planning Board as part
 381 of a preliminary plan approval, any revision or
 382 alteration to the schedule other than an amendment
 383 ~~[[pursuant to]]~~ approved under Section 50-
 384 20(c)~~[[3)(vi) will]]~~ (7) must not be
 385 ~~[[administered]]~~ treated as a request for extension,
 386 but ~~[[must be accomplished]]~~ rather as an
 7 amendment or revision to the preliminary plan.
 388 Planning Board approval of a revised phasing
 389 schedule may have the effect of extending the
 390 validity period.

391 ~~[[e.]]~~ (E) Effect of Failure to Timely Validate Plan or Secure
 392 an Extension.

- 393 (i) If a preliminary plan is not timely implemented in
 394 whole or in part prior to the expiration of the
 395 validity period, the remaining portion of such plan
 396 not then validated also expires. Similarly, the
 397 failure on the part of an applicant to timely
 398 validate a phase, in whole or part, voids the
 399 balance of the preliminary plan approval for that
 .0 phase and all subsequent phases not yet validated.

401 (ii) In those instances where an applicant has timely
 402 validated only a portion of a plan and no extension
 403 is granted, the applicant seeking to develop only
 404 that portion of the project remains responsible for
 405 fully complying with all of those terms, conditions,
 406 and other requirements associated with the portion
 407 of the plan approval that has been implemented.

408 (iii) If a preliminary plan or portion thereof is not
 409 timely validated, any APFO determination made
 410 by the Planning Board associated with the expired
 411 portion of the preliminary plan also expires. In
 412 such event the applicant loses any further rights to
 413 claim any trips associated with the expired APFO
 414 approval. The filing of a new preliminary plan
 415 would not lay the basis for reclaiming trips lost by
 416 the termination of the APFO approval.

417 (iv) A project plan that is not timely validated may also
 418 cause a preliminary plan approval conditionally
 419 linked to such project plan approval to
 420 simultaneously expire.

421 (4) Affect of a Preliminary Plan Amendment or Revision on
 422 Validity Period. An amendment or revision to an approved
 423 preliminary plan ~~[[will]]~~ must affect the established validity
 424 period for the preliminary plan as provided ~~[[for]]~~ in Section
 425 59-D-2.6.

426 * * *

427 (k) *Adequate public facilities.* [A] The Planning Board must not approve
 428 a preliminary plan of subdivision [must not be approved] unless the
 429 [Planning] Board [determines] finds that public facilities will be
 430 adequate to support and service the area of the proposed subdivision.
 431 Public facilities and services to be examined for adequacy [will]
 432 include roads and public transportation facilities, sewerage and water
 433 service, schools, police stations, firehouses, and health clinics.

434 (1) Periodically the [District] County Council [will] must establish
 435 by resolution, after public hearing, guidelines [for the
 436 determination of] to determine the adequacy of public facilities
 437 and services. [An annual] A growth policy periodically
 438 approved by the County Council may serve this purpose if it
 439 contains those guidelines. To provide the basis for the
) guidelines, the [Planning] Board and the County Executive
 441 must provide the following information and recommendations
 442 to the Council [as follows]:

443 [a.] (A) The [Planning] Board must [prepare an analysis of]
 444 analyze current growth and the amount of additional
 445 growth that can be accommodated by future public
 446 facilities and services. The [Planning] Board must also
 447 recommend any changes in preliminary plan approval
 448 criteria it finds appropriate in the light of its experience
 449 in administering [these regulations] this Chapter.

450 [b.] (B) The [County] Executive must comment on the Board's
 451 analyses and recommendations [of the Planning Board]
 452 and [must] recommend criteria [for the determination of]

453 to determine the adequacy of public facilities [as the
454 executive deems appropriate].

455 (2) [The] Each applicant for a preliminary plan of subdivision
456 must, at the request of the [Planning] Board, submit sufficient
457 information [and data] on the proposed subdivision to
458 demonstrate the expected impact on and use of public facilities
459 and services by [possible uses] occupants of [said] the
460 subdivision.

461 (3) The [Planning] Board must submit [the] each proposed
462 preliminary plan of subdivision to the [County] Executive in
463 addition to the agencies specified in [Section 50-35] subsection
464 (a).

465 (4) The [Planning] Board must consider the recommendations of
466 the [County] Executive and other agencies in determining the
467 adequacy of public facilities and services in accordance with
468 the [guidelines and limitations established by the County
469 Council in its annual] growth policy [or established by
470 resolution of the District Council after public hearing] or other
471 applicable guidelines.

472 [(5) Until such time as the annual growth policy or resolution of the
473 District Council provides guidelines and limitations for the
474 determination of the adequacy of public facilities and services,
475 public facilities may be determined to be adequate to service a
476 tract of land or an affected area when the following conditions
477 are found to exist:

478 a. The tract or area will be adequately served by roads and
479 public transportation facilities. The area or tract to be

480 subdivided shall be deemed adequately served by roads
481 and public transportation facilities if, after taking into
482 account traffic generated by all approved subdivisions
483 and the subject subdivision, the following conditions will
484 be satisfied:

- 485 (i) For the geographic area in which the proposed
486 subdivision is located, an acceptable average peak-hour
487 level of service will result from:
- 488 1. Existing publicly maintained all-weather roads;
 - 489 2. Additional roads programmed in the current adopted
490 capital improvements program of the County or the
491 Maryland consolidated transportation program, for which
492 one hundred (100) percent of the expenditures for
3 construction are estimated to occur in the first four (4)
494 years of the program; and
 - 495 3. Available or programmed public bus, rail, or other public
496 or private form of mass transportation.
- 497 (ii) For intersections or links significantly affected by traffic
498 from the subject subdivision, an acceptable peak hour
499 level of service will result from:
- 500 1. Existing publicly maintained all-weather roads;
 - 501 2. Additional roads identified on the approved road program
502 published by the County Executive; and
 - 503 3. Available or programmed public bus, rail, or other form
504 of mass transportation.
- 505 (iii) For the purposes of subsection (ii) above, the County
6 Executive shall publish periodically an approved road

507 program which shall list all roads programmed in the
508 current adopted capital improvements program and the
509 Maryland consolidated transportation program for which:

- 510 1. In the case of the capital improvements program,
511 one hundred (100) percent of the funds have been
512 appropriated for construction costs; and
- 513 2. The County Executive has determined that construction
514 will begin within two (2) years of the effective date of the
515 approved road program.
- 516 (iv) For the purposes of subsections (i) and (iii) above, roads
517 required under Section 302 of the Charter to be
518 authorized by law are not considered programmed until
519 they are finally approved in accordance with Section 20-
520 1 of this Code.
- 521 (v) Any parcel zoned for light industrial use (I-1) which has
522 been in reservation for public use pursuant to action of
523 the Montgomery County Planning Board at any time
524 since June 1, 1981, and which has not changed in size or
525 shape since June 1, 1958, will not be subject to the above
526 subsection (a) if a preliminary plan was submitted prior
527 to June 1, 1981.
- 528 b. The tract or area has adequate sewerage and water
529 service.
- 530 (i) For a subdivision dependent upon public sewerage and
531 water systems:
- 532 1. Said area or tract to be subdivided shall be deemed to
533 have adequate sewerage and water service if located

534 within an area in which water and sewer service is
535 presently available, under construction, or designated by
536 the County Council for extension of water and sewer
537 service within the first 2 years of a current approved 10-
538 year water and sewerage plan.

539 2. If the area or tract to be subdivided is not situated within
540 an area designated for service within the first 2 years of a
541 current approved 10-year water and sewerage plan, but is
542 within the last 8 years of such plan, it is deemed to have
543 adequate water and sewerage service if the applicant
544 provides community sewerage and/or water systems as
545 set forth in Subtitle 5 of Title 9 of Article Health-
546 Environmental of the Annotated Code of Maryland
7 provided the installation of such facilities has been
548 approved by the State Department of Health and Mental
549 Hygiene, the Washington Suburban Sanitary
550 Commission, the Health and Human Services
551 Department, and the Montgomery County Council.

552 (ii) For a subdivision dependent upon the use of septic
553 systems: Said area or tract to be subdivided shall be
554 deemed to have adequate sewerage service if
555 development with the use of septic systems is in
556 accordance with Section 50-27, or regulations published
557 by the Maryland State Department of Health and Mental
558 Hygiene pursuant to Article Health-Environmental,
559 Annotated Code of Maryland, whichever imposes the
560 greater or more stringent requirement.

- 561 (iii) In its determination of the adequacy of sewerage or water
562 service, the Planning Board shall consider the
563 recommendation of the Washington Suburban Sanitary
564 Commission, the capacity of trunk lines and sewerage
565 treatment facilities and any other information presented.
- 566 c. The tract or area is so situated as not to involve danger or
567 injury to health, safety or general welfare. Such danger or
568 injury may be deemed not to exist:
- 569 (i) When physical facilities, such as police stations,
570 firehouses and health clinics, in the service area for the
571 preliminary subdivision plan are currently adequate or
572 are scheduled in an adopted capital improvements
573 program in accordance with the applicable area master
574 plan or general plan to provide adequate and timely
575 service to the subdivision; and
- 576 (ii) If adequate public utility services will be available to
577 serve the proposed subdivision; and
- 578 (iii) When, in the case of schools, the capacity and service
579 areas are found to be adequate according to a
580 methodology set forth in a resolution adopted by the
581 District Council after public hearing; provided, however,
582 that until such resolution by the District Council takes
583 effect, the Planning Board shall determine the adequacy
584 of school facilities after considering the
585 recommendations of the Superintendent of Schools.

586 d. Existing or proposed street access within the tract or area
587 is adequate. Street access may be deemed adequate if the
588 streets:

589 (i) Are adequate to serve or accommodate emergency
590 vehicles,

591 (ii) Will permit the installation of public utilities and other
592 public services,

593 (iii) Are not detrimental and would not result in the inability
594 to develop adjacent lands in conformity with sound
595 planning practices, and

596 (iv) Will not cause existing street patterns to be fragmented.]

597 [(6)] (5) For a proposed subdivision located in a Transportation
598 Management District designated under Chapter 42A, Article II,
599 if the Planning Board [determines] finds, under criteria and
600 standards adopted by the County Council, that additional
601 transportation facilities or traffic alleviation measures are
602 necessary to ensure that public transportation facilities will be
603 adequate to serve the proposed subdivision, the subdivision
604 plan [may] must [not] be [approved unless approval is] subject
605 to the execution of a traffic mitigation agreement.

606 [(7)] (6) [Exemptions. Places] This subsection does not apply to any
607 place of worship, [and residences] residence for religious staff,
608 parish [halls, and additions to schools] hall, or addition to a
609 school associated with [places] a place of worship], are not
610 subject to the provisions of section 50-35(k), "Adequate Public
611 Facilities."].

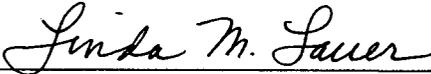
612 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of
613 Council adoption.

614 *Approved:*

615  4/3/06

Douglas M. Duncan, County Executive Date

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

617  4/4/06

Linda M. Lauer, Clerk of the Council Date