

PHED Committee #1
June 13, 2016

MEMORANDUM

June 9, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Senior Legislative Attorney
SUBJECT: Subdivision Regulation Amendment 16-01, Subdivision Regulations Rewrite

On June 13, Staff will present background on the subdivision process and Planning staff will highlight changes from the current code recommended by the Planning Board. The Departments of Permitting Services and Transportation will have the opportunity to present the Executive's point of view. It is not expected that any Committee straw votes will be taken.

Please keep this memorandum for use at future Committee meetings concerning SRA 16-01.

Summary

SRA 16-01 is a complete rewrite of the subdivision code that modernizes provisions and allows for administrative subdivision approvals under certain circumstances. The code should avoid conflicts with the road code and building code. The Council must determine how much discretion to allow the Planning Board regarding the County's future transportation networks and building lot configurations.

Recommendations

- Introduce a Bill to amend Chapter 8 to consolidated building permit provisions that are currently in Chapter 50.
- Introduce a Bill to amend Chapter 49 to allow a review of private roads with appropriate road standards.
- Find a means to change the practices regarding design exceptions.
- Introduce a ZTA to create an even playing field between public and private roads.
- Amend SRA 16-01 to:
 - allow private roads only under certain circumstances;
 - allow County engineering review of private roads;

- revise ownership lot provisions;
- revise some provisions to respond to testimony; and
- make the code more concise, precise and decisive.

Background

Subdivision Regulation Amendment (SRA) 16-01, Subdivision Regulations Rewrite, sponsored by the Council President at the request of the Planning Board, was introduced on January 12, 2016.

SRA 16-01 repeals and replaces all of Chapter 50 of the Montgomery County Code. Chapter 50 includes some of the oldest sections of code still on the books. The specific findings necessary for approval are unclear in the current code. Its sentence structure and word use are much closer to old English than plain English. A large part of SRA 16-01 clarifies the code without substantive changes. The substantive changes, summarized from the Planning Board's attached letter of August 11, 2015, include:

- specifications for private roads, including bonding requirements
- an administrative plan approval process
- deleting resubdivision criteria that currently require consistency with lots in the neighborhood
- allowances for the reconstruction of any dwelling unit
- allowances for construction on part of a lot, if deeded before 1958
- allowances for electronic communication (but electronic applications may be required by Planning Board procedures and would not be required by law)
- allowances for advanced land dedication without platting
- a 120-day review period for preliminary plans
- a list of Planning Board required findings for approval
- an authorization for the Board to determine that events make the application of master plan recommendations inappropriate when site plan approval is not required
- clarifications for the minor and major plans processes
- an allowance for off-site location for a necessary public use
- the removal of the requirement for "unusual circumstances" for a waiver of subdivision standards
- clarification of the ancillary uses associated with religious institution that must meet adequate public facilities standards.

Public Hearing

The Council held a public hearing on February 21, 2016. The Planning Board recommended approval of SRA 16-01. Chair Anderson noted that the following provisions for private roads bear further conversation with the Council: 1) non-standard road design; 2) maintaining public access; and 3) how such roads are platted when parking structures are proposed under the road.

The County Executive is concerned about provisions of the draft Subdivision Regulations that could supplant lead agency determinations in areas for which the lead agencies are legally or programmatically responsible. The County Executive's testimony noted the significant work invested in the Planning Board's recommendation, but noted that:

...there are still issues to be resolved regarding extent of authority, balancing of interests [developers, government, business, users, and future generation] mentioned, imposition of new tasks with resulting added costs and even legal authority in some instances.

The Executive's testimony said that the Council should expect suggested amendments to "assure that we retain the protections that reflect our success both for today and for future County residents, communities and businesses...." On June 2, the Department of Transportation submitted line-by-line concerns.

Tim Dugan, a member of the law firm of Shulman Rogers, suggested that the parts of SRA 16-01 concerning private roads and ownership lots were "not ready for prime time." Mr. Dugan also submitted detailed comments on a number of lower profile provisions. He sent separate correspondence asking that pending subdivisions be excluded from the requirement to follow a timeline for a subdivision hearing before the Planning Board.

Bill Kominers, a member of the law firm of Lerch, Early, and Brewer, noted that some provisions, namely ownership lots, private roads, minor subdivision, the validity period of approvals, and the detail mandated on a record plat require more attention. In particular, Mr. Kominers recommends including economic factors in the subdivision approval process. On May 31, Mr. Kominers and Mr. Robins submitted additional line-by-line concerns and comments on ownership lots.

Danila Sheveiko thought that the provision for minor lot line adjustment that do not require a preliminary plan could be liberalized without harm. Property line adjustments that do not create new lots should not be restricted to 2,000 square feet or 1% of the lot.¹

Post Hearing Work

Over the past several months, Executive staff, the Planning Department, WSSC, and representatives of the building industry met to try to resolve issues in the proposed subdivision code concerning private roads, structures under roads, buildings crossing lot lines, and ownership lots. In Staff's opinion (subject to correction by the agencies concerned), only a few items were generally accepted:

- *Beyond the minimal incursions allowed by the building code, a private structure is prohibited under a public right-of-way.*
- *If a building or structure is to be located under a private roadway, then the entire building or structure must be included in a single lot with the roadway above the structure.*
- *WSSC-owned water and sewer lines must terminate at a public right-of-way; any water and sewer lines under a private road will be privately owned.*

Any material received from departments before this memorandum goes to print will be attached to this memorandum.

¹ The current and proposed lot line adjustment is actually 5% of the combined area affected by the adjustment. There is no maximum square footage on the minor lot line adjustment.

Outstanding Issues

Private Roads

Private roads exist and have been allowed by the Planning Board under the current Subdivision Regulations. The proposed new code establishes a clear framework for their approval at the Planning Board's discretion. The Council has addressed the issue of when a road may be private, to some degree, in Master Plans. The current push for more private roads and the complications with the road code, building code, and Subdivision Regulations requires Council attention.

Developers find private roads attractive for a number of reasons:

- In the absence of new code requirements, there are no engineering, dimensional and construction standards.
- Context sensitive designs are allowed without constraint.
- Public utilities (with the exception of water and sewer) may be located in the road bed.
- Buildings and structures can extend over a private road and under the road.
- Unique sidewalk surfaces, lighting, stormwater management treatments, and street furniture are allowed.
- Zoning setbacks do not apply.
- There are no bonding requirements.
- The road may be kept to a higher standard of day-to-day maintenance (e.g., street cleaning, snow removal, and lighting replacement) than County roads.

Private roads are a future public problem for a number of reasons:

- Private road ownership arrangements are subject to future failure.
- The absence of bonding can lead to half built facilities without adequate recourse.
- Future owners will object to private maintenance fees in addition to general taxes.
- When maintenance fails, the County will be petitioned to fix the problem and accept the road as a public road.
- When a private road is used for public transit, inadequate private maintenance becomes a public issue.
- The County's flexibility to accommodate future network connections (new utilities or above or below grade transportation) will be restrained.
- Future water and sewer connections (that will not go on private roads) may be far less efficient.
- Internal street closures, traffic control, public assembly and expression will be private issues in an area that looks like a public forum.

There is a fundamental split of opinion between Planning staff and Executive staff on private roads. The new subdivision code as introduced would allow the Planning Board the discretion to allow a private street anywhere it sees fit. The Planning Director sees a particular need for private streets in urban business environments. In the opinion of the Planning Director, parking under a road frees up surface area for green and other pedestrian-friendly surface amenities.

Executive departments are adverse to private streets on master plan roadways and high volume streets. The Executive believes that it lacks the authority to review any aspect of the planning or construction of a private road. (A bill to amend Chapter 49 is required to give the departments of Permitting Services and

Transportation the authority to review the plans for private roads and to inspect the construction of private roads, if the Council believes this is sound policy.) As a general matter, the Executive has a different view of how the Planning Board proposes to stake out its responsibility and the responsibility of Executive departments in SRA 16-01.

Why are public roads a good idea?

One significant purpose of Subdivision Regulations is to create a public network of roads and utility infrastructure that benefits the subdivider and the public at large. Dedicated rights-of-way allow the County to control the use of the area, both at and below grade. The public right-of way is not just for cars and pedestrians. In urban areas, it also includes dry utilities (electric and telecommunication). It is lack of access to the “last mile” of a telecommunications network that makes innovations such as the next generation of broadband more expensive. Public roads create public access.

The absence of public rights-of-way is more likely than not to limit future public options for providing desirable transportation and utility services. Transit options, such as bus rapid transit and street cars, can be accommodated on public streets and would be a negotiation on private streets.

All traffic control devices on public rights-of-way are County controlled and inspected by MCDOT. The County police do not enforce the rules of the road on private streets.

The dedication of rights-of way allows each private property to gain access to the public networks. Access to a private road is a private decision. Public streets are a public forum for First Amendment rights. There is an expectation of those rights on a road that only comes with a public street.

The County retains the burden of maintenance on public roads. The County fixes pot holes, traffic signs, sidewalks, and light fixtures. These services are paid for by taxes. The County has the means to cover non-payments and a secure method to ultimately collect required funds. The County does not need to wait for the actions of private parties to assure public safety. There is no default risk. The County has been in business since 1776, with no signs of collapse.

Why are private roads a bad idea?

As a general matter, private roads are a short-term solution and a long-term problem. Private roads require a payment for maintenance by neighboring property owners in addition to taxes collected for that purpose. While taxes pay for maintenance of public streets, those taxpayers on a private street will have the obligation to pay both taxes and maintenance fees.

Private streets create private liability. Those costs will also be passed on to those paying maintenance. At some point, the roadway will need to be rebuilt. If that is not expensive enough, a road that is constructed over parking structures must be built as a bridge. The costs (and disruption) during replacement are significant. High bills will result in petitions for the County to accept the road for public maintenance.

The developer of a project will come and go, but the obligation for maintenance will exist as long as the street exists. The life of the private entity required to maintain the street and liability can be terminated by bankruptcy or voluntary dissolution. The people dependent upon the private road will petition to make the street public at some point in the future, without regard to the construction standards of the roadway.

WSSC will not put their pipes in a private street. The General Assembly gave WSSC authority over their easement in public rights-of-way. That authority is absent in private roads. In particular, WSSC lacks controls over the servicing of other utilities in the private street. Maintenance work on those other networks can damage WSSC pipes, which in turns leads to unreliable service and litigation to establish responsibility and cover repair costs. WSSC would install master meters at the start of the private road and the end of a public right-of-way or public utility easement, but that solution could lead to an ineffective network for others who might connect in the future.

Access to a truly private road is a private decision. First Amendment rights could be limited on private streets. This is counter to the accepted notion of streets as being within the public realm. In the opinion of the County Attorney's Office, if the County wants public access (and public first amendment rights to apply), the road should be a public road.

The Planning Board recommendation for private streets includes a requirement for a public access easement. The Maryland Court of Appeals very recently found that such an easement would create a public street. In light of the Court ruling, DPS will likely treat streets with such easements as public, with a requirement for public road standards. The County Attorney's Office concluded that a private road cannot have a public access easement without becoming a public road.

Historically, in its strict meaning, a right-of-way is the right of passage over another person's ground. The dedication of a road to the public is no different from a public access easement. When the public has the right to pass over someone else's land, it is a public right-of-way despite any notation to the contrary.² If and when a court finds that a private road is public, it could impose unexpected expenses on the county for maintenance and enforcement.

Private roads are an example of where today's solution will be tomorrow's problem. There are a number of examples where private road owners plead with the County for their roads to become public. Maintenance organizations fail and maintenance can deteriorate. The County Attorney cites one example where a private road was auctioned at a tax sale and a threat by the buyer to make the private road a toll road. Private road owners object to paying general taxes for snow removal in addition to assessments to clear their private roads. Private roads diminish future public flexibility to require roadway access by others or to make other future changes. The liability issues associated with private roads will be different than for public roads.

When should private roads be allowed?

There are some circumstances under which a private road will be allowed in the future. The Planning Board wants to allow them at its discretion. DPS and DOT would want to define the circumstances when private roads are allowed. Staff agrees with the Executive Departments that private roads should only be allowed under particular circumstances. There seems to be agreement on 3 factors:

- 1) Private roads should be allowed when a road is identified in a master plan as a private road (and only require to satisfy the standards in the master plan).
- 2) Private roads should never be approved on a master planned identified road that that is not explicitly allowed as a private roadway.

² See footnote 9 in *Montgomery County v. Bhatt*, Maryland Court of Appeals, September 2015. A clear test of whether a right-of-way exists is whether the land is subject to adverse possession. In the opinion of the County Attorney, "private roads" with public access easements would not be subject to adverse possession and therefore would be characterized as public roads.

- 3) A public road will prohibit any structure under it, therefore only a private road would allow a structure under the roadway to be approvable.³

Department heads have not agreed on when a private road should be allowed, but staff from the departments recommended the following:

- In general, creation of public roads is preferred in all circumstances; a developer must justify the use of a private road based upon the criteria below and the specific circumstances of the property being developed.
 - Justification for a private road:
 - must include a list of proposed design elements that cannot be accommodated using a context-sensitive road design standard or modified under a Design Exception; and
 - must not be based solely on the installation of non-standard amenities that could be addressed under a Maintenance & Liability Agreement with the County.
- The following roads must always be public:
 - Freeway
 - Major Highway
 - Arterial (any kind)
 - Parkway
 - Country
 - Primary Residential
 - Principal Secondary
 - Rustic/Exceptional Rustic.
- Consideration may be given to making the following roads private:
 - Business District
 - Industrial
 - Secondary
 - Tertiary
 - Alley.

³ Underground parking garages are only permitted under a private road. Department staff recommend that such facilities only be allowed in the Commercial/Residential, Employment, Industrial, and Planned Unit Development zones per the following:

- The garage and the road must be on the same record lot.
- The private road must be created in an easement recorded on the plat as opposed to a right-of-way parcel.
- The record lot may not contain ownership lines that cross through the garage.
- Any water and sewer elements over a parking garage have to be private; WSSC will not accept any maintenance or liability for pipes over a garage or in a private street.
- Underground structures and the bridge that will be the base of the roadway must be subject to structure inspection every 2 years, performed at the private property owner's expense.

Other Criteria for Private Roads	
Road Classification	Requirements that must be satisfied to allow a private road in lieu of a public road.
Business District	<input type="checkbox"/> Only when the proposed road is not needed to maintain area circulation and control roadway volumes. <input type="checkbox"/> Only when the proposed road is not a connector between two higher classification roads that is more than one block long. <input type="checkbox"/> (Where an underground garage is proposed beneath the road, it must be a private road.)
Industrial	<input type="checkbox"/> Only when the proposed road is part of a network of roads internal to the industrial site. <input type="checkbox"/> Only when the proposed road is not a connector street between higher classification roads.
Secondary	<input type="checkbox"/> Only when the proposed road connects to no more than one higher classification road. <input type="checkbox"/> Only when the road does not need to be extended onto adjacent property to facilitate a future subdivision of the adjacent land.
Tertiary	<input type="checkbox"/> When the road is a cul-de-sac, it must be less than 500' in length.
Alley	<input type="checkbox"/> No access easement if the alley only serves one building. <input type="checkbox"/> No access easement if the alley is a secondary access to one-family residential dwellings (i.e., residential lots front another road but have garages off the alley).

Staff recommendation

With the exception of areas that are essentially townhouse parking areas or short culs-de-sac, Staff recommends public roads. The department staff consensus alternative for when private roads should be allowed is far better than unlimited discretion.

Staff recommends removing many of the reasons the private sector is demanding private roads:

- 1) MCDOT's design exception process and procedure is in need of changes:
 - Allowed exceptions should be published and available to other developers without going through the exception process. (This would include urban corner truncation standards and private maintenance and liability agreements.)
 - There should be a known processing time for new exceptions.
- 2) The time required for context-sensitive design approval or denial by MCDOT is a resource issue that should be resolved without legislative change.
- 3) The new Zoning Ordinance mistakenly allows setback from private streets to be determined at site plan. This flexibility is not allowed for public streets. That should be corrected in a ZTA. Setbacks can always be established in the site plan approval process.
- 4) Staff does NOT recommend changes to the building code or allowing structure under either private or public rights-of-way.

How must a private road be established?

Staff thought that there was agreement to the effect that area for a private road must be shown on a plat. The private road must be shown as a private easement for the benefit of adjacent property owners. Staff agrees with this approach; however, DPS proposed edits to the definition of a right-of-way would allow a private road to be created by an easement without a plat. This difference should be addressed in the Committee's worksession.

Staff recommends adding a definition of a private road. It should be an easement for the benefit of adjacent property owners shown on a record plat. Lines 1148-1159 and 1180-1189 should conform to the Council decision concerning the standards for narrower rights-of-way and private roads. Lines 1309-1316 may also need revision.

DPS would recommend a finding of safe vehicle access as determined by the fire marshal and roads that meet sound engineering for safe use, horizontal and vertical alignments for the intended road speed, and adequate sections for all users, stormwater facilities, sight distances, points of access, and parking.

Who should review private roads?

As proposed by the Planning Board, private roads must be built to the right-of-way and structural standards of the corresponding public road or have an approved exception. There is no agreement on who reviews or inspects a private road.⁴

DPS and DOT want nothing to do with the approval, construction inspection, or post construction inspection of private roads due to the limits of their jurisdiction under Chapter 49. Planning staff points out that it lacks the capacity (civil engineering staff) to take on this role. An alternative to only allow third party engineering certification is inconsistent with how buildings (within the expertise of County staff) are inspected. **Staff recommends amending Chapter 49 to give DPS and DOT the necessary authority to review private roads. Inspections of completed work on a private road should be a DPS function, as is the inspection of a private building.**

⁴ The staff level committee did not reach full consensus on how private road plans should be reviewed:

- M-NCPPC staff is concerned about the fact that all aspects of private road design plans are not being reviewed like those for public roads (currently, certification has to be provided by the applicant that private roads meet the structural standards of a tertiary road but not other standard design criteria of a public road). M-NCPPC staff supports review and approval of private road plans by DOT/DPS as part of the approval of a subdivision or 59.7.3.4 site plan (would require change to Ch. 49 to permit County review) because these agencies have the qualified staff and the expertise to determine compliance with the road standards. If not, we think that staff should be hired by the Planning Department to do the review. We don't think that private roads should continue to be approved with no review other than structural standards.
- DOT and DPS staff agree that private roads must be designed and constructed to appropriate standards, policies, and specifications – unless the applicants obtain specific Design Exception approvals for deviations. Design considerations include typical section, horizontal alignment, roadway profile, drainage, pedestrian and bicycle facilities, street trees and lighting, on-street parking, intersection and driveway locations, sight distances, etc. That is currently done by private consultants through a certification process since private roads are currently exempt from permitting requirements in Chapter 49 of the Code. DOT and DPS are strongly concerned that removing the exemption creates additional workload. Department budgets would need to be increased to meet the demand. This would need to be shown in annual budget submissions and allocations. In the process of studying such revisions to the Code there also needs to be a determination concerning Executive Branch liability (for reviewing the design of a private road).

Are parking structures under a street a good idea?

Parking under roadways has been put forward as a significant reason for private roads. The International Building Code (IBC), as approved by method 2 Executive Regulations, prohibits structures such as parking garages under public right-of-way, limits the underground supports to a one foot incursion under the right-of-way, and limits above-ground incursions (balconies or windows must be at least 8 feet above the ROW and no more than a 4 foot overhang). Resolving these problems without allowing private roads would require a local change to the IBC. The IBC was debated on a national level. It is hard to image that construction methods are so different in the County that change is warranted.

Even if a structure were not specifically prohibited by the IBC, a public right-of-way is defined by lot line on a record plat. Structures that cross lot lines are prohibited by the IBC under any circumstances. Resolving this problem without allowing a private easement (without any lot lines) would require a local change.

The new Zoning Ordinance reduced the number of required parking spaces to get the requirement more in line with usage. County policy is being geared to reducing car dependence. Does the Council want to encourage more parking in a manner that reduces future public flexibility?

Any road located over a parking structure must be constructed as a bridge. Maintenance can be more complicated and costly. Bridges must be inspected every two years. Publicly owned piped utilities (water, sewer and gas) would not locate under the road and over the parking structure.

The alternative to parking under a road would be to provide less parking or to provide parking under building footprints or floors above the building footprint. Either of these supply alternatives may be more expensive than building under a single level of the site. Below-grade construction requires more excavation. Added building height may change the building construction from stick (lumber structural support, flooring and walls) construction to concrete.

The question for the Council is whether making parking easier or less expensive promotes the policy to encourage transit use. The new Zoning Ordinance reduced commercial parking requirements from the pre-2014 Code.

Adequate Public Facilities Provisions

SRA 16-01 as introduced includes provisions for extending the validity period for mixed-use projects, but does not fundamentally change how the Planning Board grants extensions. The Council will have the opportunity to decide if the Planning Board should consider economic conditions as factors in granting validity period extensions (line 1520). Testimony also requested fewer restrictions on extensions and longer duration periods and retaining the trips from an original approval when an amended plan will use fewer trips.

The Council has been extending the validity period every 2 years since the 2008 recession. During the course of the last extension, a number of Councilmembers stated that it would be the last such extension. The suggestion in testimony would codify longer validity periods.

There is a danger that dormant plans will prevent more marketable plans from being approved.

Restrictions on the Issuance of Building Permits

Currently, Subdivision Regulations restrict building permits. SRA 16-01 includes the same restrictions as the current code. The Council will have the opportunity to decide if building permit restrictions should be included in Chapter 8 and deleted from the Subdivision Regulations.

Ownership lots

Ownership lots are currently allowed without triggering the setback requirements for other lots. Ownership lots allow for publicly accessible “mortgage” lines to be evidenced on plats. Testimony suggested that prohibiting ownership lots from creating the outside boundaries of a private street is short-sighted. That testimony also called for the text to allow the transferability of “ownership units” without going through the subdivision process.

Under the IBC, DPS will treat ownership lots the same as any other lot. To DPS, the potential for multiple owners creates the potential for fire code issues.⁵ In addition, the building code does not allow a building that is split by a lot line. Ownership internal to a lot can be split without ownership lots by creating condominiums. The private sector objects to complications associated with condominium regime, but it is a solution that accomplishes the goals of the IBC and the developers.

As introduced, SRA 16-01 repeats text from the current code that purports to override building code considerations. It says in part that an ownership lot is not:

...used to determine building setback or to establish conformance with any other law or regulation;
[or]
a bar to receiving a building permit or other approval necessary to develop or use any of the ownership lots and structures on those lots, including structures that cross lot lines.

The Council should either amend the proposed subdivision code (lines 2046-2073) or amend the building permit code. **Staff agrees with DPS that amending the proposed subdivision code is the best option. Ownership lot owners must be required to maintain compliance with Chapter 8 and Chapter 22 in the design and location of all structures. Building permits for ownership lots should be required to show all buildings and access on the parent lot from which the ownership lot was divided.** In the alternative, the Council could make complicated amendments to the building code that avoid reducing all current fire safety requirements.⁶

⁵ The IBC requires a safe means of exit outside of a building to a safe area. To this end, different ownership lines may determine acceptable layouts. The distance between buildings is affected by a building’s fire rating. Ownership lines will limit any significant building changes to avoid making a neighboring building non-compliant with fire codes.

⁶ Section 12-504 of the Maryland Code’s Public Safety Article reads as follows:

§12-504. Local amendments to Standards

Authority to adopt

(a) (1) A local jurisdiction may adopt local amendments to the Standards if the local amendments do not:

- (i) prohibit the minimum implementation and enforcement activities set forth in § 12-505 of this subtitle;
- (ii) weaken energy conservation and efficiency provisions contained in the Standards;
- (iii) except as provided in paragraph (3) of this subsection, weaken the automatic fire sprinkler systems provisions for townhouses and one- and two-family dwellings contained in the Standards; or
- (iv) weaken wind design and wind-borne debris provisions contained in the Standards.

Codification of Minimum Spacing Between Intersections

DOT recommends the inclusion of the following table in the code to address the minimum spacing between intersections. This would replace the table starting on line 1223.

Classification of the Frontage Road	Locale	Target Speed(s)	Distance between Intersections (feet)
Tertiary Residential	All	25	150
Secondary Residential	Urban	25	200
	Suburban	25	200
	Rural	25	200
Primary Residential and Principal Secondary	Urban	25	300
	Suburban	30	400
	Rural	30	400
Business District	Urban	25	300*
	Suburban	25-35	400*
	Rural	25-35	400*

This is very broad authority. It is unqualified except for the listed exceptions (must allow enforcement, may not weaken energy conservation, must not degrade sprinkler systems, and must not weaken wind design). Regulation 05.02.07.05 reads in part:

B. Local Amendments.

(1) Each local jurisdiction:

- (a) May by local amendment modify the provisions of the Standards to address conditions peculiar to the local jurisdiction's community;
- (b) May adopt and amend the IGCC to be part of the Standards applicable in the local jurisdiction.
- (c) May not adopt any amendments that weaken the requirements of the IECC or Chapter 13 of the IBC;
- (d) Except as set forth in Public Safety Article, §12-504(a)(1)(iii), Annotated Code of Maryland, may not adopt any amendments that weaken the automatic fire sprinkler systems provisions for townhouses and one- and two-family dwellings contained in the Standards; and
- (e) May not adopt amendments that weaken the wind design and wind-borne debris provisions contained in the Standards.

Given the law upon which the regulation is based, "conditions peculiar to the local jurisdiction" must be read broadly to include just about anything the jurisdiction thinks should be different from the IBC and in the public interest.

Classification of the Frontage Road	Locale	Target Speed(s)	Distance between Intersections (feet)
Industrial	Urban	25	300*
	Suburban	25-35	400*
	Rural	25-35	400*
Country Road	Suburban	25-40	400
	Rural	25-40	400
Country Arterial	Rural	35-50	800
Minor Arterial	Urban	25-30	300
	Suburban	25-35	500
	Rural	30-50	800
Arterial	Urban	25	300*
	Suburban	30-40	600*
	Rural	35-50	800*
Major Highway	Urban	25	300*
	Suburban	30-50	800*
	Rural	45-55	1000*
Controlled Major Highway	Urban	25	300*
	Suburban	40-55	1000*
	Rural	45-55	1000*
Parkway	Urban	25	300*
	Suburban	30-45	600*
	Rural	30-50	800*

*NOTE: median breaks on divided roadways are to be spaced no closer than six hundred (600) feet

Planning staff recognizes the value of including the table, but would want the following flexibility:

“When the Board finds that a greater or lesser spacing is appropriate, the Board may specify a greater or lesser spacing than otherwise required after considering the recommendation of the Department of Transportation.”

If the Planning Board position is accepted by the Council, it should also mean that an MCDOT design exception is not required.

The Council should also know if MCDOT interprets all driveway entrances to be intersections. Planning staff recommends not applying the spacing standards to alleys and driveways (line 1216).

A provision of the Code (in Chapter 49 at least) should address standard “urban truncation so that its use does not require a design exception from MCDOT.” (Lines 1225-1232 may need revision.)

Codification of Transportation Management Agreements

DOT is recommending codifying the requirements for Transportation Management Agreements. The proposed text was not subject to a public hearing; however, the proposed text requires that the agreement “meets the requirements of Chapter 42A, Article II”. The proposed text only details what will be expected in those agreements. Planning staff does NOT agree with the MCDOT recommendation to put everything in the code.

In particular, the Department recommends that the provisions include:

- 1) *Commitment to Transportation Management District (TMD) goals: Commitment to achieve and maintain the transportation goals of the TMD (and, where relevant, the specific goals for that Project), in coordination with the County TMD staff, including the peak period Non-Auto Driver Mode Share goals for the specific master plan or sector plan area and the TMD.*
- 2) *Contact Person: Appointment of a contact person assigned to coordinate and interact with TMD staff on an ongoing basis to promote alternative transportation, to receive and distribute information pertaining thereto, and to facilitate periodic access to employees and/or residents of the Project.*
- 3) *Surveys: Commitment to facilitate employer/employee or resident participation in the TMD Annual Commuter Survey, using a survey instrument provided by MCDOT, and to use best efforts to achieve an 80% response return rate from among employees or residents in the development.*
- 4) *Displays: Provision of a permanent information display in a highly-used location in the Project for commuter information and promotional material on transportation management programs in the TMD, the County, and the region. If the Project has primary access points for visitors and members of the public that are different from those access points for employees and/or residents, a display should be provided in each of the primary access areas to reach each of those target markets. Displays should include provision of real time transit information.*
- 5) *Parking: Incorporation of measures to manage parking in support of the Non-Auto Driver Mode Share goals, including measures such as market rate parking charges, unbundling of parking from tenant lease provisions, controlling parking supplied for commuters, and provision of carpool/vanpool spaces and car sharing spaces in highly visible, preferential locations.*
- 6) *Bikeshare: For Projects within the County’s bikeshare service areas, provide space in the Project for a bike-sharing docking station (or similar provision required by the County) to enable this form of transportation to be used by those occupying and visiting the Project. The location of this docking station must be selected in concert with MCDOT, based upon the requirements of the bike-sharing system in the County, and in a highly visible, publicly accessible, convenient and well-lit location on the Property. A typical station is 20 docks and requires a space of 55 feet by 12 feet. Applicant will pay the capital cost of the bikeshare station and five (5) years of operating costs.*

Applicant must take other actions in concert with MCDOT to promote use of bike-sharing among employees, visitors, or residents at the Project, to accomplish the objectives of the TMD.

- 7) *Annual Report: Provide a summary report to MCDOT on an annual date designated by MCDOT. This report will outline the traffic mitigation program and activities undertaken during the course of the previous year, and will include the name and contact information for the current contact person for the Project. MCDOT will provide a template for use in preparing this report.*

Staff agrees with Planning Staff that this level of detail may change over time and should not be in the code.

Detail

The following are proposed changes to the text as introduced, in addition to the major issues that must be resolved by the Committee.

All changes labeled as editorial do not warrant Committee attention. Changes that state an action (replace, delete, add, etc.) are actions recommended by Staff that may include minor content changes.

Changes that start with Testimony recommended or MCDOT recommended were proposed in the Council’s legislative record but are not recommended by Staff.

<i>Lines</i>	<i>Comments</i>
80	Editorial; add to the definition of Bikeshare Station or Stations – “a designated area on publicly or privately owned real property, which contains one or more of the following items: bikeshare dock, terminal, technical platform, battery and map frame.”
85	Editorial; the definition of building restriction line should add “In addition to restrictions under Chapter 59, additional restrictions may be required to comply with building or life safety codes.”
93	Editorial; add to the definition of “Council” the phrase “sitting as the District Council”.
95	Editorial; add a definition of DPS.
118	add to the definition of enforcement agent, “For site plans, the Enforcement Agent is the Director of the Department of Permitting Services or the Director’s designee.”
148	Editorial; delete the phrase “as such terms are” and add “the” before “Maryland Business Occupations and Professionals Code”.
155-157	Editorial; delete the definition of “Lot, Ownership”.
175	Editorial; delete the phrase “dedicated or otherwise accessible”.
184	Editorial; delete “notice” and replace with “document”; delete “notifies” and replace with “informs”.
187	Editorial; delete “notice” and replace with “document”; delete “notifies” and replace with “informs”.
191-192	Revise to read as follows to allow the potential for existing buildings: <i>Outlot</i> : An area of land shown on a record plat on which the construction of a building or other structure requiring a building permit is prohibited.

<i>Lines</i>	<i>Comments</i>
198	Editorial; add “or” between “organization, other legal entity” and delete “, or a combination thereof”.
208	Editorial; delete “does not include” and replace with “excludes”.
213	Editorial; delete “A plan” and replace with “A drawing”.
224	Editorial; delete “subdivision”.
226-228	Revise the definition of right-of-way to read as follows” “Land intended for the passage of people, vehicles, or utilities as shown on a record plat. Any right-of-way involving public access must be dedicated to public use by the maker of the plat on which the right-of-way is established. The land area may be donated in fee to the County.”
231	Editorial; delete “otherwise” and replace “by” with “under”.
232-235	Editorial; add to the definition of “Road, Centerline of” the following: “with consultation by the applicable transportation agency with jurisdiction over the road.” (DPS would delete the last sentence.)
249	Editorial; replace “lot” with “unit”.
256	The suggested addition of “unless such land is repurchased from the government and dedicated or donated by the owner or a predecessor in title” is unnecessary.
260	Add to the definition of “turnaround” the following: “In rare situations, with valid extenuating circumstances, a temporary turnaround may be used as the permanent terminus of a public street.”
277-278	Editorial; delete theses and outline letters.
285-287	Editorial; replace with “Construction of a new principal building may only occur on a lot or parcel shown on a plat recorded in the County Land Records or on a property that is exempt under Section 3.3.B.”
293	Add “unless or until development of the land is proposed”
298-306	Delete and replace with “ <i>Agricultural land used for residential dwellings.</i> An unplatted parcel of agricultural land at least 25 acres in size used for a primary dwelling unit, if density and development rights are available.”
321-322	Editorial; the first phrase to be revised to read “An unplatted parcel or a part of a previously platted lot proposed for single-unit living,”.
336	Editorial; after “including” add “provisions for water and sanitary service, and”.
342-345	Replace subsection b with “An unplatted parcel created by combining the entirety of two or more contiguous parcels that qualified for an exemption under Subsection (a).” Add a subsection “c” to read “An unplatted parcel or a part of a previously platted lot used for reconstruction of an existing detached house under Chapter 59, Section 7.7.1.” Delete section 5 (a telecommunications facility is not property for single-family living) and renumber the remaining subsections.
382	Add a new section 8 as follows: “ <i>Certain non-residential properties.</i> An unplatted parcel or part of a previously platted lot used for reconstruction of a non-residential structure involuntarily demolished by fire, wind, falling debris, water, or other force of nature if the floor area, height, and footprint of the new replacement structure are not increased.”
401	Add an additional subsection C: “Properties with a pending water or sewer category change request. The Director may reject a subdivision plan application for a property undergoing review by the Council for a water or sewer category change request, and require that action

<i>Lines</i>	<i>Comments</i>
	to approve the request has been taken before a preliminary plan application is accepted.” Revise outline numbers thereafter accordingly.
403	Editorial; delete “lies” and replace with “is located”.
404	Add to the sentence “and the subdivision plan is proposed for a change in zoning”.
410	Add to the sentence “and the proposed subdivision is inconsistent with the pending master plan”.
449	Editorial; replace “at least” with “a maximum of”.
452	Editorial; replace “and” with “or” between “professional engineer” and “licensed land surveyor”...
454	delete the “and”; after “data” add “and certifies that the subdivision plans and supporting documents were prepared by them in accordance with all submission requirements and applicable agency standards, policies, and procedures.”
495	Editorial; delete “according to”; add “under”.
503	MCDOT suggests adding “including the County Department of Transportation’s Drainage Design Criteria”.
506	Add a new subsection 7: “Hydraulic Planning Analysis. For lots located in areas where the subdivider proposes connection to public water and sewer facilities verification must be provided from WSSC that the subdivider has applied for a Hydraulic Planning Analysis.” Renumber subsections accordingly.
578	Editorial; after “(TMAg) and “prepared by the applicant”.
579	Add a new subsection 12: “Title Search. A title abstract for the property identifying any easements or other encumbrances on the land being subdivided.”
586	Editorial; add “An application filed without all required fees is also incomplete.”
594	Editorial; delete “per”; add “to satisfy”.
600	Add a new sentence: “An application that was filed before {effective date of legislation} is not subject to this subsection.”
607	Editorial; add “intersection locations, site access, sight distances, traffic calming” after “streets”.
610	delete “within County-maintained” (Note: requires a change to Chapter 49 to allow a review of private roads).
630-631	Editorial; Add to the beginning of the sentence “The Director must allow”; delete “must get”. End the sentence after the word “plans”. Add “Those agencies”. Delete the word “and”.
645	Editorial; delete “needed”; add “required”.
646	Delete “of County Maintained”.
650	Delete “County maintained” if Chapter 49 is changed.
654	Editorial; add at the end “proposed wells and septic systems within existing rights-of-way or easements are prohibited.”
668	Editorial; delete “agrees with”; add “has reviewed”.
670	Staff does not recommend the suggestion to have a draft report available before the Director publishes a report.
685-687	DPS notes that if clearing can start when a site plan is approved by the Board...but before the certified site plan, it would be a streamlining measure.

<i>Lines</i>	<i>Comments</i>
692	MCDOT recommends adding a new sentence: “Similarly, the Planning Board may not void or modify an applicant’s agreement with another agency without the specific approval of that agency.” DPS has an alternative recommendation to delete the last sentence.
694-701	Editorial; reorder to make number 3 number 1.
725	Note: right-of-way applies to both public and private roads.
795-798	Editorial – add “Only the Board is authorized to extend the validity period.” Replace “Board” with “applicant”; replace “receive” with “submit”; delete the last sentence.
802	Replace “Director” with “applicant” and “receive” with “submit”.
810	Editorial; replace “timing” with “ <i>failure to submit a timely extension request</i> ”.
822	Staff does not agree that economic conditions should be grounds for a validity period extension as raised in testimony.
852	Editorial; revise the first phrase to read “After a duly noticed public hearing”.
874	Editorial; replace “expires” with “is void”.
885	Editorial; replace “expires” and “expires” with “void”.
907	Editorial; end the sentence after “preliminary plan”; the next sentence should read “Notice to the owner and subdivider must be sent by certified mail at least 30 days before the date of the proposed action, giving the time and place of the hearing.” Testimony suggested more detailed procedures to assure due process for the subject of a revoked preliminary plan.
912-913	Editorial; replace “review” with “consider”; replace “technical” with “aspects”.
915-916	Editorial; delete the first sentence.
940-942	Testimony suggested prohibiting public paths to private common areas.
955-956	Editorial; delete “The Board must find that”; replace “will” with “must”.
962	Testimony indicated confusion on the meaning of <i>Donated</i> ; it is the transfer of a fee simple interest.
963-965	Delete the last sentence.
970	Editorial; delete “board must find”; replace “is” with “must”.
973	Editorial; delete Board must find that the”; replace “are” with “must be”; replace “are” with “not”.
975	Editorial; Delete “subdivision” and replace with “development”.
1006-1012	Testimony suggested that this provision address private roads.
1013-1018	Staff does not agree with the testimony recommending a limitation on the uses of dedicated rights-of-way.
1018	add “stormwater management and” after “and”.
1054-1102	Testimony suggests an addition to <i>reservations</i> to address what happens to open space and forest conservation requirements if the reserved land is not acquired.
1057	Editorial; add “immediately” after “not”.
1060	Limit reservation time to less than 3 years.
1107-1114	Testimony suggested addressing private roads allowed by master plan in this provision.
1123	Editorial; add “in consultation with the appropriate transportation agency” after Board. The suggestion to state that the access may be the principal access is unnecessary.

<i>Lines</i>	<i>Comments</i>
1143-1159	No changes recommended...but it implies that MCDOT will give a design exception when the Board recommends a narrower than standard ROW width.
1165	Add a new sentence: "A retaining wall instead of a slope easement may be allowed by the reviewing agency."
1166	MCDOT wants design standards limited to public roads...Staff disagrees.
1169	Replace "as required by the Road Design and Construction Code or municipality, whichever applies" with "as required by the appropriate transportation or permitting agency."
1178	Add "Master Plan" after "required by".
1184	After "if" add "it meets minimum fire access requirements and".
1186	Delete the word "structural" before the word "standards".
1202	Replace "lots" with "dwelling units".
1229	Add a new f. "permit, public improvement agreements or covenants to guarantee completion of any required improvements".
1264-1265	MCDOT recommends deleting the last sentence and allowing a requirement to obtain off-site ROW for sidewalks and bikeways.
1266-1282	MCDOT recommends text to acknowledge that safety and operational requirements would allow changes to rustic road.
1306	Delete "in consultation with" and replace with "after considering the recommendation of".
1309-1316	Revise as directed by the Council; delete lines 1315-1316.
1320	Editorial; Replace "rely on" with "consider".
1383	Editorial; delete "subdivision" before "record plat".
1378-1390	Testimony suggested having a deadline for the placement of markers - but it is already in the proposed code (before public maintenance is accepted).
1388	After "the owner" add "and surveyor".
1391-1399	Testimony suggested that surveyors would want this revised...no such testimony was received.
1399	Add "The amenity bonds must not be released by M-NCPPC until the licensed land surveyor certifies to the Department of Permitting Services that all survey monuments are in place."
1402-1408	MCDOT recommends to say when existing overhead lines must be relocated and criteria for determining when underground lines are infeasible.
1422-1426	Testimony suggested the need to reconcile subsections b and c.
1436	Testimony mistakenly states that this provision would always require a TMA...but it is only required when facilities are not adequate.
1438	MCDOT recommends that the word "public" should be deleted to allow for private systems.
1662-1667	Testimony suggested holding preliminary plan amendments harmless from any forest conservation amendments.
1714-1717	This prohibition on building permits should be in Chapter 8 and replaced with " <i>Regulations</i> . The Planning Board may approve regulations under Chapter 2A to administer this Section."
1725	Editorial (with the change to line 1728); delete the last sentence.
1728	Editorial (with the change to line 1725); after "subject to" add "Board approval".
1778	After "rights-of-way," add "existing and proposed".

<i>Lines</i>	<i>Comments</i>
1792	Editorial; before “hearing agenda” add “Board’s”.
1842-1865	Testimony suggested that the number of steps required are unnecessary.
1878-1879	Editorial; after “lots” delete “. This covenant must be”; add “and”.
1885-1886	Editorial; replace the list of zones with “in any residential zone”.
1900-1921	Testimony suggested that the number of steps required are unnecessary.
1949	Editorial; after “subdivision plan” add “at or”.
1952-1968	Editorial; revise point 1 to read: “After receiving the recommendations of the Development Review Committee and other reviewing agencies, and considering correspondence from other interested parties, the Director must approve or disapprove the administrative subdivision plan in writing. In the alternative, the Director may require that the plan be acted on by the Board. When applicable, the Director must schedule Board action on its next available agenda. If approved, the plan will remain valid under Section 4.2.G, by which time a plat must be recorded.” Delete point 3 and renumber point 4.
1972	Delete “received notice of the application”.
2046-2073	Changes to the ownership lot provisions will be based on the Committee’s recommendation.
2074	Testimony suggested a note that a plat of correction is not always required.
2082	Editorial; delete “that is being replaced”.
2108	Testimony suggested holding minor subdivisions harmless from any forest conservation amendments.
2109	Replace “new development” with development in excess of development in the original approval”.
2115	Editorial; add after “Generally”: “All subdivision of land must be recorded by plat in the County Land Records. The Clerk of the Circuit Court must only record plats approved under this Chapter.”
2116	Testimony suggested added text to avoid forcing re-recording a plat.
2342	Editorial; after “Documents and Plans” add “The following documents and plans must be submitted:”
2402	Testimony suggested that public utilities be required to have easements subservient to ROW dedication rather than require land free of dedication.
2407	Editorial; replace “Subsection” with “Section”.
2429	Testimony requested more waiver flexibility than the “minimum necessary”.
2435	Testimony requested more waiver flexibility than the “minimum necessary”.
2439	MCDOT recommends increasing agency review time such that DRC comments are provided no later than 65 days before the Planning Board hearing.

<u>This Packet Contains</u>	<u>Circle Number</u>
SRA 16-01	1 – 96
Planning Board transmittal letter	97 – 101
Detailed testimony	
Timothy Dugan	102 – 128
Metro Pike Center	129 – 131
William Kominers and Steven Robins	132 – 139
MCDOT	140 – 151
Planning Director submitted material concerning private roads	152 – 153

F:\Land Use\SRAs\2016 SRAs\SRA 16-01 Subdivision Regulations Rewrite\PHED Memo SRA 16-01 June 13.docx

Subdivision Regulation Amendment No.: 16-01
Concerning: Subdivision Regulations Rewrite
Draft No. & Date: 3 – 01/06/16
Introduced: January 12, 2016
Public Hearing:
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 Floreen at the request of the Planning Board

AN AMENDMENT to:

All subdivision regulations in the County Code

By deleting all of Chapter 50, Subdivision of Land; and

Replacing Chapter 50, Subdivision of Land

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.** Chapter 50 is repealed.

2 **Sec. 2.** Chapter 50 is replaced as follows:

3 **Chapter 50. SUBDIVISION OF LAND**

4 **Article I. In General**

5 **Division 50.1. Purpose**

6 **Section 1.1. Purpose of Chapter 50**

7 This Chapter provides for the legal division and subsequent transfer of land. The
8 intent of this Chapter is to facilitate harmonious development and promote the
9 health, safety, and welfare of the present and future inhabitants of the Maryland-
10 Washington Regional District within Montgomery County under the General Plan.
11 In particular, this Chapter provides a means to coordinate new transportation
12 facilities with other existing and planned facilities and make a determination of
13 adequate public facilities, land for public use, and the protection of natural
14 resources and sensitive environmental features.

15 **Division 50.2. Interpretation and Defined Terms**

16 **Section 2.1. Rules of Interpretation**

17 The following rules of interpretation apply to this Chapter.

18 A. *How to Compute Periods Measured in Months.* If a period of time is
19 measured in months, the period begins and ends on the same day of a month;
20 however, if there are not enough days in the final month for this to be
21 possible, the period ends on the final day of the final month.

22 B. *How to Compute Periods Measured in Days.* If this Chapter requires or
23 allows a person to perform an act within a specific time period measured in
24 days, the person must compute the deadline in the following manner:

- 25 1. If the period follows an event, count the day after the event as the first
26 day of the period.

27 2. Count the remaining number of calendar days in the period; however,
28 if the period is 7 days or fewer, omit Saturdays, Sundays, and legal
29 holidays.

30 3. Do not count the last day if it is a Saturday, Sunday, legal holiday, or
31 if the office where the person must file a document or perform an act
32 is not open during the regular hours of that office on that day.

33 C. Requirements to Act by a Specific Date.

34 1. If the law requires or allows a person to perform an act by a specific
35 date, but the specific date is a Saturday, Sunday, or legal holiday, the
36 person may perform the act on the next day that is not a Saturday,
37 Sunday, or legal holiday.

38 2. Any action required to be taken within a specific time period is
39 measured from the date of a final agency action, or, if a party seeks
40 judicial review of the agency action, from the date the court makes a
41 final decision.

42 D. Signatures. The signature of a person may be the actual signature of the
43 person or a mark that the person has authorized.

44 E. Singular and Plural. The singular includes the plural and the plural includes
45 the singular.

46 F. Tense. The present tense includes the future tense.

47 G. Use of "Or". "Or" indicates that the connected items, conditions, provisions,
48 or events may apply singularly or in any combination.

49 H. Use of "Includes". "Includes" does not limit a term to the specific examples.

50 I. Titles of Articles, Divisions, and Sections. Titles and captions are not part of
51 the law. They only advise the reader of the content of each Article, Division,
52 or Section.

53 J. Use of "Chapter". "Chapter" means a numbered section in the Montgomery
54 County Code.

55 K. Use of "Section". In this Chapter, "Section" means section or subsection, as
56 the context indicates.

57 L. Use of "In Writing". In this Chapter, written communication includes
58 electronic communication.

59 **Section 2.2. Definitions**

60 All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have
61 the same meanings as the definitions in those Chapters, unless otherwise defined
62 here. In this Chapter, the following words and phrases have the meanings
63 indicated.

64 A.

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

68 Administrative Civil Penalty: A monetary penalty imposed by the Board after
69 considering the factors in this Chapter for violating a Board action.

70 Administrative Subdivision Plan: A plan for a proposed subdivision prepared and
71 submitted for Director approval before the preparation of a plat.

72 Agricultural Land: Land classified in the Agricultural Reserve zone established by
73 Division 4.2 of Chapter 59; and land in other zones containing at least 25 acres
74 devoted to an agricultural use as defined in Chapter 59.

75 Applicant, Developer or Subdivider: An individual, partnership, corporation, or
76 other legal entity and its agent that undertakes the subdivision of land or the
77 activities covered by this Chapter. The terms include all persons involved in
78 successive stages of the project, even though such persons may change and
79 ownership of the land may change. Each term includes the other.

80 B.

81 Board: The Montgomery County Planning Board of the Maryland-National Capital
82 Commission.

83 Block: Land area bounded by roads, other rights-of-way, unsubdivided acreage,
84 natural barriers, and any other barrier to the continuity of development.

85 Building Restriction Line: A line designating an area in which development or
86 building is prohibited by the Board.

87 C.

88 Citation: A document noting a violation of a Board action, seeking to impose a
89 civil fine or corrective action.

90 Civil Fine: A requirement to pay a predetermined sum of money specified in an
91 administrative citation for violating a Board action.

92 Commission: The Maryland-National Capital Park and Planning Commission.

93 Council: The Montgomery County Council.

94 County Executive: The Montgomery County Executive.

95 D.

96 Development: The act of building structures and installing site improvements, both
97 public and private, or the resulting structures and improvements.

98 Development Review Committee: A review committee to whom a plan is referred
99 under the requirements of this Chapter. The Committee consists of Planning
100 Department Staff and staff of any County, State, and Federal agency; municipality;
101 and utility company and meets with applicants to facilitate review of the plan.

102 Developer: see "Applicant".

103 Development Rights: The potential for the improvement of a tract of land based on
104 its zoning classification, measured in dwelling units or floor area.

105 Director: The Director of the Montgomery County Planning Department or such
106 Director's designee.

107 District or Regional District: The Maryland-Washington Regional District,
108 established by the Land Use Article of the Annotated Code of Maryland.

109 E.

110 Easement: A grant or reservation by the owner of land for the use of all or a
111 portion of the land to others, including the public, for a specific purpose or
112 purposes. The easement must be included in the conveyance of the encumbered
113 land. For platting under this Chapter, an easement area is included within the
114 dimensions and areas of the lots through which the easement may run, and is not
115 separated from the lot as in the case of a dedicated right-of-way.

116 Easement, Slope: An easement to permit the creation and maintenance of slopes
117 necessary to stabilize construction or to stabilize lands adjacent to construction.

118 Enforcement Agent: The Director, or the Director's designee responsible for
119 determining compliance with a Planning Board Action.

120 Engineer: A professional engineer registered in Maryland.

121 Environmentally Sensitive Area: In this Chapter, environmentally sensitive areas
122 are limited to: (a) slopes equal to or exceeding 25 percent, wetlands, streams, and
123 associated buffers as defined in the latest version of the "Guidelines for
124 Environmental Management of Development in Montgomery County"; and (b)
125 critical habitats for threatened or endangered wildlife or plant species as defined in
126 the Code of Maryland Regulations (COMAR) 08.03.08, or for species designated
127 by the Maryland Wildlife and Heritage Service Natural Heritage Program,
128 Department of Natural Resources as rare, watchlist, or in need of conservation.

129 F.

130 Floodplain: as defined in Chapter 19.

131 Floodplain, 100-year: as defined in Chapter 19.

132 G.

133 H.

134 I.

135 Improvements: Required public or private infrastructure needed to support the
136 development, including the following: roads; alleys; grading; road pavement; curbs
137 and gutters; sidewalks; pedestrian ways or paths; bicycle infrastructure, including
138 bikeshare facilities; water mains; sanitary sewer lines; water supply and sewage

139 disposal; storm drain facilities; curb returns; sidewalk and driveway entrances in
140 right-of-way; guard rails; retaining walls; sodding; planting; street trees;
141 monuments; street lights; and stormwater management.

142 *Improvement, Public:* Any improvements located on land dedicated to the public
143 or within a dedicated right-of-way or public improvement easement.

144 J.

145 K.

146 L.

147 *Licensed Land Surveyor:* A land surveyor who is licensed in the State to “practice
148 land surveying” as such terms are defined in Maryland Business Occupations and
149 Professions Code Ann. Section 15-101 (1995 Repl. Vol.), as amended.

150 *Limit of Disturbance Line:* A line designating an area beyond which land
151 disturbance as defined in Chapter 19 is prohibited.

152 *Lot:* A discrete area of land that is described by a plat recorded in the land records
153 for which the County Department of Permitting Services may issue a building
154 permit.

155 *Lot, Ownership:* An area of land shown on a subdivision record plat created only
156 for the convenience of the owner under Section 7.1.D of this Chapter that reflects a
157 deed, mortgage, or lease line but does not subdivide the underlying lot.

158 M.

159 *Maryland Coordinate System:* The coordinate system defined in the Annotated
160 Code of Maryland, Real Prop. §§14-401 through 14-407.

161 *Maryland-Washington Regional District in Montgomery County:* An area defined
162 by the Land Use Article of the Annotated Code of Maryland as the entire County;
163 however, subdivision, planning, and zoning matters within the jurisdictional
164 boundaries of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville,
165 Gaithersburg, and Washington Grove are governed only by each municipality’s
166 ordinance.

167 Master Plan: A plan of any portion of the General Plan that may consist of maps,
168 data, and other descriptive matter that guides the physical development of the
169 district or any portion of the district, including any amendments, extensions, or
170 additions by the Commission, indicating the general locations for major roads,
171 parks or other public spaces, public building sites, routes for public utilities, zones,
172 or other similar information. Master plan includes a sector plan and any other type
173 of master plan prepared by the Board and approved by the District Council. See
174 Land Use Article of the Annotated Code of Maryland.

175 Mid-Block Right-of-Way: A dedicated or otherwise publicly accessible pedestrian
176 or bike right-of-way within a block, which may include utilities where necessary,
177 and from which motor vehicles are typically excluded.

178 Minor Subdivision: Creation of lots through the division, resubdivision, or
179 assemblage of a lot, tract, or parcel of land, including minor adjustments to
180 existing lot lines, that does not require the approval of a preliminary plan of
181 subdivision. For the purpose of applying the State Growth Tier rules, a minor
182 subdivision is separately defined in Section 4.3.F.3.a.i.

183 N.

184 Notice of Hearing: An administrative notice issued by the Director that notifies an
185 alleged violator where and when an enforcement hearing will be held by the Board
186 or the Board's designee to address an alleged violation.

187 Notice of Violation: A notice issued by an enforcement agent that notifies a
188 recipient of a violation and specifies the remedial action that the recipient must
189 take to avoid further enforcement action.

190 O.

191 Outlot: An area of land shown on a record plat that must not be occupied by a
192 building or other structure requiring a building permit.

193 Owner: A person or other legal entity holding a legal title in the land, not including
194 a mortgagee, lienor, lessee, or contract purchaser.

195 P.

196 Parcel, Unplatted: A contiguous area of land described only in a deed recorded in
197 the land records and not included on a record plat.

198 Person: An individual, partnership, corporation, organization, other legal entity, or
199 combination thereof that owns property or otherwise has an interest in a property.

200 Place of Worship: A meeting area for religious practices, including a church, a
201 synagogue, a mosque, a convent, a temple, or a monastery.

202 Planning Board: see "Board".

203 Planning Board Action: A final decision on a preliminary plan, site plan, project
204 plan, sketch plan, water quality plan, or other plan, including all associated terms,
205 conditions, requirements, and other obligations or limits, made by the Board under
206 State law and Chapters 50 and 59, including any regulations issued under State or
207 County law. For the purposes of an enforcement action, a Planning Board Action
208 does not include a decision made by the Board under Chapter 22A.

209 Plat: A drawing depicting some or all of an approved subdivision, prepared and
210 submitted under this Chapter, and intended for recording in the land records after
211 approval by the Board. A plat may consist of one or more sequentially numbered
212 sheets. See also "Record Plat".

213 Preliminary Plan: A plan for a proposed subdivision prepared and submitted for
214 Board approval before the preparation of a plat.

215 Pre-Preliminary Plan: A drawing for a proposed subdivision prepared and
216 submitted for advice before the submission of a Preliminary Plan.

217 Q.

218 R.

219 Receiving Area: Land designated on the zoning map as qualified for more
220 development than its base density through the transfer of development rights.

221 Record Plat: A plat of subdivision recorded in the land records under the
222 requirements of this Chapter.

223 Resubdivision: A change to any lot line created by a previously recorded
224 subdivision record plat. Resubdivision includes the assembly of recorded lots or
225 parts of previously recorded lots. A resubdivision is a subdivision.

226 Right-of-Way: Land intended for the passage of people, vehicles, or utilities, as
227 shown on a record plat. The maker of the plat must dedicate on the plat any right-
228 of-way involving maintenance by a public agency to public use.

229 Road: Any street, highway, avenue, lane, alley, or viaduct, or any segment of any
230 of them. Roads must be created by a subdivision plan under this Chapter and be
231 shown on a record plat, or otherwise be deemed a road by Chapter 49.

232 Road, Centerline of: A line established as a centerline of a road by any State,
233 County, or other official agency or governing body with jurisdiction and shown on
234 an officially adopted plan or recorded plat. In the absence of an official centerline,
235 the Board must establish the centerline.

236 Road Design and Construction Code: Article 3 of Chapter 49 and any regulation
237 which implements and amends that Article.

238 S.

239 State: The State of Maryland.

240 Stop Work Order: An administrative order issued by an enforcement agent that
241 requires a person to discontinue any further development, construction, or other
242 land disturbance activity authorized by a Planning Board Action until a violation
243 has been corrected.

244 Subdivider: see "Applicant".

245 Subdivision (v.): The division or assemblage of a lot, tract, or parcel of land into
246 one or more lots or parcels or other divisions for the purpose, whether immediate
247 or future, of sale or development. The definition of subdivision does not include a
248 bona fide division of exclusively agricultural land not for development purposes or
249 the creation of an ownership lot. A resubdivision is a subdivision.

250 Subdivision (n.): The land or area subdivided.

251 Subdivision Regulations: Chapter 50 of the Montgomery County Code, also
252 referred to as this Chapter.

253 Subdivision Staging Policy: The resolution or guidelines adopted by the District
254 Council to determine the adequacy of public facilities and services.

255 T.

256 Tract: A contiguous area of land, including all proposed and existing rights-of-
257 way, lots, parcels, and other land dedicated or donated in fee by the owner or a
258 predecessor in title. A tract does not include land conveyed to a government for
259 more than nominal consideration.

260 Turnaround: The termination of a road in the approximate shape of a “T”, built to
261 allow vehicles to reverse direction using a 3-point turn.

262 U.

263 V.

264 W.

265 Water Quality Plan: A plan, including supporting documents, required as part of a
266 water quality review under Chapter 19 for certain projects located in a special
267 protection area.

268 WMATA: The Washington Metropolitan Area Transit Authority.

269 WSSC: The Washington Suburban Sanitary Commission.

270 X.

271 Y.

272 Z.

273 **Division 50.3. General Requirements**

274 **Section 3.1. Applicability of the Chapter**

275 This Chapter applies to any subdivision of land within Montgomery County
276 located within the Maryland-Washington Regional District, except for:

277 A. Any municipal corporation listed in Section 20-701 of the Land Use Article
278 in the Maryland Code; and

279 B. A good faith division of exclusively agricultural land that is not made for
280 development purposes.

281 **Section 3.2. Record Plat Required**

282 A. Any subdivision of land must be included on a plat approved by the Board
283 and recorded in the land records before transfer of any part of the subdivided
284 land.

285 B. The County Department of Permitting Services may only issue a building
286 permit for the construction of a building located on a lot or parcel shown on
287 a plat recorded in the County Land Records.

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

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

292 1. Court action. Partition of land through action of a court of competent
293 jurisdiction.

294 2. Utility rights-of-way. Land used as part of an electric transmission line
295 right-of-way or other public utility right-of-way.

296 3. Advanced dedication or donation of master planned rights-of-way.

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

298 1. Certain uses on agricultural land:

299 a. a dwelling unit on an unplatted parcel of agricultural land at
300 least 25 acres in size, if density and development rights are
301 available;

302 b. conditional uses associated with agriculture and approved under
303 Chapter 59, unless a subdivision is required as a condition of
304 the approval; and

- 305 c. any equestrian facility or other agricultural building on land
306 classified in the Agricultural Reserve zone.
- 307 2. Public transfer. A part of a lot previously shown on a record plat that
308 was created by transfer of part of the lot for public use by reference to
309 a recorded instrument, if the outlines and dimensions of such
310 remainder can be determined by reference to the previously recorded
311 plat. This provision also applies to any property that qualified for an
312 exemption under this Section before the transfer.
- 313 3. Adjoining property. A part of a lot created by deed recorded before
314 May 19, 1997 between owners of adjoining platted properties for the
315 purpose of small adjustments in boundaries. This applies only to an
316 adjustment that was less than either a total of 2,000 square feet or one
317 percent of the combined area, if additional lots were not created and
318 the total area of resulting ownership was not reduced below the
319 minimum size required by this Chapter or by Chapter 59.
- 320 4. Property for Single-Unit Living:
- 321 a. One detached house on a parcel not previously included on a
322 record plat, or a part of a previously platted lot, which has not
323 changed in size or shape since June 1, 1958, if a description and
324 location of the property and proposed structure are submitted to
325 the Planning Department, before issuance of a building permit,
326 sufficient to:
- 327 i. locate the property on the tax maps of Montgomery
328 County;
- 329 ii. show that the approval of the building permit application
330 would not result in obstructing the future opening,
331 extension, or widening of any necessary road, or
332 otherwise jeopardize any planned public facility;
- 333 iii. show that the property and use comply with the zoning
334 ordinance, and show the setbacks and any other
335 information needed to check compliance with

- 336 regulations, including establishment of a building
337 restriction line along any existing or proposed road
338 sufficient to provide for future expansion or opening of
339 such road to its ultimate width; and
- 340 iv. show that the approval of the permit would not adversely
341 affect the General Plan.
- 342 b. Reconstruction of an existing detached house under Chapter 59,
343 Section 7.7.1.
- 344 5. Telecommunications facilities. Telecommunications towers/antennas,
345 including associated accessory structures.
- 346 6. Certain residential property in the City of Takoma Park. Property
347 located in the portion of the City of Takoma Park annexed into
348 Montgomery County on July 1, 1997 that was recorded by a deed
349 before January 1, 1982 and remains otherwise buildable under the
350 Prince George's County Zoning and Subdivision Regulations on June
351 30, 1997, if a description and locational survey drawing of the
352 property and proposed structure are submitted to locate them on the
353 tax map of Montgomery County.
- 354 7. Certain commercial properties adjoining State highways. An addition
355 to a building on property zoned for commercial uses:
- 356 a. adjoining a State highway;
- 357 b. located within a State-approved Community Legacy Plan Area
358 on October 30, 2012;
- 359 c. with less than 10,000 square feet of gross floor area on October
360 30, 2012, where subsequent building permits cumulatively
361 allow increases in total gross floor area by less than 2,000
362 square feet; and
- 363 d. that includes a description and boundary survey drawing of the
364 property and proposed structure at a 1-inch-equals-50-foot scale
365 or another appropriate scale as determined by the Director that

366 demonstrates that the additional floor area will not extend into
367 any adopted master plan road right-of-way.

368 8. *Certain commercial properties adjoining State highways in Rural*
369 *Village Overlay zones. An addition, reconstruction, or replacement of*
370 *a building on commercially zoned property:*

371 a. *adjoining a State highway;*

372 b. *located in the Rural Village Overlay zone;*

373 c. *with less than 10,000 square feet of existing gross floor area*
374 *where later building permits cumulatively allow net increases in*
375 *total gross floor area of less than 2,000 square feet;*

376 d. *that includes a description and boundary survey drawing of the*
377 *property and proposed structure on a 1-inch-equals-50-foot*
378 *scale or another appropriate scale, as determined by the*
379 *Director, showing that the additional floor area will not extend*
380 *into any adopted master plan road right-of-way; and*

381 e. *that is submitted within one year after demolition or destruction*
382 *of the previous building was substantially completed.*

383 **Section 3.4. Approving Authority**

384 The Board administers this Chapter.

385 **Section 3.5. Effect of Chapter on Other Ordinances**

386 This Chapter does not repeal or modify or otherwise affect any other ordinance,
387 resolution, rule, or regulation of the County; however, wherever this Chapter
388 imposes more stringent requirements, the provisions of this Chapter must prevail.

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

390 A. *The Board will consider subdivision of land as follows:*

391 1. *Except for an administrative or minor subdivision under Divisions*
392 *50.6 and 50.7, the subdivider must submit a complete preliminary*
393 *plan application form and payment of the required fee.*

394 2. The plat of all or part of an approved subdivision plan must be
395 submitted with required supporting data and documents, a completed
396 application form, and payment of the required fee.

397 B. *Subdivision of part of a tract.* The Director may reject a subdivision plan
398 application for part of a tract if the size and shape of the property as
399 submitted prevent designing a plan that will meet standards established by
400 these regulations, and require all or a larger part of the tract to be platted to
401 meet this Chapter, Chapter 49, or other laws or regulations.

402 C. *Area within pending zoning map amendments.* The Director may reject a
403 subdivision plan if all or any part of the plan lies within the boundaries of a
404 pending amendment to the zoning map. The subdivider may resubmit the
405 plan immediately after the final disposition of the pending amendment. This
406 Subsection must not apply if any map amendment is still pending 6 months
407 after the date of the submission of the plan.

408 D. *Area within pending master plan.* The Board may defer action on a proposed
409 subdivision plan application, if all or any part of the plan is located in the
410 boundaries of a pending master plan or master plan amendment. For
411 purposes of this Section, a pending master plan or master plan amendment is
412 the public hearing draft master plan or master plan amendment.

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

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

417 b. no later than 12 months from the date the Board approves the
418 public hearing draft master plan or master plan amendment,
419 unless there is a determination by the Board that the subdivision
420 plan application presents a substantial conflict with the
421 proposed public hearing draft master plan or master plan
422 amendment, in which case the Board may defer a subdivision
423 plan application for a maximum of 18 months from the date the
424 Board approves the public hearing draft master plan or master

425 plan amendment, but in no event beyond the period in
426 Subsection (a).

427 **Article II. Subdivision Plans**

428 **Division 50.4. Preliminary Plan**

429 Except for an administrative or minor subdivision submitted under Divisions 50.6
430 and 50.7, the subdivider must submit a proposed subdivision to the Board for
431 approval in the form of a preliminary plan before the submission of a plat. The
432 plan must show graphically, and supporting documents must demonstrate, the data
433 needed for the Board to make the findings required by this Article.

434 **Section 4.1. Filing and Specifications**

435 **A. Application and fee.**

436 1. The subdivider must file the preliminary plan with the Board, together
437 with the completed application form, supporting information, and
438 payment of the required fee.

439 2. The subdivider must own the property or be authorized by the owner
440 to file the application.

441 3. If property is owned or controlled by the State, Montgomery County,
442 or another political subdivision, government entity or agency, or
443 WMATA, the subdivider must obtain authorization from the
444 government entity, agency or WMATA to include the property as part
445 of the subdivision.

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

449 1. scaled drawing of at least 100 feet to the inch, or as specified by the
450 Director;

451 2. title block information;

- 452 3. certificate of registered professional engineer and licensed land
453 surveyor to affirm the accuracy of boundary lines, topographic data,
454 and other engineering or survey data;
- 455 4. locations and names of abutting and confronting subdivisions with lot,
456 block, and record plat number of subdivided land, and deed references
457 for unplatted land;
- 458 5. existing scenic easements, scenic vistas designated by the Rustic
459 Roads Plan, or designated historic resources;
- 460 6. vicinity location map; and
- 461 7. graphic representation of the proposed subdivision, including:
- 462 a. bearings referenced to the Maryland Coordinate System, except
463 that an application filed to correct an approved preliminary plan
464 may be referenced to the plat meridian used on the original
465 approved preliminary plan or the record plat;
- 466 b. lot and block layout;
- 467 c. all roads labeled as public or private with construction details.
468 The subdivider must show the applicable Chapter 49 design
469 standards or typical sections for the proposed roads and must
470 list any proposed modifications;
- 471 d. location of existing and proposed utilities;
- 472 e. existing topography with contour intervals of 5 feet or less;
- 473 f. location and width of existing and proposed pedestrian and
474 bicycle facilities, including sidewalks, shared-use paths and on-
475 road bicycle lanes and connections to existing off-site facilities;
- 476 g. sites for public uses and open spaces;
- 477 h. location, type, and width of all existing and proposed rights-of-
478 way and easements, including roads, slopes, paths, utilities, on-
479 and off-site storm drainage, and other improvements;

- 480 i. the proposed use of all lots on the preliminary plan and the
481 scaled dimensions and approximate area of each use;
- 482 j. lines showing the limits of each zone, if the property is located
483 in more than one zone; and
- 484 k. all existing topography, structures, and paving within 100 feet
485 of adjoining properties.

486 C. Supporting information.

- 487 1. An approved Natural Resources Inventory/Forest Stand Delineation.
- 488 2. A preliminary forest conservation plan or forest conservation
489 exemption.
- 490 3. Verification from the County and other applicable agencies showing
491 payment of any required fees in connection with the County's review
492 process.
- 493 4. Concept road grade and profile. A registered engineer or registered
494 professional land surveyor must prepare conceptual road grade and
495 profile plan according to the design criteria of Chapter 49 and indicate
496 the percentage of tangent grades, lengths of crest and sag, vertical
497 curves and elevations, and elevations of all intersecting roads. The
498 plan must indicate the direction of water flow. Where the topography
499 makes the determination of the adequacy of the road grades difficult,
500 the Director may require additional supporting information.
- 501 5. Storm drainage capacity and impact analysis. The concept road grade
502 plan must be supported by a preliminary storm drain study prepared
503 under the County's storm drain specifications.
- 504 6. Sight distance evaluation for all proposed driveways and proposed
505 road intersections prepared under the criteria of the applicable State or
506 County transportation agency.

- 507 7. Wells and septic systems. For lots located in areas where the
508 subdivider proposes the installation of individual wells and septic
509 systems, the preliminary plan must also show:
- 510 a. the proposed locations of water wells for each lot and existing
511 wells on the property and within 100 feet of the property;
- 512 b. a circular area with a radius of 100 feet around each well to
513 denote clear space in which no final sewage system is to be
514 located;
- 515 c. the “usable area” for sewage disposal that satisfies the
516 Executive Regulations for on-site sewage disposal;
- 517 d. any existing sewage disposal systems on the property and
518 within 100 feet of the property;
- 519 e. wetlands, rock outcrops, and floodplains; and
- 520 f. a 10-foot zone surrounding the water service line to buildings,
521 free and clear of any sewer lines, systems, or part thereof.
- 522 8. Phasing schedule.
- 523 a. The preliminary plan approval establishes the plan validity and
524 adequate public facilities validity periods for the entire project.
- 525 b. Where the subdivider proposes a phased project that will
526 cumulatively exceed the minimum validity periods under
527 Sections 4.2.G.2.a and 4.3.J.5.a, the applicant must submit a
528 recording and construction phasing schedule as part of the
529 preliminary plan for approval by the Board. The schedule must
530 indicate the portions of the preliminary plan for which record
531 plats and building permits will be obtained during each of the
532 proposed phases, up to the expiration of the maximum adequate
533 public facilities validity period under Section 4.3.J.5.a.
- 534 c. When applicable, the phasing schedule must identify the timing
535 for the completion of construction and conveyance to unit

536 owners of such things as common open areas and recreational
537 facilities. In addition, the phasing schedule must indicate the
538 timing for the provision of moderately priced dwelling units,
539 and infrastructure improvements associated with each phase.
540 The subdivider must design such a phasing schedule to
541 minimize dependence on features (other than community-wide
542 facilities) that will be provided in subsequent phases and have
543 minimal impact during construction on phases already built and
544 occupied.

545 d. If a phasing plan for a preliminary plan included land or
546 building space that the County accepted for an arts or
547 entertainment use under Section 59-C-6.2356 of the zoning
548 ordinance in effect on October 29, 2014, approval of a site plan
549 under Section 59-7.3.4 for the phase containing that land or
550 building space validates all remaining phases of the preliminary
551 plan and the project plan for the purpose of Section 59-D-2.7(b)
552 of the zoning ordinance in effect on October 29, 2014.

553 9. *Transfer of development rights.*

554 a. A preliminary plan for a property located in a receiving area
555 that proposes to increase the density of the property by using
556 transferred development rights must indicate:

557 i. the number of lots permitted for the tract by zoning
558 without the use of density increases as allowed by
559 Transferable Development Rights (TDR) or the
560 Moderately Priced Dwelling Unit (MPDU) programs;

561 ii. the number of development rights to be conveyed to the
562 receiving property;

563 iii. the number of Moderately Priced Dwelling Units to be
564 provided as required by Chapter 25A;

565 iv. the total density, in dwelling units, of the proposed
566 subdivision; and

- 567 v. the density recommended by the adopted master plan.
568 b. A preliminary plan that uses transferable development rights in
569 the Rural Residential and Residential zones must include at
570 least two-thirds of the number of development rights permitted
571 to be transferred to the property under the appropriate master
572 plan. However, the Board may reduce the two-thirds
573 requirement if it finds the reduction is more appropriate for
574 environmental or compatibility reasons.

575 10. Draft Traffic Mitigation Agreement. A preliminary plan application
576 for property located in a Transportation Management District (TMD),
577 designated under Chapter 42A, Article II, must contain a draft Traffic
578 Mitigation Agreement (TMAg) that meets the requirements of that
579 Article.

580 D. Application processing.

581 1. The applicant must submit an initial application to the Director. The
582 Director must review the application for completeness within 10 days
583 after receipt. An application is incomplete if any required element is
584 missing or is facially defective, e.g., a drawing that is not to scale. The
585 assessment of completeness must not address the merits of the
586 application.

587 2. The applicant must submit any required revisions to the Director. The
588 Director must review the revised application for completeness within
589 10 days after receipt.

590 3. After the Director verifies that the application is complete, or if the
591 review is not completed within 10 days after receipt, the Director will
592 accept the application and establish a hearing date under Section
593 4.1.E.

594 4. Public notice is required per a regulation approved under Section 10.1.

595 E. Hearing date. The Board must schedule a public hearing to begin within 120
596 days after the date the Director accepts an application. The Director may

597 postpone the public hearing by up to 30 days once without Board approval.
598 The Director or applicant may request one or more extensions beyond the
599 original 30 days with Board approval. The Board must notice the public
600 hearing and indicate the new hearing date on the Board's agenda.

601 **Section 4.2. Approval Procedure**

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

- 606 1. WSSC, for water and sewer service;
- 607 2. the County Department of Transportation, for roads, streets, paths,
608 pedestrian and bicycle facilities (including bike share), parking, transit
609 facilities, transportation demand management elements, and storm
610 drainage within County-maintained rights-of-way and easements;
- 611 3. the County Department of Permitting Services, for stormwater
612 management, floodplain delineation, sanitation, wells, and septic
613 systems;
- 614 4. the County Department of Environmental Protection, for water and
615 sewer adequacy and tree variances;
- 616 5. Montgomery County Fire and Rescue Service, for requirements for
617 adequate fire protection and access;
- 618 6. the State Highway Administration, for right-of-way requirements and
619 access on state roads;
- 620 7. any appropriate agency of the federal government;
- 621 8. any municipality that has filed a request with the Board for an
622 opportunity to review subdivision or resubdivision plans for property
623 located in that municipality;
- 624 9. Montgomery County Public Schools, for school site planning;

- 625 10. any other Montgomery County Executive agency, for the adequacy of
626 public facilities and services and any proposed public use; and
- 627 11. local utility providers.
- 628 B. Review and recommendation.
- 629 1. Timing of review.
- 630 a. Reviewing State and County agencies and utilities must get a
631 minimum of 14 days to review plans and must submit initial
632 comments to the Director before the Development Review
633 Committee meeting when one is scheduled.
- 634 b. The applicant must submit revised drawings at least 65 days
635 before the date of the hearing to address all comments received.
636 The Director may extend the deadline if the applicant submits a
637 written request within 15 days after the revised drawings were
638 due. If no written request is received or if the requested
639 extension is not granted, the application is deemed withdrawn.
- 640 c. State and County agencies and utilities must each submit their
641 final recommendations on the application at least 45 days
642 before the date of the Board hearing or must request an
643 extension.
- 644 2. Approvals from public agencies. The following agency approvals are
645 needed before the Board approves the preliminary plan:
- 646 a. Design of County-maintained roads. The County Department of
647 Transportation must approve in preliminary form the typical
648 section, concept road profile, intersection and site access
649 locations, sight distances, utility location, and storm drain
650 adequacy for improvements along County-maintained roads
651 and paths;
- 652 b. Wells and septic systems. The County Department of Permitting
653 Services must approve lots with individual wells or septic
654 systems, the well, and septic plan;

- 655 c. Stormwater management. The County Department of
656 Permitting Services must approve a stormwater management
657 concept and floodplain delineation, if required under Chapter
658 19;
- 659 d. Water Quality Plan. If a water quality plan is required under
660 Chapter 19, the Board must not approve a preliminary plan or
661 any extension until all requirements of Chapter 19 for plan
662 approval are satisfied. The Board must make the compliance
663 with a required water quality plan, including any plan reviewed
664 on a preliminary or final basis, a condition of any approved
665 preliminary plan; and
- 666 e. Water and sewer service. If water and sewer are proposed to
667 serve the property, the Board may approve a preliminary plan
668 only if WSSC agrees with the proposed water and sewer service
669 layout.
- 670 3. Director. The Director must publish a report and recommendation at
671 least 10 days before the Board hearing.

672 C. Planning Board Action.

- 673 1. The Director must present every preliminary plan to the Board for its
674 review and action. The Board must take one of the following actions
675 or defer action to obtain more information:
- 676 a. approve, if the plan conforms to the purposes and other
677 requirements of this Chapter;
- 678 b. approve, with any conditions or modifications necessary to
679 bring the proposed development into compliance with all
680 applicable requirements; or
- 681 c. deny, if the plan is contrary to the purposes and other
682 requirements of this Chapter.
- 683 2. All necessary improvements to support the development must be
684 completed or assured, as specified in Section 10.2.

685 3. Where a site plan is required, the approval of the preliminary plan
686 must not allow clearing or grading to occur before approval of the site
687 plan, unless otherwise specified by the Board.

688 4. The Board must approve a resolution containing findings supporting
689 its decision. Following approval of a preliminary plan by the Board,
690 no agency may require a substantial change in the plan unless allowed
691 by the Board's conditions of approval or a plan amendment under
692 Section 4.2.F.

693 D. Required Findings. To approve a preliminary plan, the Board must find that:

694 1. the preliminary plan substantially conforms to the master plan;

695 2. public facilities will be adequate to support and service the area of the
696 subdivision;

697 3. the layout of the subdivision, including size, width, shape, orientation
698 and density of lots, and location and design of roads are appropriate
699 for the subdivision given its location and the type of development or
700 use contemplated, considering the recommendations included in the
701 master plan and the applicable requirements of Chapter 59;

702 4. all Forest Conservation Law, Chapter 22A requirements are satisfied;

703 5. all stormwater management, water quality plan, and floodplain
704 requirements of Chapter 19 are satisfied; and

705 6. any other applicable provision specific to the property and necessary
706 for approval of the subdivision is satisfied.

707 E. Plan Certification. Every preliminary plan approved by the Board must be
708 certified by the Director to confirm that the plan reflects the Board's
709 approval. Any modification of the plan conditioned by the Board's approval
710 must be included in the plan before receiving the approval stamp. The
711 approved plan must be filed in the records of the Board.

712 F. Amendments.

713 1. A major amendment to an approved preliminary plan must follow the
714 same procedures, meet the same criteria, and satisfy the same
715 requirements as the original preliminary plan.

716 a. A major amendment includes any requests to change density; or
717 make major changes to lot configuration or location, or right-
718 of-way width or alignment; or make a change to any condition
719 of approval, except a change to validity period phasing as
720 permitted in Section 4.2.F.2.

721 2. A minor amendment to an approved preliminary plan must follow the
722 same procedures, meet the same criteria, and satisfy the same
723 requirements as the original preliminary plan, except as modified
724 under Section 4.2.F.2.b.

725 a. A minor amendment to an approved preliminary plan includes
726 any change that does not change density; make major changes
727 to lot configuration or location, or right-of-way width or
728 alignment; or alter the intent, objectives, or requirements of the
729 Board in approving the preliminary plan.

730 b. The Board may approve a minor preliminary plan amendment
731 without a public hearing if the Director publishes a report and
732 recommendation on the amendment a minimum of 10 days
733 before the Board meeting. The Director may also approve a
734 minor amendment to change validity period phasing as
735 permitted in Section 4.2.H.1.b.

736 G. Plan Validity.

737 1. Initiation date. The plan validity period for preliminary plans starts on
738 the later of:

739 a. 30 days from the date of mailing indicated on the written
740 resolution; or

741 b. if an administrative appeal is timely noted by any party
742 authorized to file an appeal, the date upon which the court

743 having final jurisdiction acts, including the running of any
744 further applicable appeal periods.

745 2. Duration.

746 a. Single-phase project.

747 i. A preliminary plan approved after March 31, 2009 and
748 before April 1, 2017 remains valid for 60 months after its
749 initiation date.

750 ii. A preliminary plan approved after March 31, 2017
751 remains valid for 36 months after its initiation date.

752 b. Multi-phase project.

753 i. An approved preliminary plan for a multi-phase project
754 remains valid for the period of time allowed in the
755 phasing schedule approved by the Board.

756 ii. The applicant must propose a phasing schedule and the
757 duration of the validity period for each phase as part of
758 an application for preliminary plan approval or
759 amendment. The Board must assign each phase a validity
760 period after considering the size, type, and location of the
761 project.

762 iii. The time allocated to any phase must be 60 months or
763 less after the initiation date for that particular phase for
764 any preliminary plan approved after March 31, 2009, but
765 before April 1, 2017, and 36 months after the initiation
766 date for that particular phase for any preliminary plan
767 approved after March 31, 2017.

768 iv. The cumulative validity period of all phases must be
769 shorter than or equal to the APFO validity period which
770 begins on the initiation date of the first preliminary plan
771 approval, including any extension granted under Section
772 4.3.J.7.

773 v. If the recordation of an approved preliminary plan occurs
774 within 5 years of approval for a multi-phase project that
775 includes land or building space to be transferred to the
776 County for an arts or entertainment use under Section 59-
777 C-6.2356 of the zoning ordinance in effect on October
778 29, 2014, all phases of the preliminary plan are validated.
779 After approval, an amendment or modification to the
780 phasing plan or the preliminary plan will not affect the
781 validations if the requirements of this Subsection have
782 otherwise been met.

783 3. Validation. A preliminary plan or phase of a preliminary plan is
784 validated when the applicant has secured all government approvals
785 necessary to record a plat, and a plat for all property shown on the
786 plan or in that phase has been recorded in the County Land Records.

787 4. Effect of a preliminary plan amendment on validity period. For any
788 action taken by the Board to amend a previously approved preliminary
789 plan, the Board will determine, on a case-by-case basis, whether it
790 should extend the validity period and, if so, for what duration. In
791 making the determination, the Board must consider the nature and
792 scope of the requested amendment.

793 H. Extension of plan validity period.

794 1. Extension request.

795 a. The Board must receive a request to extend the validity period
796 of an approved preliminary plan in writing before the
797 previously established validity period expires. Only the Board
798 is authorized to extend the validity period.

799 b. The Director may approve a request to amend the validity
800 period phasing schedule of an approved preliminary plan if the
801 length of the total validity period of the preliminary plan is not
802 extended. The Director must receive the request in writing

803 before the previously established validity period of the phase
804 expires.

805 c. The written request must detail all reasons to support the
806 extension request and include the anticipated date by which the
807 plan will be validated. The applicant must certify that the
808 requested extension is the minimum additional time required to
809 record all plats for the preliminary plan.

810 2. Effect of timing.

811 a. The failure to submit a written extension request in a timely
812 fashion voids all non-validated portions of the preliminary plan
813 and, where applicable, an approved site plan.

814 b. Where a preliminary plan has been allowed to expire due to the
815 applicant's failure to file a timely request for extension, the
816 Board may reinstate the preliminary plan and establish a new
817 validity period if practical difficulty or undue hardship is
818 demonstrated by the applicant. The Board may require the
819 applicant to get a new APFO review and approval by the Board
820 as a prerequisite or condition of its action to extend an expired
821 plan.

822 3. Grounds for extension.

823 a. The Board may only grant a request to extend the validity
824 period of a preliminary plan if the Board finds that:

825 i. delays by the government or some other party after the
826 plan approval have prevented the applicant from meeting
827 terms or conditions of the plan approval and validating
828 the plan, provided such delays are not caused by the
829 applicant; or

830 ii. the occurrence of significant, unusual and unanticipated
831 events, beyond the applicant's control and not caused by
832 the applicant, have substantially impaired the applicant's

833 ability to validate the plan, and exceptional or undue
834 hardship (as evidenced, in part, by the efforts undertaken
835 by the applicant to implement the terms and conditions of
836 the plan approval in order to validate the plan) would
837 result to the applicant if the plan were not extended.

838 b. The applicant bears the burden of establishing the grounds in
839 support of the requested extension.

840 4. Planning Board considerations for extension.

841 a. The Board may condition the grant of an extension on a
842 requirement that the applicant revise the plan to conform with
843 changes to the requirements of this Chapter since the plan was
844 approved.

845 b. The Board may deny the extension request if it finds that the
846 project, as approved and conditioned, is no longer viable. The
847 Board must consider whether the project is capable of being
848 financed, constructed, and marketed within a reasonable time
849 frame. The Applicant must demonstrate the project's viability
850 upon request by the Board or the Director.

851 5. Planning Board action.

852 a. After a public hearing for which notice was duly given, the
853 Board must determine whether it should grant a request for an
854 extension. The requirements for noticing and conducting a
855 public hearing must follow the requirements for a preliminary
856 plan.

857 b. If voting to approve an extension, the Board must only grant the
858 minimum time it deems necessary for the applicant to validate
859 the plan.

860 c. The Board may only grant an extension to a preliminary plan
861 within the plan's APFO validity period, unless a further
862 extension is allowed by law.

- 863 d. An applicant may request, and the Board may approve, more
864 than one extension.
- 865 e. Once a phasing schedule is approved by the Board as part of a
866 preliminary plan approval, the Board must treat any revision or
867 alteration to the schedule other than an amendment approved
868 under Section 4.3.J.7 as a minor amendment to the preliminary
869 plan. Board approval of a revised phasing schedule is required
870 to extend the total length of the validity period.
- 871 I. Effect of failure to timely validate plan or secure an extension.
- 872 1. If a preliminary plan is not timely validated in whole or in part before
873 the expiration of the validity period, any remaining portion of the plan
874 expires. For multi-phased plans, the failure on the part of an applicant
875 to timely validate a phase, in whole or in part, voids the balance of the
876 preliminary plan approval for that phase and all subsequent non-
877 validated phases.
- 878 2. In those instances where an applicant has timely validated only a
879 portion of a plan and no extension is granted, the applicant seeking to
880 develop only that portion of the project remains responsible for fully
881 complying with all of the terms, conditions, and other requirements
882 associated with the portion of the plan approval that has been
883 implemented.
- 884 3. If a preliminary plan or a phase of the plan is not timely validated, any
885 APFO determination made by the Board associated with the expired
886 portion of the preliminary plan also expires. In such event, the
887 applicant loses any further rights to claim any vehicle trips associated
888 with the expired APFO approval. The filing of a new preliminary plan
889 application does not provide the basis for reclaiming vehicle trips lost
890 by the termination of the APFO approval.
- 891 4. A preliminary plan approval conditionally linked to a sketch plan or
892 project plan approval under Chapter 59 expires if the sketch plan or
893 project plan expires.

894 J. Revocation of approval.

895 1. The Board may revoke approval of a preliminary plan by resolution at
896 any time before the Board approves the final plat covering the
897 proposed preliminary plan.

898 2. To revoke a preliminary plan approval, except in response to a
899 violation of this Chapter, the Board must find that completing a
900 portion of the plan has been rendered impractical by reason of an
901 amendment to the General Plan, or by a conflict with a proposed
902 public improvement or other conditions or circumstances not
903 previously considered by the Board that make the plan contrary to
904 public health, safety, or welfare.

905 3. The Board must give a subdivider notice and an opportunity to be
906 heard by the Board before taking any action to revoke approval of a
907 preliminary plan by sending the owner and subdivider a notice by
908 certified mail at least 30 days before the date of the proposed action
909 and giving the time and place of the hearing. The notice must state the
910 reasons for the proposed revocation.

911 **Section 4.3. Technical Review**

912 In making the findings under Section 4.2.D, the Board must review the following
913 technical aspects of the application.

914 A. Relation to master plan.

915 1. In determining whether to approve a preliminary plan, the Board must
916 consider the applicable master plan or Urban Renewal Plan. A
917 preliminary plan must substantially conform to the applicable master
918 plan or Urban Renewal Plan, including maps and text. However, if a
919 site plan is not required under Chapter 59, Article 59-7.3.4, the Board
920 may find that events have occurred to render the relevant master plan
921 or Urban Renewal Plan recommendation no longer appropriate.

922 2. A preliminary plan that requires a site plan approval under Chapter
923 59, Article 59-7.3.4 may exceed any dwelling unit per acre or floor

924 area ratio (FAR) limit recommended in a master plan, as provided in
925 Chapter 59, to permit construction of all MPDUs under Chapter 25A,
926 or workforce housing units required under Chapter 59 or Chapter
927 29A.

928 B. Block design.

929 1. Residential blocks. The Board must approve the length, width, and
930 shape of any residential block as follows:

931 a. Length. The length of a residential block must be compatible
932 with existing development patterns and the land use goals for
933 the area of the subdivision. The maximum length of a block is
934 1,600 feet.

935 b. Width. Blocks must be designed with sufficient width to
936 provide 2 tiers of lots. The Board may approve exceptions to
937 block width design for blocks adjacent to heavy traffic ways,
938 railroads, streams, drainage courses, or for land uses where it is
939 appropriate to establish blocks with 1 tier of lots.

940 c. Pedestrian paths. The Board may require paths for pedestrian
941 access to schools, playgrounds, parks, and other public areas
942 and through long blocks.

943 d. Multi-unit or apartment blocks. The Board must review and
944 approve the design and arrangement of access roads within a
945 subdivision for multi-unit or apartment dwellings, together with
946 the required parking facilities and pedestrian walks, to
947 determine that resulting blocks are a suitable length and width
948 for pedestrian and vehicle circulation.

949 2. Nonresidential blocks. The Board must determine if the blocks
950 designed for business or industry are a suitable length and width,
951 including adequate provision for pedestrians, parking, deliveries, and
952 truck maneuvering.

953 C. Lot design.

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1. General requirements.

- a. Lot dimensions. The Board must find that lot size, width, shape, and orientation will be appropriate for the location of the subdivision and for the type of development or use contemplated, considering the recommendations of the master plan and the applicable requirements of Chapter 59.
- b. 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 created by a record plat and be made available for public use through an access easement.
 - i. The Board may approve a maximum of 2 lots that do not abut a public or private road if the lots will be served by a private driveway that serves no other lots without frontage.
 - ii. The Board must find that access to lots with no road frontage is adequate to serve the lots for emergency vehicles and for installation of public utilities. In addition, the Board must find that the lots are accessible for other public services and are not detrimental to future subdivision of adjacent lands.
- c. Side lines. Side lines of interior lots must to the extent possible be aligned perpendicular to the road line or radial to a curved road line.
- d. Through lots. The Board must not approve through lots, except where unusual topography, orientation, or the size of the subdivision permit no other feasible way to subdivide.
- e. Alley or pedestrian paths for residential lots. If a mid-block alley or pedestrian right-of-way is provided in a residential subdivision, the subdivider must increase the lot widths

985 adjoining the alley or right-of-way to provide for a parallel side
986 building restriction line 15 feet from the alley or right-of-way.

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

989 1. *Master planned sites.* When a tract being subdivided includes a
990 proposed site for a park, playground, school, or other public use
991 recommended in the applicable master plan, and that use is deemed
992 necessary by the Board and applicable public agency, the preliminary
993 plan must show the site for the use for dedication or acquisition and
994 subsequent record plat. Land that is not dedicated may be acquired by
995 donation, purchase, or condemnation, or reserved under Subsection 5.

996 2. *Local recreation.* The Board must require platting and dedication to
997 public use of adequate spaces for recreation wherever it is reasonable
998 to do so, considering the recommendations in the applicable master
999 plan, the circumstances existing where a subdivision is located, and
1000 the size and character of the subdivision. The subdivider may be
1001 required to provide what is determined by the Board to be an area
1002 relevant to the recreational needs of the present and future inhabitants
1003 of the subdivision. Whenever the necessary recreational area is larger
1004 than the subdivider is required to dedicate, the balance of the needed
1005 area must be reserved for acquisition under Subsection 5.

1006 3. *Area for public roads and associated utilities and storm drainage.*

1007 a. *Roads.* In its consideration of the approval of a subdivision, the
1008 Board must require dedication and platting of adequate area to
1009 provide public roads and other public transportation facilities.
1010 These must be coordinated with other existing, planned, or
1011 platted roads, other features in the district, or with any road plan
1012 adopted or approved as a part of the General Plan.

1013 b. *Rights-of-way and easements other than roads.* The Board may
1014 require dedication to public use of rights-of-way or platting of
1015 easements necessary for public uses, such as pedestrian paths,

1016 equestrian trails, bicycle infrastructure (including, but not
1017 limited to, bikeways and bike-share facilities), water and
1018 sanitary sewer, and storm drainage facilities. The Board must
1019 approve the extent, location, and width of each pedestrian path,
1020 equestrian trail, and bikeway right-of-way after considering the
1021 master plan. The extent and width of water and sanitary sewer
1022 rights-of-way must be determined by the Washington Suburban
1023 Sanitary Commission in its jurisdiction. The extent and width
1024 of drainage rights-of-way must be determined by the County
1025 Department of Permitting Services after receipt of drainage
1026 studies prepared by the applicant's engineer.

1027 4. Areas not suitable for public use.

1028 a. When a preliminary plan includes a proposed dedication of land
1029 to public use, the Board must determine if the land is suitable
1030 for the intended public use. In its evaluation, the Board must
1031 consider, among other relevant factors, any criteria for the
1032 intended use adopted by the receiving agency and the agency's
1033 recommendations, the natural features of the site, and the extent
1034 of site preparation work. Site preparation may include
1035 excavation of rock, excessive grading, grading of steep slopes,
1036 remedial environmental measures, and similar work required to
1037 prepare the site for the public use. In evaluating the natural
1038 features of a site, the Board may require the applicant to
1039 perform soil borings or to provide other detailed topographical
1040 or subsurface information not otherwise submitted under
1041 Section 4.1.B. The applicant's engineer must certify the
1042 information provided to the Board. Factors relevant to a
1043 determination of the magnitude of site preparation work include
1044 estimated costs, acreage, agency experience with similar sites
1045 and construction industry practices.

1046 b. Based on the analysis, the Board may refuse to approve the
1047 dedication and:

- 1048 i. require the rearrangement of lots in the subdivision to
1049 provide for a suitable site;
- 1050 ii. permit the applicant to pay for additional site preparation
1051 that makes the site suitable for the public use; or
- 1052 iii. with the concurrence of the receiving agency, permit the
1053 applicant to provide an alternative location offsite.

1054 5. Reservation.

1055 a. Procedure. When the Board determines that a tract being
1056 subdivided includes land that is necessary for public use but
1057 will not be acquired by donation, dedication, purchase, or
1058 condemnation when the plat is recorded, the Board must
1059 determine the need to reserve the land. The Board may require a
1060 reservation for 3 years or less for road rights-of-way, public
1061 school and building sites, parks, playgrounds, recreational
1062 areas, or other public purposes.

1063 i. Referral to agency concerned with acquisition. If a
1064 reservation of land appears to be in the public interest,
1065 the Board must refer the plan to the public agency
1066 concerned with acquisition for consideration and report.
1067 The Board may propose alternate areas for such
1068 reservation and must allow such public agency 30 days
1069 for reply. The agency's recommendation, if affirmative,
1070 must include a map showing the boundaries and area of
1071 land to be reserved and an estimate of the time required
1072 to complete the acquisition.

1073 ii. Resolution. The Board must approve a declaration of
1074 public reservation by resolution, stating the period during
1075 which the reservation is effective. Notice of the same
1076 must be carried once each in two newspapers of general
1077 circulation in the County and a plat must be recorded in
1078 the land records of the County showing in detail the land

1079 so reserved. Certified copies of the resolution must be
1080 sent to the property owner and to the agency concerned
1081 with acquisition.

1082 iii. Taxes. The Board must advise taxing and assessing
1083 bodies of all public reservations, and such public
1084 reservations must be exempt from all State, County, and
1085 local taxes during the reservation period.

1086 iv. Preservation. During the reservation period, any use of
1087 the reserved land that involves constructing buildings or
1088 structures, removing trees, or clearing and grading must
1089 be approved by the Board. A person must not remove or
1090 destroy trees, topsoil, or cover; grade; or build a storm
1091 drainage structure that discharges water on the reserved
1092 land, except according to a storm drainage plan approved
1093 by the County Department of Permitting Services or the
1094 County Department of Transportation. Nothing in this
1095 Section relieves the landowner from the responsibility to
1096 maintain the property according to law or prohibits the
1097 owner from removing weeds or trash from reserved land
1098 or from selling the reserved land after approval of the
1099 Board.

1100 v. Posting. The Board must post properties in reservation
1101 with an appropriate sign, warning against violation of the
1102 preservation provisions and the penalties for a violation.

1103 b. Expiration of plan. The expiration or revocation of approval of
1104 a preliminary plan must not affect a reservation if, before the
1105 expiration date, a reservation plat has been recorded in the Land
1106 Records.

1107 E. Roads.

1108 1. Plan requirements.

- 1109 a. Master plan roads. Preliminary plans must include roads shown
1110 on any adopted Master Plan of Highways, in satisfaction of the
1111 Road Design and Construction Code. Where applicable, an
1112 approved plan must include recommendations of the State
1113 Highway Administration for construction and access to State
1114 roads.
- 1115 b. Continuation of roads. The subdivision must provide for
1116 continuation of any existing roads (constructed or recorded) that
1117 satisfy the Road Design and Construction Code, unless
1118 otherwise determined by the Board, considering the
1119 recommendations of other appropriate agencies.
- 1120 c. Future subdivisions. A tract in a preliminary plan application
1121 must be divided to not preclude future road openings and
1122 further logical *subdivision of adjacent land*.
- 1123 d. Alleys. The Board may require alleys where they are necessary
1124 to provide access.
- 1125 e. Railroad crossings. A preliminary plan involving new or
1126 existing roads crossing railroad tracks must provide an adequate
1127 right-of-way, including approach right-of-way and slope
1128 easements, for construction of an underpass or overpass unless
1129 otherwise determined by the Board, considering the
1130 recommendations of other appropriate agencies.
- 1131 f. Residential roads paralleling railroads. A residential road
1132 paralleling a railroad must be located at least 160 feet from the
1133 track to provide lots with sufficient depth backing to the
1134 railroad right-of-way.
- 1135 g. Railroad tracks. Existing railroad tracks must not be included
1136 within the rights-of-way of roads, except for crossings or rail
1137 transit lines outside the paved traveled portion of the road.
- 1138 2. Design standards.

- 1139 a. Right-of-way. Area for a road on a subdivision plan must
1140 include the full width of all rights-of-way recommended for the
1141 applicable road classification in the adopted master plan and in
1142 the Road Design and Construction Code.
- 1143 i. The Board may approve a narrower than standard road
1144 right-of-way if the Board finds that a narrower right-of-
1145 way is environmentally preferable, improves
1146 compatibility with adjoining properties, or allows better
1147 use of the tract under consideration.
- 1148 ii. In determining the width of a less than standard right-of-
1149 way, the Board must consider:
- 1150 (a) the recommendations of the County Department of
1151 Transportation or other applicable state or
1152 municipality transportation permitting agency;
- 1153 (b) the amount of traffic expected to use the proposed
1154 roads;
- 1155 (c) the maximum road right-of-way or improvement
1156 required for the proposed land use; and
- 1157 (d) the increased traffic, travel lane, and right-of-way
1158 requirements that would be created by maximum
1159 use and development of land using the road.
- 1160 b. Slope easement. When required for construction or road
1161 maintenance, the subdivision plan must establish an easement
1162 for a 2:1 slope along both sides of each road right-of-way for
1163 public use. The easement must be at the front setback line per
1164 zoning, or as determined by a site-specific slope study in
1165 coordination with the road grade approved under this Chapter.
- 1166 c. New roads, sidewalks, etc. The subdivider must design and
1167 construct the roads, alleys, bicycle facilities, sidewalks, and
1168 pedestrian ways with drainage, street trees, and other integral

- 1169 facilities in each new subdivision as required by the Road
1170 Design and Construction Code or a municipality, whichever
1171 applies.
- 1172 d. Existing public roads. In a preliminary plan or administrative
1173 subdivision plan application containing lots fronting on an
1174 existing State, County, or municipally maintained road, the
1175 subdivider must provide any additional required right-of-way
1176 dedication and reasonable improvement to the road in front of
1177 the subdivision, including sidewalks and bicycle facilities, as
1178 required by the Road Design and Construction Code or by a
1179 municipality, whichever applies.
- 1180 e. Private roads. Private roads must be built to the applicable
1181 structural standard, grade, and typical section based on the
1182 comparable functional classification in Chapter 49. Private
1183 roads must conform to the horizontal alignment requirements of
1184 this Chapter. The subdivider must have a registered engineer
1185 certify to the County Department of Permitting Services that
1186 each private road has been designed to meet the structural
1187 standards required by this Section. The subdivider must then
1188 certify to the County Department of Permitting Services that all
1189 construction complies with the design.
- 1190 f. Mid-block pedestrian right-of-way. The minimum right-of-way
1191 must be 20 feet for a mid-block pedestrian right-of-way.
- 1192 g. Drainage right-of-way. The minimum for an enclosed drainage
1193 right-of-way must be 20 feet, unless otherwise determined by
1194 the County Department of Permitting Services or other
1195 applicable public agency.
- 1196 h. Non-through roads. The Board must not approve any road that
1197 does not connect to another road at its beginning and end,
1198 unless a determination is made that:

- 1199 i. a through road is infeasible due to a property's unusual
1200 shape, size, topography, environmentally sensitive areas,
1201 or the characteristics of abutting property;
- 1202 ii. the road provides access to no more than 75 lots;
- 1203 iii. the road is properly terminated in a cul-de-sac or other
1204 turnaround; and
- 1205 iv. the road is less than 500 feet in length, measured along
1206 its centerline to the nearest through street, unless the
1207 Board determines that a longer length is necessary
1208 because of the unusual shape, size, topography, or
1209 environmentally sensitive areas of the subdivision.
- 1210 i. *Intersection.*
- 1211 i. Roads must be laid out to intersect as nearly as possible
1212 at right angles. The Board must not approve a proposed
1213 intersection of new roads at an angle of less than 70
1214 degrees.
- 1215 ii. Proposed road intersections must be spaced as shown in
1216 the table below, as measured from the centerline of the
1217 intersections, except in an Urban Area as defined in
1218 Chapter 49. When the Board finds that a greater or lesser
1219 spacing is appropriate, the Board may specify a greater or
1220 lesser spacing than otherwise required after considering
1221 the recommendation of the County Department of
1222 Transportation.
- 1223

<u>Road Classification</u>	<u>Distance Between Intersections (FT)</u>
<u>Tertiary</u>	<u>200</u>
<u>Secondary</u>	<u>300</u>
<u>Primary and Principal Secondary</u>	<u>400</u>
<u>Business District and Industrial</u>	<u>300</u>
<u>Arterial and Minor Arterial</u>	<u>500</u>
<u>Controlled Major Highway, Major Highway and Parkway</u>	<u>1000</u>

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iii. Corner lots at an intersection must be truncated by straight lines joining points 25 feet back from the theoretical property line intersection in each quadrant. When more or less width is needed for traffic safety and operations, the Board may specify a greater or lesser truncation than otherwise required. Any alley intersection or abrupt change in alignment in a block must have the corners truncated sufficiently for safe vehicular turning.

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j. Horizontal alignment. In all public and private primary, secondary and tertiary residential streets and culs-de-sac, the alignment must be designed so that all deflections in horizontal alignment are accomplished through segments of circular curves properly incorporated into the design. The minimum permitted centerline radii must be:

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i. Primary roads 300 feet

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ii. Secondary roads 150 feet

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iii. Tertiary roads 100 feet

1242 The Board must specify greater radii when safety requires. A
1243 tangent at least 100 feet long must be used between two reverse
1244 curves, except in a secondary or tertiary residential street.

1245 3. Additional roadway provisions.

1246 a. Road names. The Board must approve any road name before it
1247 is used. The Board must not approve any road name that is
1248 already used, or closely resembles any road name already used,
1249 anywhere else in the County. If a new road is an extension of or
1250 in a direct line with an existing road, the Board should continue
1251 the name of the existing road.

1252 b. Off-site sidewalks and bikeways. In approving a preliminary
1253 plan, the Board may, after considering the recommendation of
1254 the Department of Transportation or other applicable
1255 transportation agency, require a developer to provide a
1256 reasonable amount of off-site sidewalks, bikeways, or
1257 improvements. Off-site sidewalks, bikeways, or improvements
1258 may be required to provide necessary connections from the
1259 proposed development to an existing sidewalk or bikeway, an
1260 existing or master plan proposed bus or other public transit
1261 stop, an existing or proposed bikeshare station, or a public
1262 facility. The Board must find that such facilities will be used by
1263 residents or users of the development or for handicapped
1264 access. The developer must not be required to obtain any right-
1265 of-way to build or improve a sidewalk or bikeway.

1266 c. Rustic roads. In approving a preliminary plan, the Board must
1267 not require improvements that are contrary to Chapter 49,
1268 Article 8 or Executive Regulations governing rustic roads. The
1269 Board may waive any requirement of Sections 4.3.E.2.c and
1270 4.3.E.2.d that is incompatible with the rustic road or substitute
1271 any alternative requirement that is consistent with the goals of
1272 the rustic roads law. The Board may only require those
1273 improvements that retain the significant features of the road

1274 identified by the Council for preservation. If the Board is
1275 otherwise directed by this Section to require improvements that
1276 are contrary to the rustic roads law or Executive Regulations,
1277 the Board must consider the recommendations of the Rustic
1278 Roads Advisory Committee and evaluate the feasibility of trip
1279 reduction and alternative road improvements to the local
1280 roadway network. If the Board determines that no feasible
1281 alternative exists, it may require improvements that are
1282 necessary for traffic safety and operational requirements.

1283 d. Road grade approval. No final grading, sidewalk or pavement
1284 construction, or installation of utilities must be permitted in the
1285 bed of any proposed public or private road in any preliminary
1286 plan or administrative subdivision plan until the grade has been
1287 approved under this Chapter.

1288 e. Pedestrian paths. When a pedestrian path is included in a
1289 preliminary plan or administrative subdivision plan, the
1290 subdivider must grade and construct the path according to the
1291 plan approved by the Board, County Department of Permitting
1292 Services, or applicable municipality.

1293 f. Storm drainage. The subdivider must grade and provide
1294 drainage structures and storm sewers according to a plan
1295 approved by the County Department of Transportation and
1296 County Department of Permitting Services or applicable
1297 municipality in coordination with the construction of new
1298 roads.

1299 g. Street lights. The subdivider must provide street lights under
1300 the standards required by the Road Design and Construction
1301 Code. The County Department of Transportation may waive
1302 any requirement under this Subsection for any new subdivision
1303 that abuts a rustic road if the requirement is incompatible with
1304 the rustic road, or may substitute any alternative requirement
1305 that is consistent with the goals of the rustic roads law.

1306 h. Traffic calming. The Board, in consultation with the appropriate
1307 transportation agency, may require any traffic calming feature
1308 under Section 49-30 as a condition of subdivision approval.

1309 4. Platting roads. Area for roads must be shown on a record plat to the
1310 full width of the required right-of-way. A public road must be
1311 dedicated to public use. A private road must be platted as a road
1312 parcel with an access easement for the public. In the
1313 Commercial/Residential, Employment, Industrial, and Planned Unit
1314 Development zones, a private road may be platted by an easement
1315 alone if the Board finds it necessary to permit a structure that would
1316 otherwise cross a lot line created by a road parcel.

1317 F. Water supply and sewage disposal facilities.

1318 1. General. Before approving a preliminary plan, the Board must
1319 consider the availability of water and sewage facilities to the
1320 subdivision. The Board must rely on the recommendation of the
1321 Washington Suburban Sanitary Commission and the County
1322 Department of Environmental Protection, as applicable, concerning
1323 the proper type of water supply and sewage disposal.

1324 2. Requirements.

1325 a. The applicant must install or assure installation of any required
1326 public or private water and sewage disposal systems for each
1327 lot.

1328 b. Central water and sewer systems. All lots must have access to
1329 public central water and sewer facilities, and necessary private
1330 connections to such facilities, when conditions affecting the
1331 subject property result in one of the following determinations:

1332 i. public water and sewer connections are available to the
1333 proposed lots for existing mains;

1334 ii. existing public water and sewer mains can be extended to
1335 serve the lots; or

- 1336 iii. the County Department of Environmental Protection
1337 determines that an interim central water supply or sewage
1338 disposal facility, or both, must be constructed for public
1339 health and safety, pending future extension of the WSSC
1340 system or other public system.
- 1341 c. Use of County roads and State roads. For locations of any
1342 private connection to the public system within County or State
1343 road rights-of-way, the subdivider must obtain necessary
1344 permits to use public roads from the County or State, as
1345 applicable.
- 1346 3. Septic tiers.
- 1347 a. The Board must review any plan that includes residential lots
1348 under the Growth Tier rules as follows:
- 1349 i. in this Subsection:
- 1350 (a) a major subdivision is a division of land that would
1351 create 8 or more residential building lots; and
- 1352 (b) a minor subdivision is a division of land that
1353 would create 7 or fewer residential building lots.
- 1354 b. The Board must not approve any subdivision that would be
1355 served by one or more septic systems on land located in the
1356 Tier I area.
- 1357 c. The Board must not approve any major subdivision that would
1358 be served by one or more septic systems on land located in the
1359 Tier II area.
- 1360 d. The Board may approve a subdivision for any number of
1361 residential lots that would be served by one or more septic
1362 systems on land located in the Tier III area.

- 1363 e. The Board may approve a minor subdivision that would be
1364 served by one or more septic systems on land located in the
1365 Tier IV area.
- 1366 f. The Board may approve a major subdivision that would be
1367 served by one or more septic systems on land in the Tier IV
1368 area.
- 1369 g. The official map displaying the Growth Tier areas as allowed
1370 under the Maryland Sustainable Growth and Agricultural
1371 Preservation Act of 2012 is located on the Planning Department
1372 website. The Council may amend the official map either by:
- 1373 i. adopting Tiers in a General Plan amendment; or
- 1374 ii. an amendment under Section 10.7.
- 1375 The latest version of the map may be accessed from the
1376 Planning Department website at
1377 www.montgomeryplanning.org.

1378 G. *Markers and monuments.*

- 1379 1. The subdivider must have metal property line markers, approximately
1380 1/2-5/8 inch in diameter and 18 inches in length, or other generally
1381 accepted survey markers, placed in the ground at all lot corners,
1382 intersections of roads, intersections of roads and alleys with
1383 subdivision record plat boundary lines, and at all points on road, alley
1384 and boundary lines where there is a change in direction or curvature,
1385 unless such point coincides with the location of a reference
1386 monument. All markers must be properly set in the ground before the
1387 roads and alleys are accepted for public maintenance. For projects that
1388 do not include public roads, the owner must certify to the County
1389 Department of Permitting Services that all property corner markers
1390 have been set by a licensed land surveyor.
- 1391 2. The licensed land surveyor hired by the owner must place markers
1392 and monuments in the ground after road grading and paving in the

1393 subdivision and grading and landscaping of adjacent lots are
1394 completed. The markers and monuments must be located as specified
1395 on the plat. The licensed land surveyor must certify to the County
1396 Department of Permitting Services, or other appropriate governmental
1397 agency or the municipality that all survey monuments and markers are
1398 in place before the County or municipality accepts any road or alley
1399 established by the plat for maintenance.

1400 H. Stormwater management. All stormwater management requirements must
1401 satisfy Chapter 19.

1402 I. Public utilities. Pipelines, electric power and energy lines, and
1403 telecommunications lines must be underground in all subdivisions.

1404 1. Installation. Unless the Board determines that it is infeasible, the
1405 developer must install new and existing utilities underground.

1406 2. Completion. The Board may not approve a final plat until the
1407 developer demonstrates that the applicable utility companies or public
1408 agencies are able to provide utility service to the subdivision.

1409 J. Adequate Public Facilities Ordinance (APFO).

1410 1. Definitions. Words and phrases used in this Subsection have the
1411 meanings indicated in Chapter 8, Section 8-30.

1412 2. Applicability. The Board may only approve a preliminary plan when it
1413 finds that public facilities will be adequate to support and service the
1414 subdivision. Public facilities and services to be examined for
1415 adequacy include roads and transportation facilities, sewer and water
1416 service, schools, police stations, firehouses, and health clinics.

1417 3. Exemptions. The following developments are exempt from the
1418 requirements of this Subsection:

1419 a. exclusively residential development on a lot or parcel recorded
1420 by plat before July 25, 1989, or otherwise recorded in
1421 conformance with a preliminary plan approved before that date;

- 1422 b. any place of worship or use associated with a place of worship
1423 that does not generate peak hour vehicle trips that exceed the
1424 limits of the Subdivision Staging Policy traffic test; and
- 1425 c. any addition to a school associated with a place of worship that
1426 existed before July 25, 1989.

1427 4. Approval procedure.

- 1428 a. Each applicant for a preliminary plan must submit sufficient
1429 information for the subdivision to demonstrate the expected
1430 impact on and use of public facilities and services by the
1431 subdivision.
- 1432 b. The Board must consider the recommendations of the
1433 Executive and other agencies in determining the adequacy of
1434 public facilities and services under the Subdivision Staging
1435 Policy or other applicable guidelines.
- 1436 c. If the Board finds, under criteria and standards adopted by the
1437 Council, that additional transportation facilities or traffic
1438 mitigation measures are necessary to ensure that public
1439 transportation facilities will be adequate to serve the
1440 subdivision and to meet the transportation goals established by
1441 a master plan or the Subdivision Staging Policy for that portion
1442 of the County, the subdivision plan must be subject to the
1443 execution of a Traffic Mitigation Agreement (TMAg).

1444 5. Validity period.

- 1445 a. A determination of adequate public facilities made under this
1446 Chapter is timely and remains valid:
- 1447 i. for 12 years after the preliminary plan is approved for
1448 any plan approved after July 24, 1989, but before
1449 October 19, 1999;
- 1450 ii. for no less than 5 and no more than 12 years after the
1451 preliminary plan is approved, as determined by the Board

1452 when it approved the plan, for any plan approved after
1453 October 18, 1999, but before August 1, 2007;

1454 iii. for no less than 7 and no more than 12 years after the
1455 preliminary plan is approved, as determined by the Board
1456 when it approved the plan, for any plan approved after
1457 March 31, 2009, but before April 1, 2017; and

1458 iv. for no less than 5 and no more than 10 years after the
1459 preliminary plan is approved, as determined by the Board
1460 when it approved the plan, for any plan approved after
1461 July 31, 2007, and before April 1, 2009, or after March
1462 31, 2017.

1463 b. If an applicant requests a longer validity period than the
1464 minimum specified in 5.a, the applicant must submit a
1465 development schedule or phasing plan for completion of the
1466 project to the Board for its approval.

1467 i. At a minimum, the proposed development schedule or
1468 phasing plan must show the minimum percentage of the
1469 project that the applicant expects to complete in the first
1470 5 or 7 years, whichever is the applicable minimum, after
1471 the preliminary plan is approved.

1472 ii. To allow a validity period longer than the specified
1473 minimum, the Board must find that the size or
1474 complexity of the subdivision warrant the extended
1475 validity period and would not be adverse to the public
1476 interest. The Board must condition a validity period
1477 longer than the specified minimum on adherence to the
1478 proposed development schedule or phasing plan, and
1479 may impose other improvements or mitigation conditions
1480 if those conditions are needed to assure adequate levels
1481 of transportation or school service during the validity
1482 period.

- 1483 6. Validity period – County arts or entertainment use.
- 1484 a. A determination of adequate public facilities made under this
1485 Chapter is timely and remains valid for 10 years after the date
1486 of the conveyance of land to the County, or possession of
1487 building space by the County for an arts or entertainment use,
1488 under a preliminary plan for an optional method of
1489 development project approved under Section 59-C-6.2356 of
1490 the zoning ordinance in effect on October 29, 2014.
- 1491 b. The Board must grant an application to extend the validity
1492 period established under this paragraph for an additional 5 years
1493 if:
- 1494 i. at least 20 percent of the approved development,
1495 excluding the arts or entertainment use, either separately
1496 or in combination:
- 1497 (a) has been built;
- 1498 (b) is under construction;
- 1499 (c) is subject to building permits that have been
1500 issued;
- 1501 (d) is subject to a valid lease; or
- 1502 (e) has had a site plan approved under Sections 59-
1503 7.3.4 or 7.7.1.B; or
- 1504 ii. at any time during the 24 months before the application
1505 for extension being filed, the vacancy rate for class A
1506 office buildings in the Central Business District in which
1507 the project is located reaches 10 percent for direct and
1508 sublet space combined, as measured by a commercial
1509 Multiple Listings Service benchmark; or
- 1510 iii. the applicant makes a binding commitment to the County
1511 to make a contribution, as compensation for potential loss

1512 of property tax revenues, an amount equal to \$2 for each
1513 square foot of approved taxable improvements and
1514 thereafter makes the contribution within 6 months of
1515 final approval of the extension.

1516 c. The validity period is extended for the duration of any
1517 government imposed moratorium, or other government action
1518 resulting in a similar effect, that would prevent the applicant
1519 from:

1520 i. completing the regulatory approvals necessary for
1521 obtaining a building permit; or

1522 ii. obtaining a building permit.

1523 d. If the applicant proposes to change a use in a project that is
1524 approved under Section 59-C-6.2356 of the zoning ordinance in
1525 effect on October 29, 2014, and the new use would have the
1526 same or lesser impact as the original determination of adequate
1527 public facilities, the adequate public facilities approval for the
1528 project remains valid.

1529 7. Extensions.

1530 a. Application. Only the Board may extend the validity period for
1531 a determination of adequate public facilities; however, a request
1532 to amend any validity period phasing schedule may be
1533 approved by the Director if the length of the total validity
1534 period is not extended.

1535 i. The applicant must file an application for extension of an
1536 adequate public facilities determination or amendment of
1537 a phasing schedule before the applicable validity period
1538 or validity period phase expires.

1539 ii. The applicant must submit a new development schedule
1540 or phasing plan for completion of the project for
1541 approval.

- 1542 iii. For each extension of an adequate public facilities
1543 determination:
- 1544 (a) the applicant must not propose any additional
1545 development above the amount approved in the
1546 original determination;
- 1547 (b) the Board must not require any additional public
1548 improvements or other conditions beyond those
1549 required for the original preliminary plan;
- 1550 (c) the Board may require the applicant to submit a
1551 traffic study to demonstrate how the extension
1552 would not be adverse to the public interest; and
- 1553 (d) an application may be made to extend an adequate
1554 public facilities period for a lot within a
1555 subdivision covered by a previous adequate public
1556 facilities determination if the applicant provides
1557 sufficient evidence for the Board to determine the
1558 amount of previously approved development
1559 attributed to the lot.
- 1560 b. The Board may approve an amendment to the new development
1561 schedule approved under paragraph 7.a.ii if the applicant shows
1562 that financing has been secured for either:
- 1563 i. completion of at least one new building in the next stage
1564 of the amended development schedule; or
- 1565 ii. completion of infrastructure required to serve the next
1566 stage of the amended development schedule.
- 1567 c. *Exclusively residential subdivisions.* The Board may extend a
1568 determination of adequate public facilities for an exclusively
1569 residential subdivision beyond the otherwise applicable validity
1570 period if the County Department of Permitting Services has
1571 issued building permits for at least 50 percent of the entire

- 1572 subdivision before the application for extension is filed. The
1573 Board may approve one or more extensions if the aggregate
1574 length of all extensions for the development does not exceed:
- 1575 i. 2.5 years for a subdivision with an original validity
1576 period of 7 years or less; or
- 1577 ii. 6 years for a subdivision with an original validity period
1578 longer than 7 years.
- 1579 d. Nonresidential or mixed-use subdivisions.
- 1580 i. The Board may extend a determination of adequate
1581 public facilities for a preliminary plan for nonresidential
1582 or mixed-use development beyond the otherwise
1583 applicable validity period if:
- 1584 (a) the County Department of Permitting Services
1585 issued building permits for structures that will
1586 generate at least 40% of the total approved peak-
1587 hour vehicle trips associated with the development;
- 1588 (b) all of the infrastructure required by the conditions
1589 of the original preliminary plan approval has been
1590 constructed, or payments for its construction have
1591 been made; and
- 1592 (c) the County Department of Permitting Services
1593 either issued occupancy permits or completed a
1594 final building permit inspection for:
- 1595 (1) structures that generate at least 10 percent of
1596 the total peak-hour vehicular trips associated
1597 with the project within the 4 years before an
1598 extension request is filed; or
- 1599 (2) structures that generate at least 5 percent of
1600 the total peak-hour vehicular trips associated
1601 with the project within the 4 years before an

1602 extension request is filed, if structures that
1603 generate at least 60 percent of the total peak-
1604 hour vehicular trips associated with the
1605 project have been built or are under
1606 construction.

1607 ii. For any development that consists of more than one
1608 preliminary plan, the requirements of 7.d.i apply to the
1609 combined project. A project consists of more than one
1610 preliminary plan if the properties covered by the
1611 preliminary plans of subdivision are contiguous and were
1612 approved at the same time.

1613 iii. The length of any extension of the validity period granted
1614 under 7.d.i must be based on the approved new
1615 development schedule under 7.a.ii, but must not exceed:

1616 (a) 2.5 years for a subdivision with an original validity
1617 period of 7 years or less; or

1618 (b) 6 years for a subdivision with an original validity
1619 period longer than 7 years.

1620 iv. The extension expires if the applicant has not timely
1621 requested an extension and the development is not
1622 proceeding in accordance with the phasing plan, unless
1623 the Board or the Director has approved a revision to the
1624 schedule or phasing plan.

1625 v. In addition to the extension permitted under 7.d.iii, the
1626 Board may approve one or more additional extensions of
1627 a determination of adequate public facilities, not to
1628 exceed a total of 2.5 or 6 years, as applicable, if:

1629 (a) development that generates 30% or less of the total
1630 peak-hour vehicular trips remains to be built of
1631 either the entire approved development or the

1632 share of the development to be built by that
1633 applicant; or

1634 (b) the applicant will commit to reduce the amount of
1635 unbuilt development by at least 10%, and the
1636 validity period for the amount to be reduced will
1637 expire as scheduled.

1638 e. The Board may extend a determination of adequate public
1639 facilities once for up to 12 more years beyond the otherwise
1640 applicable validity period if the Board finds that:

1641 i. the preliminary plan for the development required a
1642 significant commitment of funds by the applicant,
1643 amounting to at least \$3 million, as adjusted annually by
1644 the consumer price index, to comply with specified
1645 infrastructure conditions;

1646 ii. the applicant has met or exceeded the required
1647 infrastructure conditions during the original validity
1648 period; and

1649 iii. the applicant's satisfaction of the required infrastructure
1650 conditions provides a significant and necessary public
1651 benefit to the County by implementing infrastructure
1652 goals of an applicable master plan.

1653 f. The validity period of a finding of adequate public facilities is
1654 not automatically extended under any circumstance, including
1655 when an applicant has completed all conditions imposed by the
1656 Board at the time of preliminary plan approval to meet adequate
1657 public facilities requirements.

1658 g. If a new adequate public facilities determination is required
1659 under this Subsection, the procedures in Chapter 8, Section 8-
1660 32 apply.

1661 K. Environment.

- 1662 1. Forest conservation. If a forest conservation plan is required under
1663 Chapter 22A, the Board must not approve a preliminary plan or any
1664 extension until all applicable requirements of that Chapter are
1665 satisfied. The Board must make compliance with a required forest
1666 conservation plan a condition of any approved preliminary plan,
1667 including any plan reviewed on a preliminary or final basis.
- 1668 2. Restriction of subdivision for environmental protection.
- 1669 a. Affected land.
- 1670 i. Floodplains. The Board must restrict subdivision or
1671 development of any property that is located in the 100-
1672 year floodplain as required by the County Department of
1673 Permitting Services under Chapter 19, Article III.
- 1674 ii. Unsafe Land. The Board must restrict the subdivision or
1675 development of any land it finds to be unsafe for
1676 development because of potential for flooding or stream
1677 erosion, soils with structural limitations, unstabilized
1678 slope or fill, steep slopes, or similar environmental or
1679 topographical conditions.
- 1680 iii. Trees, forests, and environmentally sensitive areas. The
1681 Board may restrict the subdivision or development of
1682 land to protect environmentally sensitive areas and
1683 achieve the objectives of Chapter 22A relating to
1684 conservation of tree and forest resources.
- 1685 b. Restrictions.
- 1686 i. General. In addition to any requirement imposed under
1687 Chapter 22A, the proposed preliminary plan or
1688 administrative subdivision plan may be restricted under
1689 this Section by:
- 1690 (a) deletion or rearrangement of proposed lots, roads,
1691 utilities, and other facilities;

- 1692 (b) the establishment of building restriction and land
1693 disturbance limit lines, and other protective
1694 measures or conditions; or
- 1695 (c) requirement of conservation easements, deed
1696 restrictions, or covenants over portions of lots or
1697 unplatted parcels to be recorded.
- 1698 ii. *Building restriction line.* The Board may require a
1699 building restriction line shown on the plat to protect
1700 floodplain and other environmentally sensitive or unsafe
1701 building areas.
- 1702 iii. *Limit of disturbance line.* The Board may require a limit
1703 of disturbance line to protect environmentally sensitive
1704 areas or unsafe land.
- 1705 iv. *Floodplain or unsafe land on a lot.* The Board may allow
1706 a platted lot to contain floodplain or unsafe land when
1707 there is sufficient safe ground to erect a building within
1708 the required setbacks of the zoning classification. The
1709 Board may require a building restriction line on the plat.
1710 The restriction line must provide at least a 25-foot
1711 setback between any building and the unsafe areas. A
1712 greater setback must be provided where necessary for
1713 positive drainage between the building and unsafe area.
- 1714 v. *Denial of a building permit.* The County Department of
1715 Permitting Services must not issue a permit for a new
1716 building within any area for which building or land
1717 disturbance is restricted under this Section.
- 1718 L. *Residential cluster subdivision.*
- 1719 1. *Purpose.* The cluster method of subdivision is intended to promote
1720 both flexibility in lot size and variety of housing types in residential
1721 communities without changing existing densities or neighborhood
1722 character. This method of development is also intended to encourage

1723 the preservation of existing topography, priority forests, and
1724 environmentally sensitive areas while providing useful community
1725 green or open space. The Board must approve the use of this optional
1726 method of subdivision.

1727 2. *Conditions for use.* The use of the cluster method of development is
1728 subject to the following conditions and requirements:

1729 a. the requirements in Chapter 59 in the applicable zone;

1730 b. except in the Rural Cluster zone or as recommended by a
1731 master plan in the Residential Estate-2C zone, an applicant may
1732 only propose a cluster development when WSSC will serve the
1733 development by public water and sewer;

1734 c. the open space and green areas proposed by the applicant in the
1735 cluster development must comply with the general purpose of
1736 cluster development, and the application must include a plan
1737 detailing the post-development maintenance responsibilities and
1738 use of those areas; and

1739 d. the Board must count the land dedicated to public use for
1740 school and park sites in the tract area for the purpose of
1741 calculating density, and allow the use of the resulting density
1742 development of the remaining land when this can be
1743 accomplished in compliance with the purposes of this Section.

1744 3. *Procedure for approval.*

1745 a. In addition to any other required information in the preliminary
1746 plan application, the applicant must include a statement
1747 outlining the ownership and use of the common open space and
1748 green area within the subdivision, and a plan showing the
1749 construction staging of all improvements. The Board must
1750 make the staging plan part of the preliminary plan approval and
1751 must be subject to approval by the Board.

- 1752 b. The Board must determine whether the site is appropriate for
1753 cluster development and will accomplish the purposes of the
1754 cluster method of development. In making this determination,
1755 the Board must consider the following:
- 1756 i. the influence that the proposed development may have on
1757 existing or future development in nearby areas;
- 1758 ii. the spatial relationship between the buildings and the
1759 open space and green area;
- 1760 iii. the location, character, area, and dimensions of the open
1761 space and green area and its usefulness for the common
1762 recreational or other purposes for its intended use;
- 1763 iv. the adequacy of the staging plan;
- 1764 v. the nature of the site; and
- 1765 vi. the use and zoning of nearby land.

1766 **Division 50.5. Pre-Preliminary Submissions**

1767 **Section 5.1. Filing and Specifications**

- 1768 A. *Filing.* Before a subdivider submits a preliminary plan, the subdivider may
1769 seek advice on limited aspects of a future subdivision plan from the Planning
1770 Department Staff, the Development Review Committee, or the Board as
1771 appropriate, or seek a binding decision from the Board. The Applicant must
1772 file a pre-preliminary submission and applicable supporting information,
1773 together with an application form and fee under Section 4.1.A.
- 1774 B. *The drawing.* A pre-preliminary drawing must contain the location of the
1775 property and sufficient information concerning the issue on which advice or
1776 a decision is requested. The drawing may include, but is not limited to:
- 1777 1. the generalized layout of the subdivision;
- 1778 2. the location and classification of roads, public rights-of-way,
1779 easements, and dedications of land;

- 1780 3. the method of controlling erosion, sediment, and stormwater;
- 1781 4. the relationship to existing or planned subdivisions;
- 1782 5. the provisions for water and sewerage; and
- 1783 6. any other features or information the applicant chooses to submit.

1784 **Section 5.2. Approval Procedure**

1785 A. Referral. Application processing and referral of the plan must satisfy
1786 Sections 4.1.D and 4.2.A.

1787 B. Hearing date. The Board must schedule a public hearing to begin within 90
1788 days after the date an application is accepted. The Director may postpone the
1789 public hearing once, by up to 30 days, without Board approval. The Director
1790 or applicant may request an extension beyond the original 30 days with
1791 Board approval. Any extension of the public hearing must be noticed and on
1792 the hearing agenda with the new public hearing date indicated.

1793 C. Action on a pre-preliminary submission.

1794 1. Advisory. The Development Review Committee must provide
1795 recommendations on the pre-preliminary plan on the day of the
1796 scheduled committee meeting. Planning Department Staff must
1797 transmit the recommendations provided by agencies outside of the
1798 committee meeting to the applicant when they are received.

1799 2. Binding.

1800 a. After receiving the recommendations of the public agencies and
1801 the advice of the Development Review Committee, the
1802 Planning Department Staff must present the application to the
1803 Board, together with its recommendations for approval,
1804 disapproval, or approval with conditions. The Board must act
1805 to:

1806 i. approve the pre-preliminary submission;

- 1807 ii. disapprove it, stating in writing the reasons for
1808 disapproval; or
- 1809 iii. approve it, subject to such conditions or modifications as
1810 the Board finds necessary. Approval of any feature of a
1811 pre-preliminary submission does not limit the ability of
1812 the Board to impose further conditions at the time of
1813 preliminary plan on features not included in the Board's
1814 binding decision.
- 1815 3. Modification of preliminary plan procedures after pre-preliminary
1816 submission approval.
- 1817 a. A subdivider must file an application for a preliminary plan
1818 within 90 days after the date of mailing of the Board resolution
1819 for the pre-preliminary plan; otherwise, the approval will
1820 expire.
- 1821 b. The procedures in Sections 4.1 and 4.2 are modified as follows:
- 1822 i. the preliminary plan application must contain the
1823 statement of the Board's action on the pre-preliminary
1824 application;
- 1825 ii. in their review of the preliminary plan under Section 4.2,
1826 the agencies to which the preliminary plan is referred and
1827 the Planning Department Staff must not recommend
1828 changes or modifications to the binding pre-preliminary
1829 decision made by the Board, unless requested in writing
1830 by the applicant or unless the applicant substantially
1831 changes some feature of the approved pre-preliminary
1832 submission. The Board must review any conditions
1833 imposed as part of the Board's binding decision to
1834 determine that the preliminary plan satisfied those
1835 conditions; and
- 1836 iii. the Board, in its review of the preliminary plan, must
1837 consider only those features of the preliminary plan that

1838 are not in conformity with the conditions imposed by the
1839 Board in the pre-preliminary application review, plus any
1840 features not considered or acted upon in that review.

1841 **Division 50.6. Administrative Subdivision Plan**

1842 **Section 6.1. Applicability**

1843 The subdivider may file an administrative subdivision plan application instead of a
1844 preliminary plan under the following circumstances. The Director must review the
1845 necessary technical requirements of the administrative subdivision plan under
1846 Section 4.3.

1847 A. *Existing places of worship and institutional uses.* The Board may approve a
1848 lot created for existing facilities such as: places of worship, private schools,
1849 country clubs, private institutions, and similar uses located on unplatted
1850 parcels, if:

- 1851 1. the applicable requirements for adequate public facilities under
1852 Section 4.3.J are satisfied before approval of the plat;
- 1853 2. any required road dedications, or covenants for future dedications, are
1854 shown on the record plat;
- 1855 3. requirements for meeting forest conservation, stormwater
1856 management, and environmental protection, if applicable, are satisfied
1857 before approval of the plat;
- 1858 4. it is located in a special protection area and all applicable special
1859 protection area requirements and guidelines are satisfied before
1860 approval of the plat;
- 1861 5. a landscaping and lighting plan including the parking lot layout is
1862 submitted for Planning Department Staff approval before approval of
1863 the plat; and
- 1864 6. the property is the subject of an approved conditional use and all
1865 conditions of the conditional use approval remain in full force.

1866 B. Subdivision for creation of certain residential lots located in the
1867 Agricultural Reserve zone. Up to 5 lots for detached houses are permitted
1868 under these procedures in the AR zone if:

1869 1. written approval for a proposed well and septic area is received from
1870 the County Department of Permitting Services before approval of the
1871 plat;

1872 2. any required road dedications and public utility easements along the
1873 frontage of the proposed lots are shown on the record plat, and the
1874 applicant provides any required improvements;

1875 3. the requirements for adequate public facilities under Section 4.3.J are
1876 satisfied before approval of the plat;

1877 4. a covenant is recorded for the unplatted balance of the tract noting that
1878 density and development rights have been used for the new lots. This
1879 covenant must be noted on the record plat for the lots;

1880 5. lots created in the AR zone through this procedure are 5 acres or less,
1881 unless approved by the Board; and

1882 6. forest conservation and environmental protection requirements are
1883 satisfied before approval of the plat.

1884 C. Subdivision for creation of certain residential lots. Up to 3 lots for detached
1885 houses are permitted under these procedures in the Residential Estate-2,
1886 Rural, Rural Cluster, and Rural Neighborhood Cluster zones, or one lot for a
1887 detached house created in any residential zone by platting the entirety of one
1888 existing unplatted parcel created before October 8, 1985, if:

1889 1. the lots are approved for standard method development;

1890 2. written approval for any proposed well and septic area is received
1891 from the County Department of Permitting Services, Well and Septic
1892 Section before approval of the plat;

- 1893 3. any required road dedications and associated public utility easements
1894 are shown on the plat and the applicant provides any required
1895 improvements;
- 1896 4. the requirements for adequate public facilities under Section 4.3.J are
1897 satisfied before approval of the plat; and
- 1898 5. forest conservation, stormwater management, and environmental
1899 protection requirements are satisfied before approval of the plat.
- 1900 D. Consolidation of existing lots or parts of lots in a nonresidential zone. In a
1901 nonresidential zone, a lot may be created by combining existing adjoining
1902 lots, or a lot and a part of a previously platted lot, if:
- 1903 1. the lots or parts of lots are:
- 1904 a. created by the same subdivision, and any applicable conditions
1905 of the original subdivision approval, including limits on
1906 density, remain in effect; or
- 1907 b. created by a subdivision approval without specific density
1908 limits and the new lot is limited to the density of the existing
1909 development;
- 1910 2. any required road dedications and public utility easements along the
1911 frontage of the proposed lots are shown on the record plat, and the
1912 applicant must provide any required improvements;
- 1913 3. where new development is proposed, the requirements for adequate
1914 public facilities under Section 4.3.J are satisfied before approval of the
1915 plat;
- 1916 4. forest conservation, stormwater management, and environmental
1917 protection requirements, if applicable, are satisfied before approval of
1918 the plat; and
- 1919 5. located in a special protection area, and all applicable special
1920 protection area requirements and guidelines are satisfied before the
1921 Board approves the plat.

1922 **Section 6.2. Filing Requirements**

1923 A. Filing. The Applicant must file the administrative subdivision plan and
1924 applicable supporting information, together with an application form and fee
1925 to satisfy Subsection 4.1.A.

1926 B. Application processing.

1927 1. The applicant must submit an initial application to the Director. The
1928 Director must review the application for completeness within 5 days
1929 after receipt. An application is incomplete if any required element is
1930 missing or is facially defective, e.g., a drawing that is not to scale. The
1931 assessment of completeness must not address the merits of the
1932 application.

1933 2. The applicant must resubmit a revised application within 10 days from
1934 the date of the written rejection, or the application will be
1935 automatically withdrawn. The Director must review the revised
1936 application for completeness within 5 days after receipt.

1937 3. The administrative subdivision plan is deemed filed when the
1938 application has been accepted as complete for review.

1939 4. Public notice is required per a regulation approved under Section 10.1.

1940 C. The drawing. An administrative subdivision plan must contain sufficient
1941 information relevant to the aspects of the submission. The plan must include
1942 the generalized layout of the subdivision and any other features or
1943 information needed to support submission of a plat.

1944 **Section 6.3. Approval Procedures**

1945 A. Referral of plan. Immediately after accepting an application, the Director
1946 must send a copy to the Development Review Committee and other
1947 reviewing agencies for the agencies' comments concerning the plan. The
1948 Development Review Committee must provide recommendations to the
1949 Director on the administrative subdivision plan before the committee
1950 meeting.

1951 **B. Action on an administrative subdivision plan.**

1952 1. After receiving the recommendations of the Development Review
1953 Committee and other reviewing agencies, the Director must approve
1954 or disapprove the administrative subdivision plan in writing.

1955 2. All necessary improvements to support the development must be
1956 completed or assured under Section 10.2.

1957 3. If correspondence is received, the Director must decide whether any
1958 comment is substantive enough to require that the plan be acted on by
1959 the Board. When applicable, the Director must schedule Board action
1960 on its next available agenda. If approved, the plan will remain valid
1961 under Section 4.2.G, by which time a plat must be recorded.

1962 4. The Director must take action on an administrative subdivision plan or
1963 schedule a public hearing within 90 days after the date an application
1964 is accepted. The Director may postpone the public hearing once, by up
1965 to 30 days, without Board approval. The Director or applicant may
1966 request an extension beyond the original 30 days with Board approval.
1967 Any extension of the public hearing must be noticed and on the
1968 hearing agenda with the new public hearing date indicated.

1969 **C. Appeal of an administrative subdivision plan.**

1970 1. Appeal to the Planning Board. After the Director issues a written
1971 decision on an administrative subdivision plan, an applicant or party
1972 who received notice of the application and testified or submitted
1973 testimony on the plan may appeal the decision to the Board within 30
1974 days.

1975 2. Hearing. The Board must hold a de novo hearing on the appeal. The
1976 Board must adopt a written resolution explaining its decision. For
1977 purposes of judicial review, the decision of the Board is the final
1978 agency action.

1979 **Division 50.7. Minor Subdivision**

1980 **Section 7.1. Applicability**

1981 The submission of a preliminary plan or administrative subdivision plan under
1982 Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

1983 A. *Minor lot line adjustment.* The sale or exchange of part of a lot between
1984 owners of adjoining lots for the purpose of small adjustments in boundaries,
1985 if:

1986 1. the total area of the adjustment is 5 percent or less of the combined
1987 area of the lots affected by the adjustment;

1988 2. additional lots are not created;

1989 3. the adjusted lot line is approximately parallel with the original lot line
1990 or, if it is proposed to intersect with the original line, it does not
1991 significantly change the shape of the lots involved;

1992 4. the owner submits a scaled drawing for review and approval by the
1993 Director. The drawing may be a copy of the existing record plat and
1994 must contain the following information:

1995 a. proposed lot line adjustment as a dashed line;

1996 b. any buildings, driveways, or other improvements located within
1997 15 feet of the proposed adjusted lot line;

1998 c. any minimum building setback that would be altered by the
1999 minor lot line adjustment; and

2000 d. the amount of lot area affected by the minor lot line adjustment;

2001 5. The drawing is approved, revised, or denied by the Director in writing
2002 within 10 days after the drawing is submitted or it is deemed
2003 approved.

2004 A record plat application must be submitted to the Director within 90 days
2005 after approval or the approval is void.

2006 Any minor lot line adjustment between properties that occurred before May
2007 19, 1997 remains as an exemption to platting under Subsection 3.3.B.3.

2008 B. *Conversion of an outlot into a lot.* An outlot may be converted into a lot if:

- 2009 1. the outlot is not required for open space or green area, or is otherwise
2010 constrained in a manner that prevents it being converted into a
2011 buildable lot;
- 2012 2. there is adequate sewerage and water service to accommodate
2013 development on the lot;
- 2014 3. all applicable requirements or agreements under the Adequate Public
2015 Facilities Ordinance in Subsection 4.3.J and the Subdivision Staging
2016 Policy are satisfied before recording the plat;
- 2017 4. all applicable conditions or agreements applicable to the original
2018 subdivision approval creating the outlot apply to the new lot. The
2019 conditions and agreements may include, but are not limited to, any
2020 adequate public facilities agreement, conservation easement, or
2021 building restriction lines; and
- 2022 5. the outlot is located within a special protection area and all applicable
2023 special protection area requirements and guidelines, including the
2024 approval of a water quality plan, are satisfied before recording the
2025 plat.
- 2026 C. Consolidation. Adjoining properties in the Rural Residential or Residential
2027 Detached zones, not developed under cluster provisions, may be combined
2028 in the following ways:
- 2029 1. by consolidating 2 or more lots into a single lot, consolidating lots and
2030 an outlot into a single lot, or consolidating a lot and an abandoned
2031 road right-of-way, if:
- 2032 a. any conditions applicable to the original subdivision remain in
2033 effect;
- 2034 b. the number of trips generated on the new lot do not exceed
2035 those permitted for the original lots; and
- 2036 c. all required right-of-way dedication is provided.

2037 2. by consolidating an existing platted lot or part of a lot that contains a
2038 legally constructed detached house, with a piece of land created as a
2039 result of a deed, if:

2040 a. the portion of land created by deed cannot itself be platted
2041 under the area and dimensional standards of the zone;

2042 b. any conditions applicable to the existing lot remain in effect on
2043 the new lot;

2044 c. any required road dedication is provided; and

2045 d. the existing platted lot was not identified as an outlot on a plat.

2046 D. Subdivision to reflect ownership. Plats for a commercial, industrial, or multi-
2047 unit residential lot may be recorded to reflect a change in ownership, deed,
2048 mortgage, or lease line as follows:

2049 1. a plat may be filed to create or delete an internal lot or create
2050 ownership lots within a previously recorded lot, if:

2051 a. all conditions of approval for the original subdivision that
2052 created the lot remain in effect;

2053 b. the total maximum number of trips generated on all new lots or
2054 ownership lots created will not exceed the number of trips
2055 approved for the lot in the original subdivision;

2056 c. all land in the original subdivision lot is included in the plat;
2057 and

2058 d. any necessary cross easements, covenants, or other deed
2059 restrictions necessary to implement all the conditions of
2060 approval on the lot in the original subdivision are executed
2061 before recording the plat.

2062 2. for ownership lots, the lot in the original subdivision is considered a
2063 single lot of record. Any ownership lot created under this Subsection
2064 is only for the convenience of the owner; an ownership lot is not:

- 2065 a. used to determine building setbacks or to establish conformance
2066 with any other law or regulation;
- 2067 b. a bar to receiving a building permit or other approval necessary
2068 to develop or use any of the ownership lots and structures on
2069 such lots, including structures that cross an ownership line; and
- 2070 c. a change to any condition of approval for the subdivision that
2071 created the lot in the original subdivision.
- 2072 3. ownership lots may not be used to create the outside boundaries of a
2073 private road right-of-way parcel.
- 2074 E. Plat of correction. A plat of correction may be used for any of the following:
- 2075 1. to correct inaccurate or incomplete information shown on a previously
2076 recorded plat, such as drafting or dimensional errors on the drawing;
2077 failure to include a required note, dedication, easement or other
2078 restriction; incorrect or omitted signatures; or other information
2079 normally required to be shown on a recorded plat. All owners and
2080 trustees of the land affected by the correction must sign the revised
2081 plat. In addition, the plat of correction must identify the original plat
2082 that is being replaced and contain a note identifying the nature of the
2083 correction;
- 2084 2. to revise easements to reflect a Board action;
- 2085 3. to improve clarity and legibility, the owner of any lands shown on a
2086 record plat may record an exact copy of the plat, except for necessary
2087 change of scale and the addition of any other necessary elements to
2088 make the plat conform to the requirements of this Chapter. The new
2089 plat must indicate that it is an exact copy of the original plat except for
2090 the changes made under this Subsection.
- 2091 F. Pre-1958 parcels. An unplatted parcel created by deed before June 1, 1958,
2092 if the parcel is developable for only one detached house.

2093 G. *Creation of a lot from a part of a lot. A part of a previously recorded lot in a*
2094 *Residential Detached zone that was created as a result of a deed transfer of*
2095 *land from the lot may be converted into a lot if:*

2096 1. *the part of lot was created by deed recorded before June 1, 1958, or*

2097 2. *the part of lot contains a legally constructed detached house; and*

2098 3. *all conditions or agreements applicable to the subdivision approval*
2099 *creating the original lot apply to the new lot. The conditions and*
2100 *agreements may include, but are not limited to, any adequate public*
2101 *facilities agreement, conservation easement or building restriction*
2102 *lines.*

2103 **Section 7.2. Procedure for Platting Minor Subdivisions**

2104 The subdivider of a property that satisfies the requirements for a minor subdivision
2105 under Section 7.1 may submit an application for record plat for approval under
2106 Section 8.1 and Section 8.2.

2107 A. *Additional considerations.*

2108 1. *In the case of minor subdivisions, no additional improvements beyond*
2109 *those required for the original subdivision are required until new*
2110 *development occurs.*

2111 2. *Any lot created through the minor subdivision process and any lot*
2112 *replatted as part of a minor lot line adjustment must satisfy all*
2113 *applicable zoning requirements in Chapter 59.*

2114 **Article III. Plats**

2115 **Division 50.8. Plats – Generally**

2116 **Section 8.1. Filing and Specifications**

2117 All boundaries, road right-of-way lines, lot lines, and any other pertinent lines must
2118 be shown together with sufficient data to locate each line and property corner on
2119 the ground.

- 2120 A. Application and fee. The subdivider must file the plat drawing with the
2121 Board, together with the application form, supporting information, and the
2122 required plat fee. Any fees required by other County agencies in connection
2123 with their review of plats must also be paid.
- 2124 B. Specifications.
- 2125 1. The plat accompanying the application for approval must satisfy
2126 Section 8.1.C. The lack of information under any item specified or
2127 inadequate information supplied by the applicant may cause the Board
2128 to disapprove a plat.
- 2129 2. The Board may approve guidelines for the preparation of a record
2130 plat.
- 2131 C. Plat drawing. The plat drawing prepared with the application must be an 18-
2132 inch by 24-inch sheet, including a margin of one-half inch outside ruled
2133 border lines. It must be accurately drawn to a scale approved by the Board
2134 and must include the following:
- 2135 1. Title block. The title block must appear in the lower right corner of the
2136 sheet and must include the following information:
- 2137 a. the words "Subdivision Record Plat";
- 2138 b. approved name of the subdivision and the Section thereof,
2139 including blocks, lots, parcels, and outlots;
- 2140 c. election district, County and State, or name of town instead of
2141 election district, if the subdivision is in an incorporated town;
- 2142 d. scale of drawing;
- 2143 e. name of firm of licensed land surveyor who prepared the plat
2144 and date of completion; and
- 2145 f. a description of the general purpose of the plat, including,
2146 without limitation, plat of correction or resubdivision.

- 2147 2. Graphic details. The plat must show the following, as applicable in
2148 each case:
- 2149 a. all property boundary lines necessary to identify the property
2150 included in the subdivision, with a reference to the previous
2151 conveyance by which the property was acquired. Where the
2152 subdivision is a part of such conveyance, the boundaries shown
2153 must include the last complete line touched on by the
2154 subdivision or an indicated dimension describing the remainder
2155 of the complete line. Where a subdivision includes all or parts
2156 of 2 or more conveyances, the boundaries of such separate deed
2157 descriptions must be indicated by light lines running through
2158 the subdivision, together with deed reference to each original
2159 tract or unplatted parcel;
- 2160 b. locations, widths, and names of all road rights-of-way located
2161 in the subdivision;
- 2162 c. locations and widths of alley and mid-block pedestrian rights-
2163 of-way or parcels;
- 2164 d. Existing and proposed encumbrances.
- 2165 i. Existing. The area and recordation reference for recorded
2166 easements or rights-of-way established for public
2167 services, conservation purposes or utilities, and other
2168 known encumbrances;
- 2169 ii. Proposed. Sufficient dimensions to identify the location
2170 of all easements or rights-of-way to be established by the
2171 plat and, as to each such encumbrance, the general
2172 purpose, and the grantee;
- 2173 iii. Environmental. Description of any conservation
2174 easement, in addition to any 100-year floodplain and
2175 100-year floodplain building restriction line required
2176 under Chapter 19, Article III;

- 2177 e. any areas to be reserved for common use by residents of the
2178 subdivision or for general public use, with the purposes
2179 indicated;
- 2180 f. bearings and lengths of all block and lot lines, together with the
2181 length of radii, arcs, and chords with chord bearings and central
2182 angles for all curves in the layout. A curve table must be used
2183 containing these data and referenced to the overall curves
2184 shown in the drawing.
- 2185 i. All bearings shown on plats must be referenced to the
2186 Maryland Coordinate System, and the survey must be
2187 accurately referenced to such system using conventional
2188 survey methods or other technology acceptable to the
2189 Board, except that a plat of resubdivision requiring no
2190 preliminary plan approval and plats of correction may be
2191 referenced to the plat meridian used on the original
2192 record plat; and
- 2193 ii. in all cases, the meridian used must be noted alongside
2194 the north arrow, which is required to be shown on each
2195 plat;
- 2196 g. Maryland coordinate values, tied to the Maryland Coordinate
2197 System, for at least 4 corners of the plan of subdivision shown
2198 on the plat, unless the survey is referenced to a record plat
2199 meridian. The identification names or numbers and coordinate
2200 values for the control stations used must be shown. Coordinate
2201 values and distance dimensions on plats must be expressed in
2202 feet, based on the United States Survey Foot;
- 2203 h. the location and nature of existing property corner markers
2204 found that coincide with property corners held referenced on
2205 the plat must be labeled as such;
- 2206 i. lots numbered in sequential order. In tracts containing more
2207 than one block, the blocks must be lettered in alphabetical

- 2208 order. In case there is a resubdivision of lots in any block, such
2209 resubdivided lots must be numbered sequentially, beginning
2210 with the number following the highest lot number in the block
2211 and the original lot lines shown dashed and original lot numbers
2212 shown dotted;
- 2213 j. area in square feet, or other units shown on the plat, of each lot,
2214 outlot, parcel, or land dedicated to public use;
- 2215 k. building setback lines, shown graphically with dimensions,
2216 where they exceed the minimum required in Chapter 59, and
2217 any other building restriction lines that may apply;
- 2218 l. bearings and lengths of tie connections between all blocks and
2219 the plat boundary;
- 2220 m. names and locations of adjoining subdivisions with lot and
2221 block numbers of immediately adjoining lots, together with plat
2222 references;
- 2223 n. location and apparent ownership of adjoining unsubdivided
2224 property with land record reference, or County Register of
2225 Wills or equity case references;
- 2226 o. vicinity map showing location of subdivision, with roads in the
2227 immediate proximity labeled. In the case of a large subdivision
2228 requiring multiple plats, a key map must be included to show
2229 the location of the plat relative to the entire subdivision;
- 2230 p. bar scale;
- 2231 q. a note stating that the lots shown will have public water and
2232 sewer, or have been approved by the County Department of
2233 Permitting Services for the installation of individual water
2234 supply systems or individual sewerage disposal systems;
- 2235 r. for lots developed using transferable development rights, a
2236 statement concerning the number of development rights
2237 transferred and the following information:

- 2238 i. the number of development rights transferred and the
2239 serial numbers of the development rights transferred;
- 2240 ii. liber and folio reference to the transfer of development
2241 rights easement; and
- 2242 iii. a notation of the recordation reference of a conveyance
2243 required by Section 59-4.9.15, as amended;
- 2244 s. file number of the preliminary plan and, as applicable, the file
2245 numbers of the site plan and project or sketch plan upon which
2246 the plat is based;
- 2247 t. tax map reference;
- 2248 u. a table containing the total number and area in square feet of
2249 lots, outlots, or parcels included on the plat and areas dedicated
2250 to public use; and
- 2251 v. any other element for inclusion on the plat that is authorized by
2252 law or regulation or required by the Board.
- 2253 3. Surveyor certificate. Certificate by the licensed land surveyor in a
2254 form required by the Board, certifying to the accuracy of the plat and
2255 to areas included on the plat and dedicated to public use. The
2256 certificate must also include conveyance information with recording
2257 references of the lands contained in the plat.
- 2258 4. Owner's Certificate. Certificate by the owner and all parties of
2259 interest, in a form required by the Board, adopting the plat; granting
2260 slope, utility, conservation, or any other easements; and establishing
2261 building restriction lines that are required to be drawn or noted on the
2262 plat per the conditions of the approved Preliminary Plan or
2263 Administrative Subdivision Plan and dedicating to public use roads,
2264 alleys, rights-of-way, and any other areas approved for dedication to
2265 public use by the Board. The owner must certify that a licensed land
2266 surveyor will be engaged to set all property corner markers under
2267 Subsection 4.3.G.

- 2268 5. Title information notice. A statement indicating that the plat does not
2269 show every matter affecting or restricting the ownership and use of
2270 the property, and does not replace an examination of title or that it
2271 notes all matters affecting title.
- 2272 6. Approval box. An approval box in a form required by the Board must
2273 be provided. The box must provide approval space for signatures by
2274 the Board and the County Department of Permitting Services.
- 2275 D. Multiple plats for a single subdivision. A plat may include only a portion of
2276 the approved preliminary plan if the portion covered is in substantial
2277 compliance with the approved staging schedule. The public improvements to
2278 be constructed in the area covered by the plat must be sufficient by
2279 themselves to support the development and to provide adequately for the
2280 health, safety, and convenience of the present and future residents and for
2281 adequate access to contiguous areas, schools, and other public sites. Any plat
2282 filed under this Subsection must show any dedication to the intersection of
2283 all roads abutting corner lots or any other road.
- 2284 E. Other supporting information. The following supporting information is also
2285 required with the plat application.
- 2286 1. Documents and plans:
- 2287 a. copies of all resolutions of approved sketch, project,
2288 preliminary, and site plans upon which the plat is based;
- 2289 b. copies of any covenants, restrictions, or joint-use and
2290 maintenance agreements that are in effect or may be recorded as
2291 part of the subdivision must be filed with the Board, together
2292 with any other supporting plans or documents required under
2293 this Chapter and Chapter 22A;
- 2294 c. copies of approved, preliminary, or final forest conservation
2295 plan, as appropriate, or exemption letter; and
- 2296 d. such other information required by the applicable resolutions of
2297 the Board as a condition of approval of the preliminary plan,

2298 project plan, sketch plan, or site plan or listed in the plat
2299 application form.

2300 2. Preliminary plans using transferable development rights (TDRs). For
2301 a subdivision designated in sewer category 3 conditioned upon
2302 approval of a preliminary plan that uses TDRs, a new plat using less
2303 than the requisite number of TDRs may not be approved until the
2304 sewer category has been reconfirmed by the Council.

2305 3. Submission of digital plat data. Digital plat data in a format approved
2306 by the Director.

2307 4. Plat for a cluster subdivision.

2308 a. Any plat for a cluster subdivision must be accompanied by
2309 covenants, agreements, or other documents showing the
2310 ownership and method of maintenance and uses of areas that
2311 are declared to be open space for common use. Development,
2312 construction, or other rights in the open space areas must be
2313 limited to the indicated recreational or scenic uses only. Public
2314 access to these areas may be limited. Covenants or agreements
2315 must be in perpetuity and must include necessary public utility
2316 easements.

2317 b. Plats may be submitted in phases; however, density on any one
2318 plat may not exceed 115 percent of the allowed density of the
2319 area included on the plat.

2320 c. Plats must contain a statement that the land shown on the plat
2321 lies within an approved cluster subdivision and resubdivision
2322 that would result in the creation of additional lots is not
2323 permitted after the property is platted.

2324 d. Covenants or joint use and maintenance agreements affecting
2325 the common lands must be recorded simultaneously with the
2326 plat.

2327 F. Application processing.

- 2328 1. The applicant must submit a plat application to the Director. The
2329 Director must review the application for completeness within 5 days
2330 after receipt. An application is incomplete if any required element is
2331 missing. The assessment of completeness must not address the
2332 accuracy of any of the elements or the merits of the application. The
2333 Director has the authority to reject the plat application if it does not
2334 contain the required information. The rejection must be in writing and
2335 specify the deficiencies.
- 2336 2. The applicant must resubmit a revised plat application within 10 days
2337 from the date of the written rejection, or the application will be
2338 automatically withdrawn.

2339 **Section 8.2. Approval Procedure**

- 2340 A. Referral of the plat application. After accepting a plat application, the
2341 Director must begin review and send a copy to each agency that has review
2342 authority for roads, utilities, or other public services that will serve the
2343 proposed subdivision, for the agency's recommendation concerning the plat.
- 2344 B. Review and recommendation. The Director and other reviewing agencies
2345 must submit final recommendation on the plat application within 90 days
2346 after the date the application is accepted.
- 2347 C. Plat to comply with approved preliminary plan and site plan where
2348 required.
- 2349 1. With the exception of a minor subdivision, as defined in this Chapter,
2350 no plat may be approved unless it complies with the preliminary plan
2351 as approved by the Board; however, the Board may allow for minor
2352 modifications from the preliminary plan which, in its opinion, do not
2353 alter the intent of its previous approval.
- 2354 2. In those situations where a site plan is required, the Board may refuse
2355 to approve a plat until a site plan is approved under Section 59-7.3.4.
- 2356 D. Road and storm drain plans. Before submitting a final plat, the applicant
2357 must obtain approval from the appropriate agency for the following plans:

- 2358 1. final grade and profile plan for roads and pedestrian paths, except
2359 where the grades of the roads have already been established; and
- 2360 2. a storm drainage concept plan.
- 2361 E. Final plat. The applicant must submit a final plat legibly printed in black ink
2362 on a permanent, reproducible medium acceptable to the Director that
2363 incorporates the recommendations of the reviewing agencies.
- 2364 F. Planning Board to act within 30 days. The Board must act to approve or
2365 disapprove a final plat within 30 days after its submittal; otherwise, the plat
2366 will be deemed approved. The applicant may waive this requirement and
2367 consent to an extension. If the plat is disapproved, the reasons must be stated
2368 in the minutes of the Board and provided to the applicant.
- 2369 G. Planning Board may hold hearing on any plat. The Board may, upon its
2370 own motion, hold a hearing before acting upon any plat, with notice required
2371 by the Board's Rules of Procedure.
- 2372 H. Planning Board may give conditional approval. In the case of a plat
2373 requiring additional supporting data, the Board may give conditional
2374 approval, requiring the applicant to provide the Board with the supporting
2375 data.
- 2376 I. Signing. A plat must be signed by applicable County agencies with review
2377 authority before Board action on the plat, unless the Board specifically
2378 permits the signature to be added as a condition of its approval. The plat
2379 must be signed by the authorized officers of the Board after the Board acts to
2380 approve the plat or, in cases of conditional approval, when the conditions are
2381 satisfied.

2382 **Section 8.3. Recording Procedure**

- 2383 A. Processing of plats.
- 2384 1. The Planning Department Staff must reproduce a sufficient number of
2385 copies of an original approved plat for applicable local agencies and
2386 the plat preparer.

2387 2. The official seal of the licensed land surveyor who prepared the plat
2388 must be impressed upon the original approved plat and reproductions.

2389 B. Recordation. The reproductions required by the Clerk of the Circuit Court
2390 must be transmitted with the appropriate recording fee within 7 days
2391 following completion of processing for recordation in the land records. Once
2392 recorded, the original approved plat must be filed in the vault provided by
2393 the Commission and remain there, unless required by court order as an
2394 exhibit.

2395 C. Indexing. The Clerk of the Circuit Court must record the plat and enter it in
2396 the general index of the land records. All plats filed and recorded must be
2397 indexed both in the name of the subdivision and in the name of the owners
2398 signing the plat.

2399 D. Effect of filing. Plats, when filed and recorded under this Chapter, constitute
2400 a part of the land records of the County and have the same effect as properly
2401 recorded deeds.

2402 **Section 8.4. Abandonment of Land Dedicated for Public Use**

2403 A. Land dedicated to the County for public use. When a record plat contains
2404 land dedicated to the County for public use, the dedication must be in
2405 perpetuity and must not be altered or taken for private use. However, the
2406 person who originally filed the plat, any successor in interest, or the County
2407 may petition to abandon any land dedicated under this Subsection.

2408 Abandonment of all or part of the dedicated land may be authorized by:

2409 1. the Council under Section 49-63, if the land has been in public use; or

2410 2. the Board under Section 49-68, if the land has not been in public use.

2411 B. Land dedicated to other public entity. Land dedicated to a public entity other
2412 than the County, including the Commission, may be abandoned according to
2413 procedures adopted by or applicable to that public entity.

2414 **Article IV. Administration**

2415 **Division 50.9. Waivers from this Chapter**

2416 **Section 9.1. Authority of Planning Board**

2417 The Board may grant a waiver from a requirement of this Chapter after making the
2418 required findings.

2419 **Section 9.2. Application**

2420 A request for a waiver must be submitted to the Board in writing, stating all facts
2421 supporting approval of a waiver.

2422 **Section 9.3. Findings**

2423 A. To grant a waiver, the Board must find that:

2424 1. due to practical difficulty or unusual circumstances of a plan, the
2425 application of a specific requirement of the Chapter is not needed to
2426 ensure the public health, safety, and general welfare;

2427 2. the intent of the requirement is still met; and

2428 3. the waiver is:

2429 a. the minimum necessary to provide relief from the requirements;
2430 and

2431 b. consistent with the purposes and objectives of the General Plan.

2432 **Section 9.4. Conditions**

2433 The Board may condition the waiver approval.

2434 **Section 9.5. Procedure for Granting Waivers**

2435 A. *Referral for recommendations.* The Director must send a copy of each
2436 waiver request to the applicable Development Review Committee agencies
2437 for investigation, report, and written recommendation before acting on the
2438 request. Those agencies must submit any report and recommendation to the
2439 Director within 20 days after receiving the request, or the recommendation
2440 must be treated as favorable.

2441 B. The Director must publish a report and recommendation at least 10 days
2442 before the scheduled Board hearing. A waiver request filed under this

2443 Section may be used as grounds for a request to extend the time
2444 requirements in Sections 4.2 and 8.2.

2445 C. Resolution. The Board must make its decision by resolution.

2446 D. Non-waiver of other ordinances. When granting a waiver, the Board must
2447 not change any other requirement of law.

2448 **Division 50.10. Administrative Procedures**

2449 **Section 10.1. Regulations**

2450 The Board may adopt regulations and necessary procedures under Chapter 2A,
2451 Section 15, Method (2) to administer this Chapter.

2452 **Section 10.2. Bonding and Surety**

2453 A. Guarantee of completion of improvements before recording final plat.

2454 1. Before plat recordation, the Board or applicable public agency must
2455 certify that the subdivider has obtained the necessary permits and
2456 bonds or provided other surety that ensures completion of all required
2457 public and private improvements on the land covered by the plat being
2458 recorded.

2459 2. As an alternative to the requirements of Subsection 10.2.A.1, if
2460 approved by the applicable public agency, a public improvement
2461 agreement may be executed between the applicant and the agency to
2462 ensure completion of public improvements.

2463 3. When the subdivider or developer is required by regulations of the
2464 WSSC to record a final plat dedicating public roads in excess of a
2465 current building phase to obtain installation of water and sewer to the
2466 site, surety as required by the Road Design and Construction Code for
2467 road improvements for such excess platting may be delayed under the
2468 approved timing sequence of the proposed development approved by
2469 the applicable County agency.

2470 **Section 10.3. Establishment of Adequate Public Facilities Guidelines**

2471 A. The Council must establish by resolution, after public hearing, the process to
2472 determine the adequacy of public facilities and services. A subdivision
2473 staging policy approved by the Council may serve this purpose if it contains
2474 those guidelines. To provide the basis for the Council resolution, the Board
2475 and the County Executive must provide the following information and
2476 recommendations to the Council:

2477 1. the Board must provide analyses of current growth and the amount of
2478 additional growth that can be accommodated by public facilities and
2479 services. The Board must also provide recommendations of any
2480 changes in preliminary plan approval criteria it deems appropriate;
2481 and

2482 2. the County Executive must provide comments on the Board's
2483 analyses and recommendations and recommend criteria to determine
2484 the adequacy of public facilities.

2485 **Section 10.4. Establishment of a Development Review Committee**

2486 The Board must establish a review committee consisting of Planning Department
2487 Staff and staff of any County, State, and Federal agency; municipality; and utility
2488 companies to which a plan has been referred. The committee must meet with
2489 applicants and other interested persons to facilitate agency review of the plan, and
2490 may reconcile conflicting requirements by different agencies. Each reviewing
2491 agency must designate a representative to the committee. For the purpose of plan
2492 review, the head of any participating County agency must delegate authority to a
2493 representative to speak for the agency.

2494 **Section 10.5. Establishment of Fees**

2495 The Board must approve by resolution the fees necessary to cover the cost of
2496 administering this Chapter.

2497 **Section 10.6. Enforcement of Chapter**

2498 A. *Notice of violation.*

2499 1. The Director may issue a notice of violation to a person whom the
2500 Director believes committed a violation of a Planning Board Action or

2501 this Chapter. A notice of violation issued under this Subsection must
2502 be served on the alleged violator personally, on the alleged violator's
2503 agent at the site of the alleged violation, or by certified mail to the
2504 alleged violator's last known address.

2505 2. The notice of violation must contain at least the following
2506 information:

2507 a. the name of the person charged;

2508 b. the nature of the violation;

2509 c. the place where and the approximate date when the violation
2510 occurred; and

2511 d. a statement advising the alleged violator of the corrective or
2512 remedial action that must be taken and the date by which the
2513 corrective or remedial action must be completed. The corrective
2514 or remedial action may include a meeting with Planning
2515 Department Staff to establish a compliance plan.

2516 B. Administrative citation.

2517 1. The Director may deliver an administrative citation to a person whom
2518 the Director believes committed a violation of a Planning Board
2519 action or this Chapter. The Director must attest to the truth of the facts
2520 and allegations in the administrative citation. An administrative
2521 citation issued under this Subsection must be served on the alleged
2522 violator personally, on the alleged violator's agent at the site of the
2523 alleged violation, or by certified mail to the alleged violator's last
2524 known address.

2525 2. The administrative citation must contain at least the following
2526 information:

2527 a. the name and address of the person charged;

2528 b. the nature of the violation;

- 2529 c. the place where and the approximate date when the violation
2530 occurred;
- 2531 d. the amount of fine assessed;
- 2532 e. where, when, and to whom the fine may be paid; and
- 2533 f. a statement advising the violator of the right to a hearing before
2534 the Board or its designee.

2535 C. Notice of hearing.

- 2536 1. The Director may issue a notice of hearing to a person whom the
2537 Director believes committed a violation of a Planning Board Action or
2538 this Chapter. The notice of hearing must be served on the alleged
2539 violator personally, on the alleged violator's agent at the site of the
2540 alleged violation, or by certified mail to the alleged violator's last
2541 known address.
- 2542 2. The notice of hearing must contain at least the following information:
- 2543 a. the name of the person charged;
- 2544 b. the nature of the violation;
- 2545 c. the place where and the approximate date when the violation
2546 occurred; and
- 2547 d. a statement advising the alleged violator of the date, time, and
2548 location of the hearing before the Board or its designee.

2549 D. Civil fine and penalty.

- 2550 1. A citation may require the recipient to pay a civil fine for a violation
2551 of a Planning Board action.
- 2552 2. The fine for each violation of a Planning Board action is the
2553 maximum allowed by the Land Use Article §23-505 of the Maryland
2554 Code for each day that the violation continues.

- 2555 3 Each day that a violation has not been corrected is a separate
2556 violation, and the applicable fine may continue to accrue each day
2557 until the violation is corrected without issuing a new citation each day.
- 2558 4. In addition to any other remedy under this Article, a person who
2559 violates this Chapter, a Planning Board Action, any applicable
2560 regulation or any associated agreement or restriction may be subject to
2561 an administrative civil penalty. The administrative civil penalty must
2562 not exceed 150 percent of the estimated cost to bring the violation into
2563 compliance.
- 2564 5. In setting the amount of the administrative civil penalty, the Board or
2565 its designee must consider:
- 2566 a. the willfulness of the violation;
- 2567 b. the degree of deviation from the approved Planning Board
2568 action;
- 2569 c. the cost of any needed corrective action or restoration;
- 2570 d. any adverse impact on the immediate neighborhood and the
2571 larger community;
- 2572 e. the extent to which the subject violation is part of a recurrent
2573 pattern of the same or similar violations committed by the
2574 violator;
- 2575 f. any economic benefit that accrued to the violator or any other
2576 person as a result of the violation;
- 2577 g. the degree of cooperation shown, or voluntary mitigation
2578 measures taken, by the violator;
- 2579 h. the extent to which any other person contributed to the
2580 violation;
- 2581 i. the impact, if any, on the violator's ability to perform corrective
2582 actions because of a change in ownership of the property; and

2583 j. any other relevant factor.

2584 6. The Board, after a public hearing on the violation, must adopt a
2585 resolution specifying the amount of any administrative civil penalty
2586 and the Board's reason for imposing the penalty.

2587 E. Nonpayment of fine.

2588 1. If a person who receives an administrative citation does not pay the
2589 fine by the administrative citation's due date or file a request for
2590 hearing, a notice must be sent to the person's last known address. If
2591 the administrative citation is not satisfied within 15 days after the
2592 notice is issued, the recipient is liable for an additional fine, as
2593 specified in the notice. The additional fine must be less than twice the
2594 original fine.

2595 2. If the fine due is not paid within 35 days from the date the notice is
2596 issued, the Board may schedule and hold a hearing.

2597 F. Hearing.

2598 1. A person who receives a citation imposing a civil fine may elect a
2599 hearing before the Board or its designee by filing a written request for
2600 hearing with the Director. The request for a hearing must be received
2601 by the Director within 15 days after the administrative citation was
2602 issued. The filing of a request for a hearing does not stay an
2603 administrative order to stop work, stabilize a site, or stop a violation.

2604 2. If the Director receives a request to hold a hearing under this Article,
2605 the Director must promptly schedule a hearing, unless the requestor
2606 consents to a delay, and must issue a notice of hearing.

2607 3. The Board may assign a hearing officer, including a Hearing
2608 Examiner from the Office of Zoning and Administrative Hearings, to
2609 conduct a public hearing and submit a report and recommendation on
2610 any alleged violation of this Chapter or a Planning Board action. The
2611 hearing officer must submit the required report and recommendation
2612 to the Board not later than 30 days after the hearing record closes. The

2613 hearing officer may extend the time to file the report by notifying all
2614 parties.

2615 4. After holding the hearing, the Board may impose any civil fine or
2616 administrative civil penalty authorized by this Section, and also may:

2617 a. suspend or revoke the plan that is the subject of a Planning
2618 Board Action;

2619 b. approve a compliance program that lists each remedial action
2620 that must be taken;

2621 c. require the violator to post a bond or other surety to guarantee
2622 completion of a compliance program;

2623 d. allow the violator to propose modifications to the plan; or

2624 e. take any combination of these actions.

2625 5. All fines, penalties, or forfeitures collected under this Section must be
2626 remitted to the Board and placed in the general funds.

2627 6. The Board may spend funds from fines and penalties for project
2628 corrections, plan enforcement or, subject to Council appropriations,
2629 other Board purposes. The Board, in its sole discretion, may spend
2630 collected fines or penalties to perform or correct some or all violations
2631 noted in an administrative citation without obligating the Board,
2632 instead of the person responsible, to correct any violation.

2633 G. Enforcement rules; conduct of hearing.

2634 1. The Board must:

2635 a. adopt regulations to administer and enforce this Section as a
2636 method (2) regulation, subject to Council review under Chapter
2637 2A, Section 15; and

2638 b. conduct any proceeding under this Section as provided in those
2639 regulations.

2640 H. Stop work order.

- 2641 1. The enforcement agent may issue a stop work order if the
2642 enforcement agent reasonably finds that:
- 2643 a. a person is violating any element of a Planning Board Action;
2644 and
- 2645 b. the violation threatens or may threaten the public health, safety,
2646 or welfare.
- 2647 2. A stop work order must include the following information as
2648 applicable:
- 2649 a. the name and address of the person charged;
- 2650 b. the nature of the violation;
- 2651 c. the place where and the approximate date when the violation
2652 occurred; and
- 2653 d. a clear statement of the action that must be taken or
2654 discontinued to cure the violation, including any requirement to
2655 prepare a plan of compliance.
- 2656 3. The enforcement agent must attest to the truth of the facts and
2657 allegations in the order.
- 2658 4. The enforcement agent must prominently display the order near where
2659 the violation has occurred. In addition, the enforcement agent may
2660 deliver or mail a copy of the order to the last known address of the
2661 person who secured approval of the Planning Board Action.
- 2662 5. When a stop work order is posted, the recipient must immediately
2663 discontinue any further work activities until the order is rescinded. A
2664 stop work order suspends the Board approval of the entire underlying
2665 plan, unless:
- 2666 a. the Board approves phasing of the project; and
- 2667 b. the enforcement agent finds that the violation involves only:

- 2668 i. one or more phases of a project, but not other phases of
2669 the same project; or
- 2670 ii. activities on a single lot or parcel.

2671 In these instances, the order may only suspend the Board's
2672 approval as it relates to those phases or lots where the violation
2673 exists.

2674 6. The recipient of a stop work order may request a hearing to contest
2675 the validity of the order. If the enforcement agent finds that a hearing
2676 before the Board is not practical in a reasonable time, the Chair or
2677 Vice-Chair of the Board may review the order. A determination by the
2678 Chair or Vice-Chair has the same effect as if the Board reviewed the
2679 order. The Board or Chair, if applicable, must review the order *de*
2680 *novo*. If the violation is corrected and a plan of compliance prepared
2681 by the recipient of the order before the hearing is confirmed by the
2682 enforcement agent, the hearing must be cancelled.

2683 7. At the Board hearing, the enforcement agent must justify to the Board
2684 the grounds and reasoning for issuing the order. The recipient must
2685 explain why the order should be discontinued and may propose a plan
2686 of compliance indicating how and when the violations will be
2687 corrected. The Board must decide if the order should be continued,
2688 modified, or rescinded, and if a plan of compliance should be
2689 approved. The Board's decision that a stop work order must continue
2690 revokes any underlying Board approvals for the entire project or any
2691 part of the project as the Board specifies until the violation is
2692 corrected.

2693 8. A Board decision to continue or modify an order may be the subject
2694 of a petition for judicial review to the Circuit Court under the rules for
2695 the review of administrative agency actions.

2696 9. A stop work order must be rescinded when the Board or the
2697 enforcement agent finds that all violations specified in the order have
2698 been satisfactorily corrected, which determination must not be

2699 unreasonably withheld, or the Board approves a compliance plan that
2700 addresses any uncorrected violation.

2701 I. *Other remedies.* The authority in this Section to impose civil fines,
2702 administrative civil penalties, and stop work orders is in addition to any
2703 other authority of the Board to enforce its actions, including seeking
2704 injunctive, declaratory, or other relief. The decision to pursue one remedy
2705 does not preclude the Board from pursuing any other available remedy.

2706 J. *Authority of the Office of the General Counsel.* The General Counsel of the
2707 Maryland-National Capital Park and Planning Commission may prosecute
2708 and take any other necessary legal action regarding any violation under this
2709 Section.

2710 K. *Exclusive authority.* The Board or its designee has exclusive authority to
2711 enforce violations of a Planning Board action and any violations of this
2712 Chapter. The authority granted in this Chapter supersedes any other
2713 authority to enforce a Planning Board action granted to any other County or
2714 State agency.

2715 **Section 10.7. Amendment of Chapter**

2716 A. *Procedures.* The procedures for amending Chapter 50 must satisfy Section
2717 23-104 of the Land Use Article, Maryland Code, and the Council Rules of
2718 Procedure.

2719 B. *Hearing.* A public hearing under the Council Rules of Procedure is required.

2720 C. *Expiration.* Any subdivision regulation introduced to amend this Chapter
2721 expires 18 months after its introduction if it is not approved.

2722 **Sec. 3. Effective Date.**

2723 This amendment takes effect 90 days after its approval by Council. This
2724 amendment applies to any Planning Board action after the effective date of this
2725 amendment.

2726 **Sec. 4. Prior Approvals**

2727 The repeal of Chapter 50 does not affect the status of any preliminary plan or
2728 record plat approved by the Planning Board before the effective date of this
2729 amendment. Any violation of a Planning Board action, or the regulations
2730 governing the applicable approval, may be enforced under Section 10.6 of this
2731 amendment.

2732

2733 *Approved:*

2734

2735

2736 Isiah Leggett, County Executive Date

2737 *This is a correct copy of Council action.*

2738

Linda M. Lauer, Clerk of the Council Date



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

OFFICE OF THE CHAIR

August 11, 2015

The Honorable George Leventhal, President
Montgomery County Council
Stella B. Werner Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Planning Board Recommendation on Transmittal to County Council for Introduction and Review of a Comprehensive Revision to the Montgomery County Code, Chapter 50 - Subdivision Regulations, affecting the transfer and subdivision of land within the Montgomery County Portion of the Maryland-Washington Regional District.

Dear Mr. Leventhal and Councilmembers:

On Thursday, July 23, 2015, the Montgomery County Planning Board voted to transmit the Comprehensive Revision to Chapter 50, the Subdivision Regulations, to the County Council. The effort to update and revise the Subdivision Regulations has been ongoing for over a year. The Planning Board reviewed the Planning Department staff ("Staff") draft of the Comprehensive Revision initially on Thursday, March 19, 2015 and authorized Staff to release the document for public review. On Thursday, April 30, 2015, the Planning Board held a public hearing at which time both oral and written comments on the Revision were accepted. The Planning Board held the public record open after the scheduled public hearing to receive additional comments. Worksessions were held on Thursday, June 18, 2015, Monday, July 20, 2015 and Thursday, July 23, 2015. The Board is pleased to be sending you this draft Revision; the work done to date represents a significant effort on this very important section of the County Code.

In reviewing the Comprehensive Revision, the Planning Board considered the recommendations of Staff as well as any commentary provided from all 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 or have more intimate discussions on the details of the Revision. The commentary provided from the handful of participants was welcomed and extremely helpful to the process, however, the overall community-wide interest was low.

The focus of the Comprehensive Revision was to modernize and clarify outdated language; improve the document's organization and ease of use; codify current interpretations; and ensure consistency with the recently adopted zoning ordinance. The Revision is not intended to reinvent the basic methodologies by which land has been subdivided. With every

modification, the Planning Board kept in mind the overarching goal of improving the efficiency in which development applications are reviewed.

While our efforts were not to radically overhaul the Subdivision Regulations, we believe some improvements were needed. The Planning Board has identified some of the most significant changes that may require further discussion with the County Council prior to adoption of the Revision.

The significant changes include:

- Addition of rules for interpretation and new defined terms (§50.2);
- New platting exceptions to permit construction and reconstruction of new detached dwellings as anticipated in the new zoning ordinance (§50.3.3.B.4);
- Modified application processing and hearing schedule timing for preliminary plans to conform with the new zoning ordinance requirements for site plan (§50.4.4.2.B);
- Added specific findings that the Planning Board must make in order to approve a preliminary plan (§50.4.4.2.D);
- Combined review standards that form the basis for Planning Board findings into a new technical review section (§50.4.4.3);
- Retained the Board's ability when making a determination of substantial conformance to a Master or Sector Plan, to find that events have occurred to render the relevant plan recommendation no longer appropriate if a site plan is not required (§50.4.4.3.A.1);
- Removed existing 50-29(b)(2) resubdivision requirements;
- Added new provisions to permit creation of private roads (§§50.4.4.3.C and 50.4.4.3.E), including the ability to create such roads in an easement only so that underground structures like a shared garage may be constructed (§50.4.4.3.E.4);
- Added new provisions for Administrative Subdivision Plans that permit new lots to be created in certain circumstances after approval by the Planning Director (§50.6);
- Added application processing and hearing schedule timing requirements for subdivision record plats (§50.8.8.2);
- Modified the waiver finding by removing the need to find that unusual circumstances and practical difficulties of the plan prevent full compliance with the chapter and replacing it with a finding that application of specific requirements of the chapter are not needed if the intent of the requirements are achieved (§50.9.9.3); and
- Modified provisions for bonding and surety to permit the Planning Board to require them for both public and private improvements, especially improvements to private streets (§50.10.10.2).

The outstanding issues are:

- Reaching consensus on the need for private streets in certain circumstances to facilitate the types of development anticipated by the zoning ordinance, and if that is achieved, establishing standards and procedures for creating, designing, constructing and maintaining private streets; and
- Re-examination of the Adequate Public Facilities Ordinance provisions in Chapter 50 in coordination with discussion on the next Subdivision Staging Policy.

Private Streets

It is evident in reviewing recent plan applications that the development community has a keen interest in furthering the use of private roads for public use within the urbanizing areas of the County. As professed by the building industry, private streets are needed to provide necessary flexibility in right-of-way width and road design that cannot be achieved under Chapter 49 to provide more desirable building design and such things as enhanced sidewalk, curb and crosswalk design features that promote pedestrian circulation. They also point out that private streets permit an overseeing management entity to retain control over maintenance of the roads rather than relying on the County to provide for it. The Planning Board has agreed with the design argument in several development projects and has approved private roads in public access easements, however, it has become obvious that provisions are needed in the Subdivision Regulations to address certain private road issues.

First, there is the issue of ensuring that private roads are designed and constructed properly. The existing provisions of Chapter 50 require private roads to be built to the structural standards of a tertiary street, and that the builder must have a registered engineer certify to the Department of Permitting Services (DPS) that the road has been designed to meet these structural standards and that all construction complies with the design. These provisions were written for the limited use of private cul-de-sacs anticipated by the previous zoning ordinance for large lot and rural cluster detached residential zones, and streets serving townhouse and multi-family residential parking lots. There is now much more of a desire to use private roads in the urbanizing areas of the county as part of mixed use development where higher classification roadways are anticipated by the Master Plan and the tertiary road structural standards are not appropriate. To address this, the proposed Revision requires that private roads be designed and constructed to the standards that are appropriate for the classification of the road with builder certification to DPS that this is done. However, DPS has stated that this is a problem because they are not authorized to review private roads under Chapter 49, and in most cases, they do not look at the ones that have been approved or track whether the certification has been provided.

Ideally, if consensus can be reached about the use of private roads in certain circumstances, the Planning Board believes that such roads should be reviewed by DPS and the Department

The Honorable George Leventhal

August 11, 2015

Page 4 of 5

of Transportation (DOT) who already have the professional engineering staff with the necessary expertise. Otherwise, if the Planning Board maintains authority over private roads, staff with the appropriate qualifications will need to be added to the Planning Department.

A second issue involved in the use of private roads is maintaining access to the public, especially when the roads are an integral part of the road network called for in a Master Plan. Therefore, in the instances where the Planning Board has approved private roads, they have been required to be placed in a public access easement. However, there has been some difficulty in getting DPS to accept these easements on the record plat. Planning Staff has been working with DPS and DOT to develop a standard easement document for this purpose but further discussion is needed.

A final issue involving private roads is how they are platted. The proposed Revision anticipates that private roads will generally be created, like a public road, in a road parcel that is separate from the adjoining lot(s) but not dedicated to the public. However, some recent plan approvals have demonstrated that such parcels are a problem if an underground parking structure crosses beneath the vertical plane of the road parcel. Although current subdivision provisions permit aboveground or underground parking facilities to cross a lot line, DPS has pointed out that this actually violates building code standards that require fire walls within structures, where such structures cross a lot line. To address this issue, developers in the urbanizing areas have proposed, and the Planning Board has approved, private roads created by a public access easement only, and not within a separate and distinct parcel. This option for these limited circumstances has also been added to the proposed Revision.

These issues need further discussion, but the Planning Board believes that the option to create private roads in certain circumstances is needed and, therefore, supports the proposed provisions.

Adequate Public Facilities

Several comments on the proposed Revision concerned the provisions for the determination of Adequate Public Facilities (APF) and the possible need for significant revisions, especially to the rationale by which the Planning Board extends aging APF validity periods to consider the prevailing economic climate that we now recognize as a major influence on the pace of new development. With the exception of adding provisions for extension of APF validity for mixed use projects, the proposed Revision retains the currently codified approach to both granting and extending APF approvals. However, given the age of these provisions and the recent Master Plan discussions on this topic it is reasonable to assume that the way the County assures that public facilities are adequate, especially transportation related facilities, will be changing under the new Subdivision Staging Policy. If this occurs, it will likely mean further revision of the Subdivision Regulations.

The Honorable George Leventhal
August 11, 2015
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BOARD RECOMMENDATION

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, July 23, 2015.


Casey Anderson
Chair

SRA 16-01

JZ
cc

Guthrie, Lynn

From: Floreen's Office, Councilmember
Sent: Wednesday, January 27, 2016 2:13 PM
To: Council President
Subject: FW: Subdivision Regulation Amendment 16-01 Subdivision Regulations Rewrite = Submission of Comments
Attachments: County Council, Jeff Zyontz and Catherine Conlon re Subdivision Rewrite Comments from Tim Dugan 01 26 2016_19972414_2.PDF

5031806

From: Timothy Dugan [mailto:TDugan@shulmanrogers.com]
Sent: Tuesday, January 26, 2016 11:39 AM
To: Floreen's Office, Councilmember <Councilmember.Floreen@montgomerycountymd.gov>; Berliner's Office, Councilmember <Councilmember.Berliner@montgomerycountymd.gov>; Katz's Office, Councilmember <Councilmember.Katz@montgomerycountymd.gov>; Rice's Office, Councilmember <Councilmember.Rice@montgomerycountymd.gov>; Navarro's Office, Councilmember <Councilmember.Navarro@montgomerycountymd.gov>; Elrich's Office, Councilmember <Councilmember.Elrich@montgomerycountymd.gov>; Riemer's Office, Councilmember <Councilmember.Riemer@montgomerycountymd.gov>; Leventhal's Office, Councilmember <Councilmember.Leventhal@montgomerycountymd.gov>; Hucker's Office, Councilmember <Councilmember.Hucker@montgomerycountymd.gov>
Cc: Zyontz, Jeffrey <Jeffrey.Zyontz@montgomerycountymd.gov>; Catherine Conlon (Catherine.Conlon@montgomeryplanning.org) <Catherine.Conlon@montgomeryplanning.org>
Subject: Subdivision Regulation Amendment 16-01 Subdivision Regulations Rewrite = Submission of Comments

MEMORANDUM

By Email

TO: Montgomery County Council
CC: Jeffrey L. Zyontz, Senior Legislative Attorney
Catherine Conlon, MNCPPC
FROM: Timothy Dugan
DATE: January 26, 2016
RE: Subdivision Regulation Amendment 16-01
Subdivision Regulations Rewrite

I am attaching a chart that includes my comments concerning SRA 16-01, which I respectfully submit for your consideration. Thank you.

Attachment

TIMOTHY DUGAN
ATTORNEY AT LAW

10Z

Subdivision Regulation Amendment 16-01
 Subdivision Regulations Rewrite
 Analysis Comments From Tim Dugan¹
 January 26, 2016

Item	Circle Page	Section	Line	Language	Comment
1.	10	2.2	226-228	Definition of right of way	I understand that the existing proposed definition of "right of way" may be interpreted to include private roads and streets, but I believe the definition should be clarified.
2.	11	2.2	256	Tract definition	<p>I recommend providing for the ability to: (1) purchase from the government contiguous condemned right of way; and (2) subsequently dedicate, and thus increase, the Tract Area. I recommend the following language:</p> <p>Tract: A contiguous area of land, including all proposed and existing rights-of-way, lots, parcels and other land dedicated or donated in fee by the owner or a predecessor in title. A tract does not include land conveyed to a government for more than nominal value <u><i>unless such land is repurchased from the government and dedicated or donated in fee by the owner or a predecessor in title.</i></u></p> <p>The Zoning Ordinance's definition of Tract Area would have to be conformed as well.</p>

103

¹ Shulman Rogers, 12505 Park Potomac Ave., Potomac, MD 20854; tdugan@shulmanrogers.com; 301-230-5228.

Subdivision Regulation Amendment 16-01
 Subdivision Regulations Rewrite
 Analysis Comments From Tim Dugan
 January 26, 2016

Item	Circle Page	Section	Line	Language	Comment
3.	22	4.1.D. 4.1.E.	580 <i>et seq.</i>	Application Processing Post Preliminary Plan Hearing Date	<p>The Subdivision rewrite includes deadlines for reviews to be conducted by the reviewing agencies. There even is a deadline when the Planning Board must consider a Preliminary Plan.</p> <p>Post Preliminary Plan approval, i.e., the follow up periods involve reviews with both the departments and agencies and also with the legal departments of MNCPPC and the County Attorney's Office. For example, draft easements, deeds, traffic management agreements, and other instruments are provided for their review, and of course re-review, and approval. Should the Subdivision rewrite include review deadlines at MNCPPC and the County Attorney's Office?</p> <p>How about the following, rather soft deadlines:</p> <p>Draft instruments must be reviewed and written comments and/or redlines provided to the Applicant no later than thirty (30) days after the initial submission of the instrument, unless the Applicant agrees to an extension. Subsequent reviews and written comments and/or redlines must be provided to the Applicant within a reasonable time, and no later than thirty (30) days following the Applicant's resubmittal, unless the</p>

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					Applicant agrees to an extension.
4.	23	4.2.A.2	607	Referral of Plan To MCDOT for roads, streets, etc. for "County-maintained rights-of-way and easements"	See the related comment at item 3. The statute should be amended to reflect that such review for roads and streets, etc. must occur for private roads that the County will not maintain. As noted in Jeff Zyontz's comments MCDOT has the expertise to review the roads, streets, etc. both as to compliance with the applicable code and later as to its structural integrity. Otherwise, MNCPPC or another agency or a private entity would have to be responsible for such reviews at Preliminary Plan and later at building permit.
5.	24	4.2.B.1.a.	628-643	Timing of Review	Reviewing State and County agencies have at least 14 days before the DRC meeting is scheduled to review plans. The agencies are required to submit comments to the <i>Director</i> before the DRC meeting. It should be explicit that the reviewing agencies must post their comments on the Efiling system no less than 3 business days before the scheduled DRC meeting, so that the Applicant may review them with adequate time before the scheduled DRC meeting. Only delivering them to the Director before the DRC meeting would not

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					foster a meaningful DRC meeting. Please also see the discussion at item 37 about adding more language about the expertise and seniority of the person who should be the agency's representative at DRC.
6.	24	4.2.B.1.c.	640-643	45-day Deadline for State and County submissions	"submission" should be more explicit to mean that the comments must be added/uploaded to the Efiling system so that the Applicant can readily review and respond.
7.	24	4.2.B.1.c.	644-651	MCDOT approval of the design of County maintained roads, etc.	Please see the related comment at item 4. The statute should be amended to reflect that such review must occur for roads and streets, etc. for <i>private roads</i> .
8.	25	4.2.C.1.	673	Director presenting every Preliminary Plan to the Board for the Board's review and action.	Should the provision cross reference and exclude from required Planning Board action, the Director's authority to amend a validity period phasing under Section 4.2.H.b (circle page 29-30, lines 799, et seq.) Please see item 6
9.	25 65	4.2.C.1. 6.1A., et seq.	673 1842 et seq.	Director presenting every Preliminary Plan to the Board And	Should the statute provide that the Director is not required to bring the Director's approvals of Administrative Subdivision Plans to the Board for approval?

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				Administrative Subdivision Plan	
10.	26.	4.2. 4.2.B.3.	601 <i>et seq.</i> 670-671	Approval Procedure Review and Recommendation And Proposal: Applicant's draft Resolution	<p>I believe that there should be a provision that the Director's report and recommendation should include the Director's draft Resolution, at least 10 days before the Board hearing, along with the other materials.</p> <p>The Applicant and others would have the opportunity to provide their edits and comments concerning the draft Resolution before the hearing. Further, under the existing process, the Applicant cannot review the final Resolution until after it has been issued. If material corrections are necessary, the Applicant must wait for the scheduling of another Planning Board hearing to have the original Resolution corrected.</p> <p><u>Applicant's submission of a draft Planning Board Resolution</u></p> <p>Often, there are details that the Applicant wishes to be certain are included in the Resolution that might be less obvious to the Director.</p> <p>I believe that it would facilitate the process to expressly provide that: (1) the Applicant may submit, via Efiling, a draft Planning Board</p>

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					<p>Resolution at least 15 days before the Preliminary Plan hearing; and (2) such draft must be included in the Planning Board's packet of materials for the hearing.</p> <p>If so, the Director would have fifteen days before the hearing and five days before issuing the Director's Resolution to review the Applicant's draft Resolution.</p>
11.	27	4.2.F.2.A.	725	Minor amendment	<p>Generally, where the term "right of way" is being used, we must consider adding language to the definition about the term including private roads and streets. The Planning Board also ought to be able to grant a minor amendment where they are not making major changes to the widths of private roads and streets.</p> <p>The private road and street concept should be considered more generally, so that there are no unintended consequences where a dedicated right of way is treated one way and, for no good reason, a private road or street is treated another way.</p> <p>Please see the discussion at item 11.</p>
12.	29	4.2.H.1.b.&c.	799-809	The Director's authority granting a validity period	<p>See the discussion above at item 3. Should the provisions be cross referenced explicitly to allow the Director authority to amend a validity period</p>

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				extension	phasing without going to the Board?
13.	30	4.2.H.3. 4.2.H.4	822-837 840-850	Grounds for extending Preliminary Plan validity periods or for denying the extension.	As noted in Jeff Zyontz's memorandum, the Council should specifically include economic conditions as factors to extend the PP validity period as well as the APFO validity period. See also 4.2.H.4b. Surely if the Planning Board can cite such economic factors such as "capable of being financed, constructed and marketed" to determine "viability," the Board should be authorized to cite similar factors to "grant" an extension based on such economic conditions..
14.	32	4.2.I.3.	884-890	Reclaiming lost vehicle trips if a phase is not validated.	The provision is reasonable unless a large project's existing background trips have not already been assigned to those new phases that have been validated. A project ought to be able to retain those trips that existed before the new or amended Preliminary Plan approval. The last sentence of 4.2.I.3. should read: The filing of a new preliminary plan application does not provide the basis for reclaiming vehicle trips lost by the termination of the APFO approval. However, the Applicant does retain any vehicle trips from its original existing project that exceed the trips validated by the new pending preliminary plan or phase of the

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					plan not timely validated.
15.	33	4.2.J.	905-910	Revoking approval of a Preliminary Plan	<p>Would it be wise to include additional language regarding the due process associated with a Preliminary Plan revocation proceeding? Should the Planning Board explicitly have the authority to delegate the fact gathering to a designee like a Hearing Examiner at OZAH? Will there be testimony and the right to cross examine? Planning Board proceedings are not suitable for a quasi judicial proceeding.</p> <p>Perhaps it would be better to add a provision to Section 10.6, Enforcement of Chapter and reference it in Section 4.2.J.</p>
16.	34	4.3.B.1.c.	940-942	Block Design. Residential blocks. Pedestrian paths	<p>The language would not allow the Planning Board to require paths for pedestrian access to private common areas such as playgrounds, parks and through long blocks connecting private areas. Is that the intent? Should it?</p>
17.	35	4.3.C.1.a.	954-959	Lot dimensions.	<p>The provision seems to be the same as 50-29(b)(2), which is seemingly being eliminated. Will the caselaw for 50-29(b)(2), and the historic application the rules associated with 50-29(b)(2), be used to apply the new provision 4.3.C.1.a.? <i>i.e., Remes vs Montgomery County, Capital Commercial Properties, Inc. vs</i></p>

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					<i>Montgomery County Planning Board, Lee vs Maryland-National Capital Park and Planning Commission.</i>
18.	35	4.3.C.b.	960-965	"dedicated or donated to public use"	I am not sure what "donated" to public use means other than the underlying density has not been included in the project's Tract Area. What is the meaning of "donated"?
19.	35	4.3.C.1.b.	963-965	A private road must be created by a record plat	I have had at least one case where a private road with a public access easement was established without a record plat being recorded. It is not necessary in every circumstance and might be impossible to implement in every instance. Why not allow more flexibility to accommodate infill developments. How about the following language: "A private road must be created by a record plat and be made available for public use through an access easement; provided, however, the Planning Board may waive the requirement for a record plat for good cause shown."
20.	36	4.3.D.3.	1006-1012	Road right of way dedication requirement	The language should be modified to reflect the possible provision of private streets and roads and thus there should not be a <i>mandate</i> that public roads be dedicated in every instance.

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21.	38	4.3.D.5.	1054-1102	Reservation of land	<p>There is a practice where an Applicant will agree to record an "easement for possible future dedication" in lieu of forcing the Planning Board to acquire property by reservation within 3 years. Should we acknowledge the practice in the statute? I had one case where many years later, it was determined that the easement area, established earlier, was not needed, and was to be extinguished. In the course of doing so, the consideration of the land area, now no longer encumbered, was added to the Preliminary Plan for forest conservation considerations and for other considerations.</p> <p>At the time of the initial recordation of the easement, such land was treated as if it were dedicated right of way, and thus not included in other considerations, including forest conservation.</p> <p>At the time of termination of the easement, it was argued that the termination of the easement opened up the right to add new preliminary plan conditions of approval, including forest conservation requirements.</p> <p>Instead, I believe that it would be fair to add language similar to language for APFO</p>

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					<p>extensions, Section 8.1.J.7.a.iii.(b), at line 1547-1549, page circle 55, "the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan."</p> <p>Similarly, language from the ownership lot provisions could be used:</p> <p>"Termination of an easement for possible future dedication or termination of a right of way reservation is not a change to any condition of approval for the subdivision that created the easement or reservation in the original subdivision."</p> <p>Please see Section 7.1D.2.c., circle page 73, line 2070-2071, regarding ownership lots.</p> <p>Some of the same considerations apply to land that is initially held in reservation but later released from reservation.</p>
22.	39	4.3.E.1.a.	1107-1114	Master plan roads	<p>The language should reflect explicitly that where a Master Plan provides information that does not explicitly recommend the dedication of roads, a "thoroughfare" illustration to show, for example, a possible future circulation grid, does <i>not require</i> the dedication of public right of way. Otherwise, MCDOT will interpret and apply this</p>

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					<p>section as requiring a dedicated roadway/thoroughfare to be built to County standards.</p> <p>The Burtonsville Master Plan had lines drawn across large properties to show possible future street grids. Similarly, the White Oak Master Plan had similar illustrations, but in both cases, language was added to indicate the Master Plan's explicit intent by the illustrations. which was not to require dedications where the illustrations were shown.</p> <p>Such language was not included with respect to future thoroughfare illustrations in the Great Seneca Science Corridor Master Plan.</p> <p>The omission triggered an expensive and time consuming problem where existing developments could not retrofit/insert dedicated right of way and roadways to County standards on top of the existing private thoroughfares.</p>
23.	41	4.3.E.2.b.	1160	Slope Easement	<p>I think the provision needs language to exempt urban projects where a 2:1 slope easement would be expensive and impractical. A retaining wall may be the logical type of construction rather than a slope easement; however, a retaining wall might be more expensive for an agency to install.</p>

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					I recommend deleting the provision and replacing it with language such as "Whether slope easements are appropriate must be considered in the context of a site-specific study in coordination with the road grade approved under this Chapter." In other words, let's level the playing field.
24.	44	4.3.E.2.i.iii	1225-1232	Truncations at corner lots at intersections	Should the language about the Planning Board's authorization of different truncation widths include "pedestrian and bicycle" safety rather than simply "traffic safety"? Perhaps the term "traffic safety" includes pedestrian and bicycle safety, as well as vehicular safety already.
25.	47	4.3.E.4.	1309-1316	Platting private roads	<p>The exception language is too restrictive as to when a private road need <i>not</i> be on a road parcel. Other circumstances might arise besides simply a thoroughfare through a structure. .</p> <p>For example, I had an infill case where a private road was established on the ground, not within a structure, without being established entirely on a record plat, and without being platted as a road parcel. Further, the private road was located on CR zoned land and the private road did not involve a structure.</p> <p>I have a further practical concern involving infill</p>

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					<p>developments. Establishing a separate road parcel might negatively affect and unnecessarily complicate the ownership relationships. Who owns the land where the private road/public access easement is to be established? The lands for the road might be owned by different owners. Would each land owner be required to establish a separate road parcel over the land that each owner owns? Or is another line drawn/shown on the subdivision record lot that indicates the ownership lines?</p> <p>Why not eliminate such narrow language and allow the parties and MNCPPC to solve the establishment of the private road/public access easement as the circumstances arise.</p> <p>Also, as long as the land area can be described and depicted, it can be recorded in the land records and anyone involved with the private roadway will know its dimensions.</p>
26.	49	4.3.G.2.	1391-1399	Licensed land surveyor installing markers and monuments	<p>I am certain that the surveyors will insist that the language of the statute more explicitly follow the language now used on record plats that the surveyor will install them, if hired to do so.</p> <p>The surveyors do not want an independent obligation if they are not hired to do so. I would</p>

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					<p>modify the sentence to read, "2. The licensed land surveyor, <i>if hired by the owner to place markers and monuments</i>, must place markers and monuments"</p> <p>See item 23 also.</p>
27.	49	4.3.G.1.	1378-1390	Markers and monuments	The last sentence addresses projects that do not include public roads, i.e., ones that include private roads. Would it be prudent to add language to establish a deadline for when the property markers must be set and certified for private roads as well?
28.	50	4.3.J.3.b.&c.	1422-1426	APFO exemptions for places of worship	<p>I believe that the language of b. and c. must be better reconciled.</p> <p>Subsection b. provides that any use associated with a place of worship, which one would presume includes a school, is subject to the SSP, if it does not pass the Traffic Test. However, subsection c. reads that a pre 7/25/89 school that is associated with a house of worship, can expand, even if it would then not pass the Traffic Test.</p> <p>I am not sure of the intent so I am unable to offer conforming language.</p>
29.	59	4.3.K.1.	1662-1667	Environment. forest	I believe it would be fair to add language that

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				conservation	<p>once a project has vested, an amendment to a preliminary plan does not require an Applicant to comply with the then current forest conservation requirements. The language under section 4.3.K.1. might suggest to some that the law allows a "reboot" of the forest conservation condition of approval.</p> <p>There is a question whether new compliance requirements may lawfully be imposed as to the portion of the property that is the subject of the preliminary plan amendment, i.e., a subset of the entire property.</p>
30.	65	6.1.A.	1841 et seq.	<p>Administrative subdivision plan Applicability.</p> <p>Existing places of worship and institutional uses</p>	<p>My question is whether it is necessary that all of the numerous listed steps must be accomplished before the record plat is recorded.</p> <p>Such uses might be attempting simply to obtain a building permit for a needed addition. The time necessary to accomplish all of the other steps might interfere with the critical timing for obtaining the building permit.</p> <p>Another purpose might be to sell a portion of their property where no new development is planned.</p> <p>Financing might be the objective where no new</p>

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					<p>development is planned.</p> <p>As written, APFO, forest conservation, special protection, and landscaping and lighting plans must be satisfied before recordation of the plat.</p> <p>Section 3.2.B. provides that a building permit may not be issued unless the lot or parcel is shown on a plat and the plat has been recorded in the County Land Records. (See circle page 12, lines 285-287.)</p> <p>Section 4.2.C.1. provides that the Director must submit every preliminary plan to the Board for review and approval. If all of the above steps are required to record a plat, why is the Director not required to bring what is tantamount to a full blown preliminary plan to the Planning Board for review and approval? See page circle 25, line 673.</p> <p>I recommend that some of the requirements are overreaching the objective of the administrative subdivision plat approval process, under subsection A.</p>

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31.	67	6.1.D.1. <i>et seq.</i>	1900-1921	Administrative subdivision plan Applicability. Consolidation of existing lots or parts of lots in a nonresidential zone	I believe the language is too specific regarding the land area that may be combined, i.e., "lots or parts of lots." First, the term "parcel" ought to be included. Second, we had an instance where all of the land was part of the same subdivision, but some of the land was subject to an easement for possible future dedication and was not a lot or a parcel. After it was no longer encumbered, the land was combined with a lot to make a new lot. The new lot was subject to the same approved original preliminary plan. I suggest language such as: <u>Consolidation of land in a nonresidential zone</u> "In a nonresidential zone, a lot may be created by combining land subject to the same approved preliminary plan."
32.	72	7.1.D.2.b.	2062-2071	Ownership lots are not a bar to receiving a building permit for structures crossing ownership lot lines	The issue is raised in Jeff Zyontz's memorandum.
33.	73	7.1.E.	2074	Plat of correction	I think it is worth emphasizing that the language reads "A plat of correction may be used for any of the following . . ." The Subdivision rewrite

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					<p>should make it very clear that re-filing and re-recording record plats is not required <i>in every instance</i>. Rather, recording a document in the Land Records in many instances is the more efficient, and cost effective and very practical alternative.</p> <p>For example, Section 7.1.E.2. "to revise easements to reflect a Board action." Under certain circumstances, revising an easement to reflect a Board action might not require the re-recording of a plat of correction. A document recorded in the land records might be perfectly adequate.</p> <p>The record plat notation, Section 8.1.C.5., "title information notice" (See circle page 80, line 2268-2271) (and see item 30 is already provided on every record plat to notify anyone reading a plat that it is only a snapshot, and that it is necessary to conduct a title examination to determine what other encumbrances or changes to the property's title might exist.</p>
34.	74	7.2.A.1.	2108-2110	Minor subdivisions Additional considerations	I think the statute should make it clear that a minor subdivision does not trigger the reexamination of the already approved forest conservation plan and/or stormwater

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					<p>management plan. The forest conservation plan is not concerning an "improvement;" therefore, the provision does not explicitly insulate the Applicant from being subject to reapplying for an approval of the forest conservation plan. A stormwater management plan might involve improvements and thus the existing language might be considered adequate to insulate the Applicant from further requirements arising from filing a minor subdivision application. However, it might not in every instance.</p> <p>Finally, is it clear (or not) that a minor subdivision application does not trigger the government's authority to amend the conditions of approval associated with other requirements that might not involve <i>physical</i> improvements. For example, the transportation related requirements such as a traffic mitigation agreement should not be subject to amendment. Existing APFO approvals and related conditions should not be subject to amendment.</p>
35.	74	8.1	2116 et seq.	Plats Filing and specifications	The general language "All boundaries, road right of way lines, lot lines, and any other pertinent lines must be shown together with sufficient data to locate each line and property corner on the ground." I recommend adding some language to

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					<p>avoid one, rigid course of action, <i>i.e.</i>, not requiring the re recording of a record plat, to accomplish a step, in every instance, rather than allow for the opportunity to pursue other, often, more practical courses of action as the circumstances might dictate.</p> <p>There have been instances involving infill developments, including infill not located in urban areas and not involving underground parking, where new preliminary plan amendment approvals will indirectly affect properties that are not subject to the preliminary plan amendment, but are part of the original preliminary plan. That is but one example that might make the rerecording of a plat impossible.</p> <p>I would like the language to avoid forcing an Applicant to attempt to amend and re-record a record plat lot of another, uninvolved, owner, just to show the establishment of a private road.</p> <p>A private road with a public access easement has been established in the past without requiring the re recording of record plats of owners who were not part of the preliminary plan amendment. Such an owner might be willing to grant a public access easement across its property but reluctant</p>

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					to engage in the more elaborate process of re-recording a record plat. Even still, the resulting private road with a public access easement was established through an instrument recorded in the land records. The instrument contained a depiction/map of the area encumbered and a legal description so that "sufficient data" was in place to locate the area on the ground. The same result occurred but in a different way that re-recording a record plat to show the private road across the property of the owner not involved with the preliminary plan amendment..
36.	79	8.1.C.4.	2258-2267	Owner's certificate about property corner markers	See the discussion at item 22 about the surveyors' desire to not be obligated to set markers unless they are hired to do so. See item 22
37.	80	Section 8.1.C.5.	2268-2271	Title information notice	Please see the discussion at item 29 about why the title notice reduces the need to re-record record plats and thus avoids a time-consuming process.
38.	84	8.4	2402-2413	Land dedicated for public use	"When a record plat contains land dedicated to the County for public use, the dedication must be in perpetuity and must not be altered or taken for private use."

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					<p>The County has taken the position that dedicated right of way must be conveyed free of any encumbrances including preexisting public utility easements.</p> <p>I am not certain of the precise location/citation/provision of the Subdivision rewrite where I should provide this comment.</p> <p>We confronted an expensive and time consuming problem involving a required dedication of <i>additional</i> right of way that encroached upon public access easements already established.</p> <p>In some instances, the public utility holding the easement agreed to subordinate its easement to the County's right to use the right of way, but in another instance, the public utility would not agree to do so.</p> <p>I recommend that the County government address the matter with the public utilities rather than require an Applicant to try to obtain subordination agreements one at a time, case by case.</p>
39.	85	9.3.A.3.a.	2429-2430	Waivers "the minimum necessary to provide	This comment applies to other sections of the Subdivision rewrite that use the term "minimum necessary."

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				relief"	<p>I wonder whether there is not better language than "the minimum necessary."</p> <p>The Planning Board ought to have the authority to grant a solution that is the most reasonable one to accomplish the Chapter's intent and to ensure the public health, safety and welfare.</p> <p>The "minimum necessary" might provide a less than optimal solution and cause more time and expense, when the better solution might not be the "minimum necessary."</p>
40.	85	9.5.A.	2435-2440	<p>Procedure for granting waivers</p> <p>"20 days after receiving the request"</p>	<p>Perhaps this comment may apply to other Subdivision rewrite provisions as well.</p> <p>The "20 days after receiving the request" is an indefinite time period.</p> <p>The Efiling system allows for the electronic filing of applications for any number of requests. I suggest that the deadline for responding should be tied to a fixed period of time after the request has been filed in the Efile system.</p>
41.	86	10.2.A	2453-2469	<p>Bonding and Surety</p> <p>Private roads</p>	<p>I expect that it is possible to provide a bond or other surety for a private road where the County is the beneficiary, if the Applicant grants the County and the public an easement for access, and the right to have the improvements installed</p>

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					<p>by a third party under the bond/surety and for the County to inspect and otherwise exercise its duties as if the road were a public right of way. By analogy, if an owner fails to repair, replace and maintain the a stormwater management facility, the recorded easement and the related maintenance covenant allow the County to: (1) enter private property; (2) repair, replace and maintain the stormwater management facility; and (3) collect the costs from the owner, including the right to lien the property to collect.</p>
42.	87	10.4	2485-2493	"authority to speak for the agency"	<p>Is the intent of the language that the agency representative can make decisions that would bind the agency in question? I other words, the DRC is supposed to bring together authorized decision makers for each agency and to provide such decisions to the Applicant so that the Preliminary Plan/Subdivision process moves forward after DRC and meets the 120 day deadline.</p> <p>If so, perhaps the language ought to be modified to read as follows:</p> <p>For the purpose of plan review, the head of any participating County agency must delegate authority to a representative <i>who has the</i></p>

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					<p><u><i>expertise and seniority to make decisions on behalf of the agency while attending the meetings.</i></u></p> <p>Please also see the discussion at item 1 about having the agencies Efile their comments at least three business days before DRC so the Applicant has an opportunity to review them before DRC.</p>

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Re: Subdivision Regulation Amendment No. 16-01: Subdivision Regulations Rewrite – the
“SRA”

Dear Council President Floreen and Members of the Montgomery County Council:

On behalf of Metro Pike Center LLC (“Metro Pike”), a Saul Centers, Inc. entity and owner of significant property on both the west and east sides of Rockville Pike between Nicholson Lane and Marinelli Road (the “Property”) in the White Flint Sector Plan (“Sector Plan”) area, we are submitting this letter in advance of the close of the record on the SRA (which we understand to be May 30th) so that this letter can be included in the Staff Report on the SRA.¹ In short, the ability to implement the intent of the Sector Plan in terms of allowing private roads to provide the connectivity envisioned by the Sector Plan is completely blocked through regulatory interpretations as described herein. Our primary focus is to ensure that the SRA will allow urban redevelopment that has private roads with private structure below (*e.g.*, below grade structure parking) and/or above (*e.g.*, bridges connecting buildings). The issues presented herein are not specific to Metro Pike or the Property; they are systemic to urban redevelopment throughout the County.

While the subject of creating private roads through urban redevelopment projects initially emerged as a subdivision issue in the context of creating separate lots for private roads (with issues relating to private structures not being permitted to cross lot lines), what has morphed from those discussions is a broader area of concern whereby the County (the Department of Permitting Services and County Attorney’s Office) is interpreting the applicable building codes in effect (“Building Codes,” but primarily, as we understand it, the International Building Code) in such a manner that essentially disallows private structure from being located beneath or above any private road serving the public (the County interpretation being that private drives serving the public are public rights-of-way and the Building Codes do not allow private structure to be located below or above public rights-of-way). The practical consequence of this, by example,

¹ The Property is the subject of a Sketch Plan approved in 2014, and the west side of the Property is the subject of both a preliminary plan of subdivision and site plan scheduled for public hearing at the Montgomery County Planning Board on June 2nd.

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and Members of the Montgomery County Council
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precludes a below grade parking structure from extending beneath a private drive so as to provide parking for a multiple building mixed use project. The SRA is an opportunity to remedy all of the issues that have tainted the ability to have private roads providing public access (such as what is intended in the Sector Plan), including both the lot line issue described above and the issues brought about by this strict interpretation of the Building Codes.

Consistent with the Sector Plan, Metro Pike proposes urban redevelopment of the Property that includes a private road (or roads) providing vehicular and pedestrian connectivity through the project, with proposed private garage structures extending beneath the private roads to serve multiple buildings within the project. While this proposal was initially problematic because the current Subdivision Regulations required the private drive to be a separate lot and the garage structure was prohibited from crossing the resulting lots lines, the notion of fixing this lot line issue with the SRA became greatly complicated with the interpretation of the Building Codes that has emerged over the last several months. Allowing private structure to extend below or above private roads is a major facet of urban redevelopment, where mixes of uses are stacked vertically rather than horizontally and it is critically important to allow vehicular and pedestrian circulation to occur at the surface with building improvements below or above (this being necessary for cost-efficient and effective parking and to allow for proper utilization of land to promote public spaces and other amenities necessary for urban vitality). To facilitate this fundamental need for urban redevelopment and to remain economically competitive in the region, the SRA (and/or related legislative changes) must clarify that "lot" lines are not mandated to create private roads, and additionally must clarify that the Building Codes shall not be interpreted in a manner that precludes private structure from being located beneath or above private roads. The net result of the legislative amendments must be to allow the creation of a private road, overlaid with a public access easement that also allows for private structure to be located below and above the private road and public access easement.

These issues have significantly delayed the entitlement processes for the Property, and it is similarly a major problem for many other properties and projects in the White Flint Sector Plan area and anywhere else in the County where urban redevelopment requires the integration of below and above grade private building structure with the vehicular and pedestrian connectivity system serving the project. These issues have been under discussion amongst relevant agencies in the County (including M-NCPPC, WSSC and other "stakeholders") for over a year now, with no resolution. The upcoming worksessions on the SRA provide an appropriate forum and important legislative opportunity to address the issues so that urban projects in the County can successfully move forward.

Because the issues related to this are complex, and positions relative to the issues are many and varied (and in conflict with each other), we have been purposefully brief with this letter and intend this to simply preserve the topics for discussion, debate, and resolution during the

Council President Floreen
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upcoming SRA. Thank you for your consideration of our comments. We are looking forward to actively participating in the upcoming worksessions on the SRA.

Very truly yours,

LINOWES AND BLOCHER LLP



Robert Dalrymple



Heather Dlhopsky

cc: Jeff Zyontz, Esq.
Mr. John Collich, Saul Centers, Inc.
Mr. Brian Downie, Saul Centers, Inc.

**L&B 5777312v4/05709.0027



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May 31, 2016

VIA ELECTRONIC & REGULAR MAIL

The Honorable Nancy Floreen
and Members of the Council
Montgomery County Council
Stella B. Werner Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Subdivision Regulation No. 16-01-Ownership Lots (Section 50.7.1.D)

Dear President Floreen and Members of the Council:

The purpose of this letter is to comment upon and recommend changes in the proposed text of Subdivision Regulation No. 16-01 (“SRA 16-01”) with regard to ownership lots, an element of the Minor Subdivision provisions of Section 50.7.1.D.

Background

Ownership lots are a subset of subdivision that are permitted today. They create parcels for different ownerships within a single record lot, and provide documentation of those boundaries in readily accessible public records. In mixed-use, urban development, different structures and uses want to be integrated into a single complex, but be able to be owned and financed separately. Thus, the ability to separate ownerships within an integrated development is a critical concept. The concept and function of ownership lots allow buildings to be placed closer together than would be possible with zoning setbacks and other standards (in large part because the development is treated as a single project), if the line delineating the boundary was a traditional record lot. In recognition of these benefits, the Council specifically endorsed the concept of ownership lots through the existing provisions of the Subdivision Regulations in Section 50-35A(a)(4), through the adoption of SRA No. 12-04 in 2013.

Confusion appears to have arisen because of denominating these areas as ownership “lots.” This label may cause the land areas to be treated in ways that were never intended for these subsidiary ownership units by other laws dealing with “lots”. Therefore, to avoid further confusion and possible conflicting expectations, the terminology should be changed. The term “ownership lot” should be changed to “ownership unit.” This will better reflect that the area as part of a larger whole—the record lot.

Proposed Amended Text

Attached to this letter is a proposed amendment (clean and marked to show changes) to the language of Section 50.7.1.D of SRA 16-01, to modify the text to change the name for these areas, and to clarify that an ownership lot is not a “lot” in the traditional sense for purposes of the

building codes. For this reason, the amendment proposes to change the term “ownership lot” to “ownership unit”. This change will make clear that “ownership units” are a component of record lots, and that it is to the underlying record lot (which may be composed of many ownership units) that other Code provisions that are related to individual “lots,” should apply.

Rationale

The ownership unit concept supports the ability to create more concentrated, urban development and redevelopment, allowing uses and structures to be grouped closer together. This facilitates the kind of walkable, accessible pedestrian environments that are desired in urban areas. These mixed-use developments want close relationships of buildings to each other. However, there is a corresponding need to build those buildings at different times, finance them with different lenders, and have them owned by different parties. Once multiple lenders are in place, there is an inherent need to be able to separately own and transfer that ownership—whether voluntarily or by foreclosure. This need has long been recognized in the Subdivision Regulations, where Section 50-9 provides an exception to platting for partition of land through the action of a Court.

Ownership units are also an important means by which to implement the Planning Board mortgage and lease lines Guideline (the “Guideline”). Because the Zoning Ordinance allows non-residential lots to include multiple buildings on a single lot, the Guideline recognized the need to be able to finance—and foreclose—on portions of recorded lots. To finance such buildings, a mortgagee requires a delineated area that can be subjected to its financing and be foreclosed on and subsequently transferred without penalty. The ownership unit provisions were designed to make the objective of this Guideline process simpler and more transparent. Having these areas shown on an ownership plat in the Land Records is far more accessible to the public, and therefore more transparent about ownerships and processing.

The ownership unit concept thus fulfills these two basic goals:

1. Facilitating mixed-use development and redevelopment, by allowing separation of ownership and financing for buildings in tightly constrained sites; and
2. Having those ownership delineations shown on documents that are readily accessible to the public, such as an ownership plat in the Land Records.

The current ownership provisions in Section 50-35A and those proposed in Section 50.7.1.D, recognize that these ownership units exist within the structure of the existing record lot and its subdivision approval. The Code is specific that conditions of approval for the original subdivision that created the underlying record lot remain in place. The maximum number of trips generated cannot exceed the trips approved in the original subdivision. Because of multiple ownerships and the use of facilities common to the entire record lot, (such as driveways, access points, utilities, subsurface parking), the Code also provides that necessary cross-easements,

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covenants, or other deed restrictions necessary to implement the conditions of approval of the original record lot need to be executed before recording the ownership plat.

The Code also makes clear that the ownership units exist within the original subdivided record lot. All zoning development standards continue to apply to that single record lot. The original record lot is the basis for the density calculation, for building setbacks, and for all of the quantitative development standards that are applicable on a "lot" basis. The presence of ownership lines should not restrict issuance of a building permit, even if such an ownership line were to go directly through a building.

The Planning Board viewed the original SRA 12-04 as a "clarification," rather than creation of a new procedure. Planning Board Staff had already allowed creation of ownership lots under Section 50-35A(a)(4), but the language was not specific. The Planning Board, in its recommendation for the SRA in 2013 notes that "SRA 12-04 clarifies that the creation or deletion of internal lots to reflect a deed, mortgage or lease line and the creation of ownership lots within a previously recorded lot (creating lines within lots or areas within a subdivision) are permitted under this [50-35A(a)(4)] minor subdivision provision. (Emphasis added.)" The Board noted that the proposed legislation reflected "the existing practice and interpretation of this provision of the subdivision regulations."

The attached amended version of Section 50.7.1.D also proposes to modify Subsection 50.7.1.D.3. with regard to use of ownership units to create the boundaries of roadway parcels. The current text of SRA 16-01 prohibits the use of ownership parcels to create "the outside boundaries of a private road right of way parcel." This seems short-sighted. Especially for private roads, it is beneficial to be able to delineate them clearly in recorded documents, such as an ownership plat. This allows the ownership of private roads to be specifically delineated, particularly in projects involving multiple owners. The legislative prohibition on using ownership units in this fashion seems to restrict flexibility, rather than facilitate it. In urban mixed-use development, flexibility is very important, and removing this tool from the toolbox seems an unnecessary limitation.

In a similar vein, the new Section 50.7.1.D should be clear that these ownership units may be transferred without violating the Subdivision Regulations. Given the genesis in the mortgage and lease lines Guideline, and the desire to facilitate a lender's ability to foreclose, the Code should make explicit this concept that has been implicit heretofore. This would also assist lenders in being able to point to a specific authorization for acquisition and transfer as a part of their financing, reducing the need to continually ask the County to interpret and advise on that issue.

For all the foregoing reasons, (i) we support the concept of ownership lots, (ii) suggest that the name be changed to "ownership units", (iii) explicitly indicate the transferability of ownership units, and (iv) allow, at least initially, their use for delineation of any kind of land area required, including roadways.

Honorable Nancy Floreen
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Thank you for your consideration of these comments.

Very truly yours,

LERCH EARLY & BREWER, CHARTERED



William Kominers



Steven A. Robins

WK/paj
Enclosures
cc: Jeffrey Zyontz, Esquire



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May 31, 2016

Via Electronic and First Class Mail

The Honorable Nancy Floreen
and Members of the Council
Montgomery County Council
Stella B. Werner Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Subdivision Regulation No. 16-01 (Subdivision Regulations Rewrite)

Dear President Floreen and Members of the Council:

The purpose of this letter is to make more specific comments on Subdivision Regulation Amendment No. 16-01 ("SRA 16-01").

1. Line 93. Definition of "Council". Amend the definition to add at the end "including when sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County."

2. Lines 191-192. Definition of "outlot". This definition should be modified with respect to structures, so that only new structures would be restricted. This would allow an outlot to be created where a structure already exists. The new definition would read: "an area of land shown on a record plat that must not be occupied by a new building or other new structure requiring a building permit."

3. Lines 213-216. These two definitions should use the same terminology for the proposed document. In one case it refers to "a 'plan' for a proposed subdivision ..." and in the other to "a 'drawing' for a proposed subdivision ..." The single term "plan" or "drawing" should be used in both cases.

4. Lines 226-228. Definition of right of way. At the end of the first sentence, add the phrase "or donated in fee." This will make the definition of "right of way" consistent with the definition of "tract" later on in Division 50.2. It will also account for the process of the State Highway Administration that requires fee conveyance for State right of way, but still operates as a dedication.

5. Lines 408-418. Deferral of action on an area within a pending master plan. This section allows deferral of action on a subdivision plan if any or all part of the plan is located in the boundary of a pending master plan amendment. Under the current text in SRA 16-01, action may be deferred without regard to whether or not the proposed subdivision plan is consistent or

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inconsistent with the proposed master plan. Where a proposal is consistent with the proposed master plan, there seems to be no reason for deferral.

6. Lines 584-586. Completeness of applications. We strongly support the inclusion of this sentence in the evaluation of completeness of an application for purposes of filing and processing.

7. Lines 1013-1018. Dedications of rights of way and easements, other than roads. This provision should state that the dedication that may be required should be limited to the use requested in that circumstance. The dedication should be clearly limited to the specific use for which the dedication is requested and made—the use that is the use intended in the subdivision plan that gives rise to the dedication. In that individual subdivision plan there is a nexus for the use and for dedication of land for that use. However, there is no nexus for other possible uses that may be created in the future, that likely were not even contemplated at the time of the subdivision approval. This section should make clear that the dedication for one use does not open the door to other future uses that are not contemplated by the subdivision at issue.

8. Lines 1123-1124. Alleys. SRA 16-01 notes that the Board may require alleys where they are necessary to provide access. Alleys should be available for access to both residential and non-residential property, including as “principal” access in appropriate situations (such as townhouses, for example).

9. Lines 1143-1152. This section involves right of way approvals by the Board, particularly in approving a narrower than standard road right of way. This section is not clear whether such a decision by the Planning Board is binding on the County Department of Transportation (“MCDOT”). Also not clear is whether it is necessary for an applicant to have sought and obtained a design exception from MCDOT in order to secure this approval, or whether the Planning Board can act sua sponte on such a proposal within the review of a plan application.

10. Lines 1215-1222. Intersection Spacing. Does the Planning Board need a design exception from MCDOT in order to allow the spacing set forth in the chart in this Section, or when the Board finds that greater or lesser spacing is appropriate? As to either the chart itself, or the Board’s finding of what is appropriate, is that decision binding on MCDOT, and is it binding without a design exception having been approved by MCDOT? Is this section intended to apply only as to road intersections with other roads, or would it apply to multiple driveway intersections along a road?

11. Lines 1225-1232. Corner truncations. Can this section address the standard “urban truncation,” so that using that configuration does not require a design exception in every instance? This would be very helpful.

12. Lines 1436-1443. This relates to adequate public facilities approval. This section seems to make execution of a traffic mitigation agreement mandatory, irrespective of whether the Board finds (i) that traffic mitigation measures are necessary or (ii) that additional transportation facilities are necessary. If the Board finds that additional transportation facilities are necessary, there is no need for a traffic mitigation agreement.

13. Lines 1529-1660. Extensions. The extension provisions require further attention to address current thinking about the way that adequate public facilities requirements are handled and the need to recognize outside impacts, such as external economic conditions, that can affect the progress of approved projects.

14. Lines 2107-2110. Addition considerations in the procedure for platting Minor Subdivisions. This section restricts requiring additional improvements in the case of a minor subdivision unless new development occurs. This section should clarify that “new” in this instance is meant to represent development “in excess of” the original approval, in terms of its impacts. This would clarify that a different kind of development may occur following the minor subdivision, so long as the traffic impacts, for example, are no greater than what was approved in the original subdivision application. This would be consistent with the provisions of 50-35A(b) in the existing Code.

15. Lines 2423-2431. Findings necessary to grant a waiver. This section provides that to grant a waiver, the Board must find, among others that “the intent of the requirement is still met ...” This seems restrictive, in that the requirement may not be applicable in light of the waiver. Therefore, there may be an impossibility of meeting the “intent of the requirement” rather than “not contradicting” it. Therefore, the clause “or at least is not contradicted...” should be added after the word “met”.

Economics. The Subdivision Regulations should build in the ability to consider economics as a factor in decisions. Since these regulations are the nuts and bolts of implementing the development process, they must deal with reality. Economics is a necessary part of the reality of any development activity. The local and national economies at times present dramatic shifts and dramatic challenges to the development process. There needs to be a simple and fair way to take into account these changing conditions, without having to come to the Council, as has been necessitated since the recession of 2008.

Duration/Extensions of Approval. This letter does not yet address the duration of approvals and/validity periods. In light of the focus on private roads and ownership lots, validity periods have taken somewhat of a back seat. Nevertheless, validity periods and extensions of approvals are of critical importance and should have reasonable standards that are not punitive. Bad things can happen to good projects that cause delays in moving forward, and projects should not be penalized for trying to survive external events. Market demand and economics affects the ability of projects to proceed. Sometimes changing of internal development sequence is important in order to go forward. There should be an easy way to extend approvals and revise

Honorable Nancy Floreen

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phasing schedules without putting the entire project at risk. In light of the changes to the adequate public facilities ordinance, and the subdivision staging policy in recent years, which focus more expansively on funding sources and providing resources for public facilities, rather than solely on applicants making physical improvements, the ability to extend approvals should be strongly considered and eased. This should be the subject of further discussion between public and private sectors to evolve to an equitable and non-punitive measure. We no longer see the conditions of roadways as being the same severe impediment that it had been in the past, when many of the current extension provisions were developed.

Thank you for your consideration of these comments. We are happy to expand the explanation of any of them at the appropriate time.

Very truly yours,

LERCH EARLY & BREWER, CHARTERED



William Kominers



Steven A. Robins

cc: Jeffrey Zyontz, Esquire



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

MEMORANDUM

Al R. Roshdieh
Director

June 1, 2016

TO: Jeffrey L. Zyontz, Senior Legislative Attorney
Montgomery County Council

FROM: Al R. Roshdieh, Director
Department of Transportation

SUBJECT: Subdivision Regulation Amendment 16-01
Subdivision Regulations Rewrite

This memorandum is to provide you with the Department of Transportation (MCDOT)'s technical review comments on the pending Subdivision Regulation Amendment. Although most of these comments were previously vetted at the staff level with representatives from the Planning Department and other Executive Branch agencies, they were not included in the Public Hearing DRAFT of the proposed legislation. We believe these comments merit further consideration by yourself and the County Council.

Attached for your information and use are the following two documents, which we will also forward to you electronically:

- o MCDOT's tabular summary of review comments on SRA 16-01
- o A supplemental table of the spacing of proposed intersections along different classes of roads located in urban, suburban, and urban situations (see Section 4.3.E.2.i.ii, lines 1215-1224)

Please note that these comments DO NOT address private roads. Our comments on same will be conveyed to you in a separate consolidated Executive Branch agencies document.

Thank you for your consideration of these review comments. Should you have any questions regarding these attachments, please contact Mr. Gary Erenrich, Acting Deputy Director of Transportation Policy, at 240-777-7156.

Attachments (2)

CC: Diane Jones, Director, Department of Permitting Services
Gwen Wright, Planning Director, Planning Department
Emil Wolanin, Deputy Director, MCDOT
Gary Erenrich, Acting Deputy Director, Transportation Policy, MCDOT
Sandra Brecher, Manager, Commuter Services Section Chief, MCDOT
Gregory Leck, Manager, Development Review Section Chief, MCDOT

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Office of the Director

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Located one block west of the Rockville Metro Station

Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
			<u>a public street."</u>			
2.2	232 - 235	Definition of "Road, Centerline of" - last sentence	amend the last sentence to read: In the absence of an official centerline, the centerline must be established by the Planning Board " <u>with consultation by the applicable transportation agency with jurisdiction over the road.</u> "			✓
4.1 (A.1)	436 - 438	Appropriate fees	add a condition to require applicants to demonstrate that they have paid all applicable agency review fees prior to final acceptance of the application			✓
4.1 (B)	449 - 450	Scale of drawing	suitable scale of the drawing is unclear; recommend amending "at least 100 feet to the inch" to read "a <u>maximum of 100 feet to the inch</u> "			✓
4.1 (B.3)	452 - 454	PE/RLS certification	change "PE and RLS" to read "PE <u>or RLS.</u> " Expand the certification to note the PE/RLS "certifies that they have prepared the subdivision plans and supporting documents in accordance with all known submission requirements and applicable agency standards, policies, and procedures."			✓
4.1 (B.7)	472 - 475	details of the existing and proposed streets	add requirement to delineate existing topographics and			✓

Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
e & f)			planimetrics of frontage streets abutting and opposite the site			
4.1 (B.7.f)	474	Proposed bike facilities	add "but not limited to bike share stations" after " <u>bicycle facilities, including</u> "			✓
4.1 (C.4)	493 – 495	Criteria for designing roadway profiles	we recommend changing "design criteria of Chapter 49" to read " <u>current American Association of State Highway and Transportation Officials (AASHTO) design criteria.</u> "			✓
4.1 (C.5)	503	Storm drain capacity and impact analysis criteria	we recommend changing "County specifications" to read <u>County Department of Transportation's Drainage Design Criteria and errata</u> "			✓
4.1 (C.6)	504 – 506	Sight distances evaluation certifications	we recommend adding: <u>Sight distance evaluations are to be signed and sealed by a Maryland registered Professional Engineer or licensed Land Surveyor.</u> "			✓
4.1 (C.7)	507 – 521	Wells and septic system restrictions	Please add a condition to indicate: " <u>Proposed wells and septic systems cannot be located within existing or proposed rights-of-way or easements.</u> "			✓
4.1 (C.10)	575 – 579	Traffic Mitigation Agreements	(ALSO refer to p. 51, lines 1436-1443, for additional language re TMAGs)		✓	

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Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
			<p>We believe now is the time to codify certain provisions of TMAGs. We recommend the Following language be added to this section, after "meets the requirements of that Article":</p> <p><u>"and consists at a minimum of the following provisions:</u></p> <p><u>a. Commitment to TMD goals: Commitment to achieve and maintain the transportation goals of the TMD (and, where relevant, the specific goals for that Project), in coordination with the County TMD staff, including the peak period Non-Auto Driver Mode Share goals for the specific Master Plan or Sector Plan area and the TMD.</u></p> <p><u>b. Contact Person: Appointment of a contact person assigned to coordinate and interact with TMD staff on an ongoing basis to promote alternative transportation, to receive and distribute information pertaining thereto, and to facilitate periodic access to employees and/or residents of the Project.</u></p>			

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Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
			<p><u>c. Surveys:</u> <u>Commitment to facilitate employer/employee and/or resident participation in the TMD Annual Commuter Survey using a survey instrument provided by MCDOT, and to use best efforts to achieve an 80% response return rate from among employees and/or residents in the development.</u></p> <p><u>d. Displays:</u> <u>Provision of a permanent information display in a highly-used location in the Project for commuter information and promotional material on transportation management programs in the TMD, the County and the region. If the Project has primary access points for visitors and members of the public which are different from those access points for employees and/or residents, a display should be provided in each of the primary access areas to reach each of those target markets. Displays should include provision of real time transit</u></p>			

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Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
			<p><u>information.</u></p> <p><u>e. Parking: Incorporation of measures to manage parking in support of the NonAuto Driver Mode Share goals, including measures such as market rate parking charges, unbundling of parking from tenant lease provisions, controlling parking supplied for commuters, and provision of carpool/vanpool spaces and car sharing spaces in highly visible, preferential locations.</u></p> <p><u>f. Bikeshare: For Projects within the County's bikeshare service areas, provide space in the Project for a bikesharing docking station (or similar provision required by the County) to enable this form of transportation to be used by those occupying and visiting the Project. The location of this docking station must be selected in concert with MCDOT, based upon the requirements of the bikesharing system in the County, and in a highly visible, publicly accessible, convenient and well-lit location on the</u></p>			

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Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
			<p><u>Property. A typical station is 20 docks and requires a space of 55 feet by 12 feet. Applicant will pay the capital cost of the bikeshare station and five (5) years of operating costs. Applicant must take other actions in concert with MCDOT to promote use of bikesharing among employees, visitors, and, or residents at the Project, in order to accomplish the objectives of the TMD .</u></p> <p><u>g. Annual Report:</u> <u>Provide a summary report to MCDOT on an annual date designated by MCDOT. This report will outline the traffic mitigation program and activities undertaken during the course of the previous year, and will include the name and contact information for the current contact person for the Project. MCDOT will provide a template for use in preparing this report."</u></p>			
4.2 (A.2)	607 – 610	DOT review responsibilities	Please add " <u>intersection locations, site access, sight distances, traffic calming,</u> " after "streets."			✓

Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
4.2 (B.2.a)	646 - 651	Design of public roads	After further thought, we suggest changing the title to read "public" roads and lines 648-649 be amended to read "approved in preliminary form by the transportation agency responsible for maintaining the existing and proposed public road(s)."			✓
4.2 (C.4)	688 - 692	Planning Board Action	A statement should be added at the end of this paragraph to indicate: " <u>Similarly, the Planning Board may not void or modify an applicant's agreement with another agency without the specific approval of that agency.</u> " (e.g., to address changes to Traffic Mitigation Agreements, Parking Reduction Agreements, etc which are needed for transportation demand management.)		✓	
4.3 (D.3.b)	1018	Rights-of-Way and Easements Other Than Roads	we suggest adding "stormwater management" to the list of potential public uses			✓
4.3 (D.5.a)	1060 - 1061	Reservation/procedure	What/where are the criteria for allowing a reservation to be less than 3 years?		✓	
4.3 (E.1.d)	1123 - 1124	Alleys	The regulatory agencies need to participate in proposals related to alleys. We suggest adding " <u>in consultation with the appropriate transportation agency</u> " after "The Planning Board"		✓	

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Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
4.3 (E.1.e-g)	1125 – 1137	Railroad issues	Railroads should be existing and planned. Does this cover pending reviews (such as the Purple Line) appropriately?			✓
4.3 (E.2.c)	1166 – 1171	New roads, sidewalks, etc.	<p>We recommend adding “<u>public</u>” to the subsection title and 1st sentence.</p> <p>Please add “<u>bikeshare</u>” to the list.</p> <p>We also recommend changing “as required by the Road Design and Construction Code, or municipality, whichever applies” to read “<u>as required by the appropriate transportation or permitting agency.</u>”</p>			✓
4.3 (E.2.h.iii)	1202	Non-through roads	We recommend replacing “lots” with “dwelling units”		✓	
4.3 (E.2.i.ii)	1223 – 1224	Road intersection spacing	<p>We recommend the spacing along arterial roads remain at 600 feet (our policy on median break spacing is also 600'; MSHA requires more).</p> <p>We recommend further thought about the spacing of intersections along arterials and major highways within urban areas (while retaining median break policies) SEE 1/5/16 DRAFT TABLE OF INTERSECTION</p>			✓

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Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
			SPACING BY ROADWAY CLASSIFICATION & LOCALE FOR SUBSEQUENT DOT PROPOSALS			
4.3 (E.2.i.iii)	1225 - 1232	Truncations	We recommend replacing "for safe sight distance or traffic channelization" with " <u>traffic safety and operations</u> " (to allow adequate room for multi-modal activities, traffic control devices, etc). We recommend adding language for how/when/by whom rights-of-way needed for master planned interchanges will be established.		✓	
4.3 (E.3.b)	1266 - 1282	Off-site Sidewalks and Bikeways	Last sentence about not requiring developer to obtain right-of-way: we recommend this sentence be deleted; there may be situations where a developer is proposing an off-site sidewalk as part of a TMAg or an urban TIS mitigation effort - so off-site right-of-way may be necessary			✓
4.3 (E.3.c)	1264 - 1288	Rustic Roads	We suggest rewriting this section to be more clear. Per our previous comments, we recommending adding a note to acknowledge improvements can be required to a Rustic Road if necessary for traffic safety or operational requirements (per the Executive Regulation).			✓

b7d

Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
4.3.1	1402 - 1408	Public utility undergrounding	<p>More clarification is needed on when existing overhead utilities should be relocated underground - particularly in CBDs, MSPAs, & Town Centers.</p> <p>The criteria for determining when it is infeasible to install underground lines should be specified.</p>		✓	
4.3 (J.4.c)	1438	"public" transportation facilities	We recommend the word "public" be deleted - there may be situations where private transportation facilities may also be needed to achieve these goals			✓
150 4.3 (J.7.d)	1579 - 1606	APFO/Nonresidential or Mixed-Use Subdivisions: building permits and related peak-hour trips	How will these building permits (& related peak-hour trips) be determined? Are counts to be done - or are these trips based solely on projected trips? How will this action be implemented on projects with trip reduction goals? Who will be responsible for tracking these trips and building permits?		✓	
		NEW DRAFT DOT COMMENTS	6/1/16			
4.3 (e.2.D)	1178-1179	Existing Public Roads	Add "Master Plan," after "required by" (to address potential sidewalk and/or bicycle improvements on State highways			✓

Section	(pending SRA) Line #	Issue Description	Suggestion	Authority	Big Picture	Technical
			- that are currently not subject to Chapter 49)?			
8.2	2339 - 2381	[Plat] Approval Procedure	Where is stated that applicants must provide certificates of guarantee (permits, PIAs, or covenants) to guarantee completion of their required improvements?		✓	
9.5.A	2435-2440	Procedure for Granting Waivers - Referral for recommendations	Increase the agency review time for Planning Board waivers - formal comments from the DRC should be provided no later than 65 days before the Planning Board hearing - see p. 24/line 634 for comparison			✓

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

The Planning Department recommends the following revisions to the road provisions of SRA 16-01 as they pertain to permitting private roads, and the design and construction of private roads.

In Section 50.4.1 Filing and Specifications, Supporting Information for a Preliminary Plan, at lines 493-500:

4. Concept road grade and profile. For a public road, [A] a registered engineer or registered professional land surveyor must prepare conceptual road grade and profile plan [according to] under the design criteria of Chapter 49 and indicate the percentage of tangent grades, lengths of crest and sag, vertical curves and elevations, and elevations of all intersecting roads. The plan must indicate the direction of water flow. Where the topography makes the determination of the adequacy of the road grades difficult, the Director may require additional supporting information. For a private road, a registered structural or civil engineer or registered professional land surveyor must provide certification prior to recordation of the plat that the private road has been designed to appropriate specifications.

In Section 50.4.3 Technical Review aspects of a Preliminary Plan, Road Design Standards, at lines 1160-1165:

- 2b. Slope easement. When required for construction or road maintenance, the subdivision plan must establish an easement for a 2:1 slope along both sides of each public road right-of-way for public use. The easement must be at the front setback line per zoning, or as determined by a site-specific slope study in coordination with the road grade approved under this Chapter.

In Section 50.4.3 Technical Review aspects of a Preliminary Plan, Road Design Standards, at lines 1180-1189:

- 2e. Private roads.
 - i. Standards. Private roads must be built to the construction specifications of the corresponding public road with regard to paving detail and design data, including surface depth and structural design. The width and cross section of a private road must meet the right-of-way specified in a master plan or be equal to the corresponding public road standard unless

modified by the Board [applicable structural standard, grade, and typical section based on the comparable functional classification in Chapter 49]. Private roads must conform to the horizontal alignment requirements of this Chapter.

ii. Road Classifications. Only roads classified as either Business District, Industrial, Secondary, Tertiary, or Alley may be considered by the Board to be private. All other road classifications must be public unless specifically permitted to be a private road by a master plan.

iii. Certification. The subdivider must have a registered structural or civil engineer certify to [the County Department of Permitting Services] DPS that each private road has been designed to meet the [structural] standards required by this Section. The subdivider must then certify to [the County Department of Permitting Services] DPS that all construction complies with the design.

In Section 50.4.3 Technical Review aspects of a Preliminary Plan, Additional Roadway Provisions, at lines 1309-1316:

4. Platting roads. Area for roads must be shown on a record plat to the full width of the required right-of-way. A public road must be dedicated to public use. A private road must be platted as a road parcel with an access easement for the public. In the Commercial/Residential, Employment, Industrial, and Planned Unit Development zones, a private road may be platted by an easement [alone] without a separate road parcel if the Board finds it [necessary] appropriate to permit a structure that would otherwise cross a lot line created by a road parcel.



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

Addendum PHED Committee Item # 1 June 13, 2016

June 9, 2016

The Honorable Nancy Floreen
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Floreen:

The Montgomery County Planning Department has submitted red-line revisions to our original draft of amendments to the Subdivision Regulations. These revisions specifically address issues related to the policy and regulations on Private Roads and are the result of many months of discussion with both Executive Branch agencies and representatives of the development community and land use bar. We have not reached consensus with Executive Branch agencies, but are in substantial agreement with representatives of the development community and land use bar.

Before getting into an executive summary of our suggested revisions, I would like to delve into why this is such an important topic. As a county, we need to accommodate growth. This is not a choice – it is a necessity and is at the core of why we have had a planning program since 1927. Our projections – based on our own demographic studies – show the potential for another 200,000 residents by 2040. The challenge is that only approximately 19% of the land in the county remains unconstrained to accommodate this projected growth.

What this means is that we must begin to think differently and use our land more efficiently. Any facilities that go below grade serve to free up land that is above grade for commercial and residential uses that relate to the pedestrian and for active and passive open space. Representatives in the development community have understood this and they are responding by creating development plans that use land more efficiently. This includes putting parking structures below grade. Putting structures such as parking, utility vaults, and stormwater facilities underground is the norm in the District of Columbia and many of the close-suburbs surrounding DC. This is rapidly becoming the norm in Montgomery County.

Unfortunately, our existing policies and regulations – including the Subdivision Regulations – are oriented towards “greenfield” development and forms of growth that do not use land efficiently. One of our primary goals in updating the Subdivision Regulations is to make them more responsive in addressing the real challenges that we are facing.

To that end, here are policies and criteria that we think are most important to incorporate in terms of private roads and which are the basis of our red-line revisions to Chapter 50:

- In general, the creation of public roads is preferred, and a developer should justify the need for a private road based upon the specific circumstances of the property being developed. Justification for a private road should include:
 - Explanation of why proposed design elements cannot be accommodated using a context-sensitive road design standard or modified under a Design Exception; and
 - reasons that the installation of non-standard amenities cannot be addressed under a Maintenance & Liability Agreement.
- The following roads must be public, unless specifically permitted to be a private road by a master plan:
 - Freeway
 - Major Highway
 - Arterial (any kind)
 - Parkway
 - Country
 - Primary Residential
 - Principal Secondary
 - Rustic/Exceptional Rustic
- Consideration will be given to making the following roads private when the proposed road is not part of the analysis used to maintain area circulation and control roadway volumes (i.e., roads modeled as part of a network for area capacity):
 - Business District
 - Industrial
 - Secondary
 - Tertiary
 - Alley
- Private roads with improvements above or below are only allowed in projects that require site plan review and approval.
- Roads may be private if specified in a master plan.
- Private roads should generally be in separately recorded parcels. However, in the CR, Employment, Industrial and PD zones, to facilitate private structures above or below the ground, the roads may be created by specific designation on the plat and restrictive covenants that reflect site plan conditions.

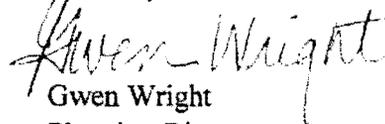
- Private roads should not be permitted if they will create a segmented road ownership pattern, unless approved by the Planning Board.
- Minimum requirements for any private road:
 - Area designated for the private road must meet the right-of-way width specified in a master plan or be equal to the corresponding public road standard unless modified by the Planning Board in coordination with MCDOT.
 - Road must be built to MCDOT construction materials specifications of the corresponding public road with regard to surface depth and structural design.
 - Road design must also provide for other necessary improvements, including sidewalks, bikeways, storm drainage facilities, stormwater management, street trees, and street lights all of which will be included in an approved long-term maintenance plan, including entry into a maintenance and liability agreement.
 - Road must meet all requirements for emergency access as determined by the Fire Marshall.
 - The private road must remain open for the public to traverse at all times as part of the project common area unless otherwise allowed under the covenant.
 - All private roads must meet the minimum ESD requirements of a public road except stormwater control for the road is not required to be separate from the rest of the site if the stormwater control for the road is covered by the Maintenance and Liability Agreement.
 - Certification by a professional engineer licensed in Maryland must be provided to DPS at record plat approval to verify that the road design meets required standards.
 - Bonding and surety must be provided under the terms of the preliminary plan or site plan conditions and will be held by MNCPPC (along with bonds for any additional site amenities.)
 - Before release of bonds and surety, certification must be provided to DPS by an independent professional engineer licensed in Maryland that the road has been built to required standards. The County will provide inspections as related to site plan enforcement.
 - Bi-annual certifications by a licensed professional engineer must be submitted to DPS to verify the ongoing structural integrity of any road that has below-ground structures. Certifications can be made every five years if there are no below-ground structures.
 - Bi-annual third-party certifications must be submitted to DPS to verify that sufficient capital reserves are being maintained to ensure that the structural

integrity of the road and any below-ground structures can be maintained. Certifications can be made every five years if there are no below-ground structures.

Other Criteria for Specific Private Roads	
Road Classification	Requirements that apply to the use of a private road in lieu of a public road.
Secondary	<ul style="list-style-type: none">• Only when the road does not need to be extended onto adjacent property to facilitate a future subdivision of the adjacent land
Tertiary	<ul style="list-style-type: none">• When the road is a cul-de-sac, it must be less than 500' in length
Alley	<ul style="list-style-type: none">• No access easement if the alley only serves one building• No access easement if the alley is a secondary access to one-family residential dwellings (i.e., residential lots front another road but have garages off the alley)

I hope that this information is helpful in understanding the private roads issue and our suggested revisions to Chapter 50. We look forward to discussing this matter further with the PHED Committee.

Sincerely,



Gwen Wright
Planning Director