

MEMORANDUM

June 16, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, ⁸²Senior Legislative Attorney
SUBJECT: Subdivision Regulation Amendment 16-01, Subdivision Regulations Rewrite
Worksession 2

On June 13, Staff presented background on the subdivision process and Planning staff highlighted changes from the current code recommended by the Planning Board. The Departments of Permitting Services and Transportation presented the Executive's point of view, with a focus on ownership lots.

The Committee did not take any straw votes, but asked for maps of existing private roads and detailed comments from all interested parties in light of the June 13 staff memorandum.

**Please bring the June 13 packet and the June 14 addendum concerning SRA 16-01
for use at the June 20 Committee meeting.**

On June 20, the Planning Department will present maps of private roads in the County at the Committee meeting. Staff intends to start the Committee's deliberations using page 4 of the June 13th memorandum. Staff hopes to help the Committee work through private roads (when allowed, establishment on a plat, and the responsibility for permitting and inspection), parking under private streets (conditions of approval), ownership lots, and adequate public facility provisions.

This Packet Contains

Circle Number

Comments from:

Planning Department	1 – 6
Rodgers Consulting	7 – 9
DPS (received by staff and substantively included in the June 13 Memorandum) ... a packet addendum will be published when additional comments are provided	10 – 21



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

The following is submitted by the Planning Department in response to the detailed comments covered in pages 15-20 of the Council Staff's memorandum dated June 9, 2016.

<i>Lines</i>	<i>Comments</i>
85	<p>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."</p> <p>The proposed language is not appropriate for the subdivision code. Any setbacks needed to meet building and life safety codes should already be covered in those codes. If needed for clarity, the definition in Chapter 50 could be changed to "A line designating an area in which development or building is prohibited by the Board <u>under Section 50.4.3.K of these regulations.</u>"</p>
118	<p>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."</p> <p>Do not add the proposed language. DPS is not the Enforcement Agent, the Planning Department is. They do some of the enforcement capabilities under an MOU between the two agencies but the Planning Department is the ultimate enforcement agent and actually enforces the cases if they are in non-compliance.</p>
226-228	<p>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."</p> <p>From a plat perspective, private road parcels constitute the "right-of-way" for the private road. Definition of a private road parcel is needed to make clear that a private road parcel that will be used by the public is not a dedicated right-of-way.</p>
232-235	<p>Editorial; add to the definition of "Road, Centerline of" the following: "with consultation by the applicable transportation agency with jurisdiction over the road."</p> <p>Delete the word "transportation" since the definition would also apply to a private road.</p>
410	<p><i>Area within pending master plan.</i> The Board may defer action on a proposed subdivision plan application, if all or any part of the plan is located in the boundaries of a pending master plan or master plan amendment <u>and the proposed subdivision is inconsistent with the pending master plan.</u></p> <p>Language was taken out because it isn't always clear if the proposed subdivision will be inconsistent with the pending master plan since the master plan has not been</p>

	through the entire process and may change. This is why it says “the Board may” and not “must” because if the subdivision plan could have a big impact on the master plan area then the Board can defer action. It’s on a case by case basis. The most recent example of this is the Monument Realty development in the Montgomery Village Master Plan.
454	<p>certificate of registered professional engineer [and] <u>or</u> licensed land surveyor to affirm the accuracy of boundary lines, topographic data, [and] other engineering or survey data <u>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.</u></p> <p>Change “certifies” to “certify”.</p>
503	<p><i>Storm drainage capacity and impact analysis.</i> The concept road grade plan must be supported by a preliminary storm drain study prepared under the County[’s] <u>Department of Transportation’s Drainage Design Criteria [storm drain specifications].</u></p> <p>Just refer to the design criteria and delete reference to “storm drain specifications”. Also, add a general rule of interpretation to cover situations where it’s not the county standards that are available. At line 59, add: <u>M. Reference to County Standards. For infrastructure under the jurisdiction of State or local municipalities, references in these regulation to County standards, policy and procedures should be replaced with the applicable standards, policy and procedures of the agency responsible for maintaining the infrastructure.</u></p>
692	<p>The Board must approve a resolution containing findings supporting its decision. Following approval of a preliminary plan by the Board, no agency may require a substantial change in the plan unless allowed by the Board’s conditions of approval or a plan amendment under Section 4.2.F.</p> <p>Recommendation by DOT to add: <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> Or delete the last sentence.</p> <p>Do not delete the last sentence. Discussion is needed before adding the proposed language needs.</p>
963-965	<p><i>Lots to abut on a public or private road.</i> 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.</p> <p>Don’t delete the last sentence, could modify it to read: “A private road must be <u>shown on</u> [created on] a record plat and be made available for public use through a <u>recorded covenant approved by the Board</u> [access easement].” If recorded covenant is too specific, then just “recorded legal instrument”?</p>
1006-	Address private roads as part of this provision:

1012	<p>“3. <i>Area for public roads and associated utilities and storm drainage.</i></p> <p>a. <i>Roads.</i> In its consideration of the approval of a subdivision, the Board must require dedication and platting of adequate area to provide public roads and other public transportation facilities. These must be coordinated with other existing, planned, or platted roads, other features in the district, or with any road plan adopted or approved as a part of the General Plan.”</p> <p>Why here when the subsection is clearly about public roads and the section is about necessary Public Sites?</p>
1107-1114	<p>Address private roads allowed by master plan in this provision:</p> <p>“<i>Master plan roads.</i> Preliminary plans must include roads shown on any adopted Master Plan of Highways, in satisfaction of the Road Design and Construction Code. Where applicable, an approved plan must include recommendations of the State Highway Administration for construction and access to State roads.”</p> <p>Add the sentence, “<u>Where private roads are specifically permitted by a master plan, the roads must be provided in satisfaction of Section 50.4.3.E.2.e.</u>” As that section is recommended for revision by the Planning Department at circle page 152.</p>
1143-1159	<p>Council staff commented that this section implies DOT will give a design exception when the Board recommends a narrower than standard ROW width. That was our intent. However, we suggested adding the requirement that the right-of-way must meet minimum fire access requirements.</p> <p>“The Board may approve a narrower than standard road right-of-way if <u>it meets minimum fire access requirements and</u> the Board finds that a narrower right-of-way is environmentally preferable, improves compatibility with adjoining properties, or allows better use of the tract under consideration.”</p>
1184	<p>After “if” add “it meets minimum fire access requirements and”.</p> <p>The line reference may be incorrect. Planning Department staff recommended this change to line 1144.</p> <p>If a similar change is also needed in the section containing the line at 1184 (which is the highlighted text below in the changes recommended to the section by the Planning Department), I believe the Council staff may be recommending that the change occur after “this Chapter”. We support that change.</p> <p><i>Private roads.</i></p> <p>i. <u>Standards.</u> Private roads must be built to the <u>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</u> [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 <u>and meet</u></p>

	<p align="center"><u>minimum fire access requirements.</u></p> <p>ii. <u>Road Classifications.</u> 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.</p> <p>iii. <u>Certification.</u> The subdivider must have a registered structural or civil engineer certify to [the County Department of Permitting Services] <u>DPS</u> 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] <u>DPS</u> that all construction complies with the design.</p>
1186	Proposed change included in the Planning Department recommended language on the previous line.
1229	<p>Add a new f. “permit, public improvement agreements or covenants to guarantee completion of any required improvements”.</p> <p>Don’t think the line reference is correct since the line referenced is in the section covering corner lot truncation requirements. We believe the language of Section 10.2 at line 2452 adequately covers this. If not, changes should be made there.</p>
1264-65	<p>MCDOT recommends deleting language and allowing the Board to require applicants to obtain offsite ROW for sidewalks and bikeways.</p> <p>Disagree. There is no nexus to require this. There may be incentives to do it for optional method benefit points in certain zones, but otherwise, it is enough to ask for the construction of offsite sidewalks and bikeways in available right-of-way.</p>
1266-82	<p>MCDOT recommends text to acknowledge that safety and operational requirements would allow changes to rustic road.</p> <p>The section states that “the Board must not require improvements that are contrary to Chapter 49, Article 8 or Executive Regulations governing rustic roads”. The language MCDOT seeks should be covered by these.</p>
1309-1316	<p>Revise as directed by the Council; delete lines 1315-1316.</p> <p>The Planning Department recommended the following language for this section at circle page 153. We would not be opposed to deleting the recommended language (highlighted) since it does not change the intent of the sentence.</p> <p><i>Platting roads.</i> 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 a restrictive covenant approved by the Board [alone] <u>without a separate road parcel</u> if the Board finds it [necessary] <u>appropriate</u> to permit a structure that would otherwise cross a lot line created by a road parcel.</p>

1662-1667	<p>Testimony suggested holding preliminary plan amendments harmless from any forest conservation amendments.</p> <p>If the approved preliminary plan included a forest conservation plan that was being changed, not amending the FCP would be a violation of Chapter 22A. Amendment to a preliminary plan that did not include a forest conservation plan is exempt from the requirement to do an FCP if no new land area is being added to the existing subdivision.</p>
1842-65	<p>Testimony suggested that the number of steps required are unnecessary.</p> <p>The lines noted cover the requirements for an Administrative Subdivision Plan to create a lot for existing places of worship and institutional uses. All of the requirements are necessary when they are applicable.</p>
1900-1921	<p>Testimony suggested that the number of steps required are unnecessary.</p> <p>The lines noted cover the requirements for an Administrative Subdivision Plan to consolidate existing lots or parts of lots in a nonresidential zone. All of the requirements are necessary when they are applicable.</p>
2046-2073	<p>The Planning Department recommends the following changes to the ownership lot provisions:</p> <p>D. Subdivision to reflect ownership. Plats for a commercial, industrial, or multi-unit residential lot may be recorded to reflect a change in ownership, deed, mortgage, or lease line as follows:</p> <ol style="list-style-type: none"> 1. a plat may be filed to create or delete an internal lot or create ownership <u>units</u>[lots] within a previously recorded lot, if: <ol style="list-style-type: none"> a. all conditions of approval for the original subdivision that created the lot remain in effect; b. the total maximum number of trips generated on all new lots or ownership <u>units</u>[lots] created will not exceed the number of trips approved for the lot in the original subdivision; c. all land in the original subdivision lot is included in the plat; and d. any necessary cross easements, covenants, or other deed restrictions necessary to implement all the conditions of approval on the lot in the original subdivision are executed before recording the plat. 2. for ownership <u>units</u>[lots], the lot in the original subdivision is considered a single lot of record <u>and fee simple ownership of the underlying land must remain in common ownership</u>. Any ownership <u>unit</u>[lot] created under this Subsection is only for the convenience of the owner; an ownership <u>unit</u>[lot] is not: <ol style="list-style-type: none"> a. used to determine building setbacks or to establish conformance with any other law or regulation; <u>or</u> b. [a bar to receiving a building permit or other approval necessary to develop or use any of the ownership lots and structures on such lots, including structures that cross an ownership line; and

	<p>c.] a change to any condition of approval for the subdivision that created the lot in the original subdivision.</p> <p>3. ownership <u>units</u>[lots] may not be used to create the outside boundaries of a private road right-of-way parcel.</p>
2074	<p>Testimony suggested a note that a plat of correction is not always required.</p> <p>The line reads, "A plat of correction may be used for any of the following:". The "may" should be enough.</p>
2108	<p>Testimony suggested holding minor subdivisions harmless from any forest conservation amendments.</p> <p>FCP amendments are only required where applicable. To do otherwise would be a violation of Chapter 22A.</p>
2116	<p>Testimony suggested added text to avoid forcing re-recording a plat.</p> <p>Further discussion is needed. We don't understand the comment in regard to the noted line.</p>
2342	<p>The editorial comment actually refers to line 2286.</p>
2402	<p>Testimony suggested that public utilities be required to have easements subservient to ROW dedication rather than require land free of dedication.</p> <p>The proposed language reads:</p> <p>Section 8.4. Abandonment of Land Dedicated for Public Use</p> <p>A. <i>Land dedicated to the County for public use.</i> 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. However, the person who originally filed the plat, any successor in interest, or the County may petition to abandon any land dedicated under this Section. Abandonment of all or part of the dedicated land may be authorized by:</p> <ol style="list-style-type: none"> 1. the Council under Section 49-63, if the land has been in public use; or 2. the Board under Section 49-68, if the land has not been in public use. <p>We don't think the recommended provisions should be added to this section, and further discussion is needed before adding them elsewhere.</p>
2429	<p>Testimony requested more waiver flexibility than the "minimum necessary".</p> <p>Proposed section reads:</p> <p>A. To grant a waiver, the Board must find that:</p> <ol style="list-style-type: none"> 1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare; 2. the intent of the requirement is still met; and 3. the waiver is: <ol style="list-style-type: none"> a. the minimum necessary to provide relief from the requirements; and b. consistent with the purposes and objectives of the General Plan. <p>The proposed language should be retained.</p>

TO: Jeff Zyontz, Senior Legislative Attorney, Montgomery County Council
FROM: Frank Bossong, IV, P.E. – Executive Vice President
Jennifer Russel – Principal
Matthew Leakan - Principal
SUBJ: SRA 16-01
DATE: June 14, 2016

Subdivision Regulation Amendment 16-01, Subdivision Regulations Rewrite was recently heard in public hearing by the County Council and is proceeding to discussion at PHED now re-scheduled for June 2016. There are a variety of issues associated with the re-writing of a code that is outdated and must be revised to coincide with changes made with the recent re-write and adoption of the County's Zoning Ordinance. The effort underway is laudable and must proceed, but there are several pressing issues that need to be addressed before this SRA can be adopted.

In light of our concerns, the following changes are suggested to the text of SRA 16-01:

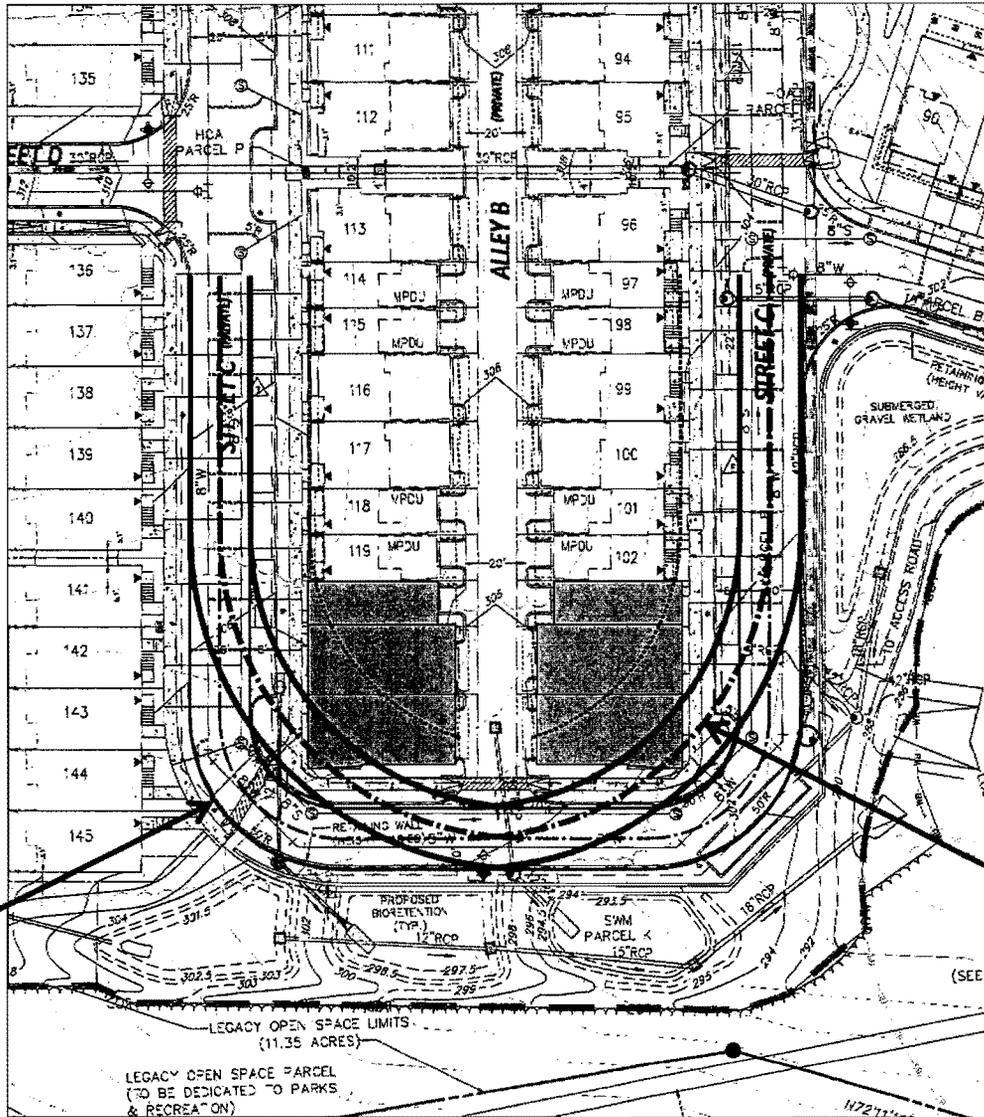
- 1) **Section 4.3 Technical Review. E.Roads.2.Design standards. e. Private roads-** should be redrafted as: Private roads must be built to the applicable structural standard, grade and typical section based on the comparable functional classification in Chapter 49. ~~Private roads must conform to the horizontal alignment requirements of this Chapter.~~ The subdivider...
- 2) *j. Horizontal alignment.* In all public and ~~private~~ primary, secondary and tertiary streets and cul-de sacs, 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....
- 3) Regarding concerns raised about the maintenance and liability of private roads, it is suggested this issue be researched and addressed by indemnifying the County from liability within the context of an easement agreement.
- 4) **Division 50.7.Minor Subdivision. Section 7.1 Applicability. D. Subdivision to reflect ownership. 2. For ownership lots.** The definition included herein, as well as the description of what an ownership lot is not are both very clear. We urge the Council to use this definition and suggest that DPS interpret it accordingly. At present, DPS suggests that the Building Code (Chapter 8) would prevail, thereby undermining the intent of Chapter 50.
- 5) Concern voiced by DOT as to the future possibility of pressure to take over private roads in the future could be addressed via language within an easement document that allows public use of private roads, and includes some assurances and procedures to the government prior to public takeover.

In a County where master plans are consistently promoting mixed-use transit-oriented development in urban areas, the ability for flexible development standards is a necessity, and indeed must be a priority. Infill development, by its nature will be severely hampered by the approach that SRA 16-01 is promoting vis-a-vis the ability to develop under the aegis of private streets. If this issue is not confronted, it will become a serious economic development obstacle, despite many other County actions to the contrary, to streamline the development process and become competitive regionally and nationally. Innovative urban design cannot be expected to proceed under the restrictions that SRA 16-01 intends to impose on private roads. To accommodate and promote infill development in the County, the use of private roads, which promote flexibility in design, must be allowed, and even promoted. The existing private road geometry allows for blocks less than 200' measured

ATTACHMENT

Existing private road geometry allows for blocks less than 200' centerline-centerline
 Efficient, compact development footprint
 Promotes reduced vehicular speed for a more friendly pedestrian environment

50' outside curb fillet radius (MCFRS Fire Apparatus)



- Blocks less than 200' centerline-centerline not geometrically feasible
- Inefficient, suburban development footprint
- Promotes increase in vehicular speed
- Secondary roads require 150' centerline

SRA:
 100' min. centerline radius required (tertiary)

SRA: Private Roads Horizontal Alignment
 (residential tertiary road equivalent example)

Comments on SRA 16-01 submitted by
the Department of Permitting Services
(The June 13 Staff Memorandum on SRA 16-01 incorporated
these comments. The lines numbers are only for reference in
this document and do not relate to SRA 16-01 line numbers.)

1
2 Block: Land area bounded by roads, other rights-of-way, unsubdivided acreage,
3 natural barriers and any other barrier to the continuity of development.

4 Building restriction line: A line designating an area in which development or
5 building is prohibited by Montgomery County Code Chapter 59 or the Planning
6 Board. Building restriction line is not a setback line for purposes of compliance
7 with requirements of the International Building Code, National Fire Protection
8 Code or other life safety codes adopted by the State of Maryland or pursuant to
9 Montgomery County Code, Chapters 8 and 22.

Commented [JD1]: This definition does not currently exist

10 * * *

11 C.

12 Citation: A document noting a violation of a Planning Board action, seeking to
13 impose a civil fine or corrective action.

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

16 Enforcement Agent: The Director, or the Director's designee responsible for
17 determining compliance with a Planning Board action. For site plans, the
18 Enforcement Agent is the Director of the Department of Permitting Services.

19 Engineer: A professional engineer registered in Maryland.

20 * * *

21 Right of way: Land intended for the passage of people, vehicles or utilities, as
22 shown on a record plat or easement. Any right of way involving maintenance by a
23 public agency access or use must be dedicated to public use by the grantor or
24 maker of the plat on which the right-of-way is established.

Commented [JD2]: Existing language: "A strip of land occupied or intended to be occupied by a road, pedestrian path, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for other special use. For land platting purposes, every right-of-way shown on a record plat must be separate and distinct from any adjoining lot or parcel, and not included in any other lot or parcel. Any right-of-way intended for roads, pedestrian paths, water mains, sanitary sewers, storm drains, or any other use involving maintenance by a public agency must be dedicated to public use by the maker of the plat on which the right-of-way is established."

25 Road: Any street, highway, avenue, lane, alley, or viaduct, or any segment of any
26 of them. Roads must be created by a subdivision plan under this Chapter and be
27 shown on a record plat, granted by easement or otherwise be deemed a public road
28 by under Chapter 49.

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

29 Road, centerline of: A line established as a centerline of a road by any state, county
30 or other official agency or governing body with jurisdiction and shown on an
31 officially adopted plan or recorded plat. ~~In the absence of an official centerline, the~~
32 centerline must be established by the Planning Board.

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Commented [JD3]: Dot /

33 * * *

34 Section 4.2 Approval Procedure

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- 36 3. County Department of Permitting Services, for stormwater
37 management, sanitation, wells, septic systems, water, and sewers;
- 38 4. Montgomery County Fire and Reseue Department of Permitting
39 Services, for requirements for adequate fire protection and access.
- 40 5. State Highway Administration, for right-of-way requirements and
41 access on state roads;
- 42 6. Any appropriate agency of the federal government;
- 43 7. Any municipality which has filed a request with the Planning Board
44 for an opportunity to review subdivision or resubdivision plans for
45 property located in that municipality;
- 46 8. Montgomery County Public Schools, for school site planning;
- 47 9. Any other Montgomery County Executive agency, for the adequacy of
48 public facilities and services; and
- 49 10. Local utility providers.

50 B. Review and Recommendation

51 1. Timing of Review

- 52 a. Reviewing State and County agencies and utilities must have at
53 least 10 days to review and must submit initial comments to the
54 Director before the Development Review Committee meeting.

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

55 b. The applicant must submit revised drawings at least 65 days
56 before the date of the hearing to address all comments received.
57 The Director may extend the deadline if the applicant submits a
58 written request within 15 days after the revised drawings were
59 due. If no written request is received or if the requested
60 extension is not granted, the application is deemed withdrawn.

61 c. Chapter.

62 ****

63 2. All necessary improvements to support the development must be
64 completed or assured as specified in Section 10.2.

65 3. Where a site plan is required, the approval of the Preliminary Plan
66 must not allow clearing or grading to occur before approval of the site
67 plan unless otherwise specified by the Planning Board.

Commented [JD4]: Note this is exactly what NAIOP was asking about.

68 4. The Planning Board action must be by resolution containing findings
69 supporting its decision. Following approval of a Preliminary Plan by
70 the Planning Board, no agency may require a substantial change in the
71 plan unless allowed by the Planning Board's conditions of approval.

Commented [JD5]: This is contrary to legislatively conferred authority for building codes, sediment control and stormwater management, fire codes, etc.

72 D. Required Findings. To approve a Preliminary Plan, the Planning Board must
73 find that:

74 1. The Preliminary Plan substantially conforms to the Master Plan;

75 2. Public facilities will be adequate to support and service the area of the
76 subdivision;

77 3. The layout of the subdivision, including size, width, shape, orientation
78 and density of lots, and location and design of roads are appropriate
79 for the subdivision given its location and the type of development or
80 use contemplated, considering the recommendations included in the
81 Master Plan and the applicable requirements of Chapter 59;

82 4. All Forest Conservation Law, Chapter 22A requirements are satisfied;

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

- 83 5. All stormwater management, water quality and floodplain
84 requirements of Chapter 19 are satisfied; and
- 85 6. Any other applicable Planning Board finding required under this
86 Chapter that is specific to the property and necessary for approval of
87 the subdivision.

88 E. Plan Certification. Every Preliminary Plan approved by the Planning Board
89 must be certified by the Director to confirm that the plan reflects the
90 Planning Board's approval. Any modification of the plan conditioned by the
91 Planning Board's approval must be

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92 3. Grounds for Extension

Commented [JD6]: This could be an opportunity to add a condition for extension that there be capacity for other projects so capacity is not being hoarded to the detriment of other projects that may go forward.

93 a. The Planning Board may only grant a request to extend the
94 validity period of a Preliminary Plan if the Planning Board
95 finds that:

Also if the plan is approved based on certain assumed infrastructure being provided and other development is held up by the infrastructure not being provided, how is that addressed?

96 i. delays by the government or some other party after the
97 plan approval have prevented the applicant from meeting
98 terms or conditions of the plan approval and validating
99 the plan, provided such delays are not caused by the
100 applicant; or

101 ii. the occurrence of significant, unusual and unanticipated
102 events, beyond the applicant's control and not caused by
103 the applicant, have substantially impaired the applicant's
104 ability to validate the plan, and exceptional or undue
105 hardship (as evidenced, in part, by the efforts undertaken
106 by the applicant to implement the terms and conditions of
107 the plan approval in order to validate the plan) would
108 result to the applicant if the plan were not extended.

109 b. The applicant bears the burden of establishing the grounds in
110 support of the requested extension.

111 4.*****

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Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

112 d. Multi-Unit or Apartment Blocks and Access Roads. The design
113 and arrangement of access roads or drives within a subdivision
114 for apartment dwellings, together with the required parking
115 facilities and pedestrian walks, must be reviewed and approved
116 by the Planning Board. Determination of whether interior
117 access roads will be dedicated to public use or may be private
118 roads for the benefit of the development to have the public
119 access the development will be made by the Planning Board,
120 considering the recommendations of applicable agencies.

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121 2. Nonresidential blocks. Blocks designed for business or industry must
122 be a suitable length and width as determined by the Planning Board,
123 including adequate provision for pedestrians, parking, deliveries and
124 truck maneuvering.

125 C. Lot Design

126 1. General requirements

127 a. Lot Dimensions. Lot size, width, shape and orientation must be
128 appropriate for the location of the subdivision, and for the type
129 of development or use contemplated considering the
130 recommendations of the Master Plan and the applicable
131 requirements of Chapter 59.

132 b. Lots to Abut on a Public or Private Road. Except as specified
133 below, every lot must abut on a public or private road. A public
134 road must be dedicated in perpetuity or donated to public use or
135 have acquired the status of a public road under Chapter 49. A
136 private road must be created by a record plat and be made
137 available for the benefit of the development to have the public
138 access the development public use through an access easement.

Commented [JD7]: Should consider reserving vault for future utilities with reservation that county grants right to locate.

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139 i. The Planning Board may approve a maximum of 2 lots
140 that do not abut a public or private road if the lots will be
141 served by a private driveway that serves no other lots
142 without frontage.

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

- 143 ii. The Planning Board must find that access to lots with no
144 road frontage is adequate to serve the lots for emergency
145 vehicles, for installation of public utilities, and the lots
146 are accessible for other public services, and are not
147 detrimental to future subdivision-development of
148 adjacent lands.
- 149 c. Side Lines. Side lines of interior lots must to the extent possible
150 be aligned perpendicular to the road line or radial to a curved
151 road line.
- 152 d. Through Lots. Through lots, must not be approved except
153 where unusual topography, orientation or the size of the
154 subdivision permit no other feasible way to subdivide.
- 155 e. Alley or Pedestrian paths for Residential Lots. If a mid-block
156 alley or pedestrian right of way is provided in a residential
157 subdivision, the lots adjoining the alley or right of way must be
158 increased in width sufficient to provide for a parallel side
159 building restriction line 15 feet from the alley or right of way.

160 * * *

161 D. E. Roads

162 1. Plan requirements.

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164 2. Design standards.

- 165 a. Right-of-way: Area for a road on a subdivision plan must
166 include the full width of all rights-of-way recommended for the
167 applicable road classification in Chapter 49.
- 168 i. The Planning Board may approve a narrower than
169 standard road right-of-way if the Planning Board finds
170 that a narrower right-of-way is environmentally
171 preferable, improves compatibility with adjoining

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

- 172 properties or allows better use of the tract under
173 consideration.
- 174 ii. In determining the width of a less than standard right-of-
175 way, the Planning Board must consider:
- 176 (a) (a) — the amount of traffic expected to use the
177 proposed roads;
- 178 (b) Safe emergency vehicle access and use as
179 determined by the fire marshal;
- 180 (c) Whether the road will meet sound engineering
181 principles for safe use including horizontal and
182 vertical alignments for the intended target speed,
183 adequate typical section (s) for
184 vehicles/pedestrians/bicyclists, stormwater
185 management and drainage facilities, sight
186 distances, points of access and parking;:
- 187 (b) the maximum road right-of-way or improvement
188 required for the proposed land use; and
- 189 (c) the increased traffic, travel lane, and right-of-way
190 requirements which would be created by maximum
191 use and development of land using the road.
- 192 b. Slope easement. When required for construction or road
193 maintenance, an easement for a 2:1 slope must be established
194 along both sides of each road

195 ***-

- 196 4. Platting roads. Area for roads must be shown on a record plat to the
197 full width of the required right-of-way. A public road must be
198 dedicated to public use. A private road must be platted as a road
199 parcel with an access easement for the benefit of the development to
200 have the public access the development. In the
201 Commercial/Residential, Employment, Industrial, and Planned Unit

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Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

202 Development zones, a private road may be platted on a lot by an
203 easement alone if the Planning Board finds it is necessary to permit a
204 structure that would otherwise cross a lot line created by a road parcel.

205 F. *Water supply and sewage disposal facilities*

206 ***

207 G. *Markers and monuments*

- 208 1. Metal property line markers, approximately 5/8-1/2 inch in diameter
209 and 18 inches in length, or other generally accepted survey markers,
210 must be placed in the ground at all lot corners, intersections of roads,
211 intersections of roads and alleys with Subdivision Record Plat
212 boundary lines and at all points on road, alley and boundary lines
213 where there is a change in direction or curvature, unless such point
214 coincides with the location of a reference monument. All markers
215 must be properly set in the ground before the roads and alleys are
216 accepted for public maintenance. For projects which do not include
217 public roads, the owner and surveyor must certify to the Department
218 of Permitting Services that all property corner markers have been set
219 by a licensed land surveyor.
- 220 2. After road grading and paving in the subdivision and grading and
221 landscaping of adjacent lots are completed, the licensed land surveyor
222 who prepared and signed the plat or the licensed land surveyor's
223 successor, if so engaged by the owner, must place the markers and
224 monuments in the ground as specified and as certified by such
225 licensed land surveyor on the plat. Before the County or municipality
226 accepts any road or alley established by the plat for maintenance, the
227 licensed land surveyor must certify to the Department of Permitting
228 Services, or other appropriate governmental agency, or the
229 municipality that all survey monuments and markers are in place.
230 Before the amenity bonds are released by MNCPPC, the licensed land
231 surveyor must certify to the Department of Permitting Services that all
232 survey monuments and markers are in place.

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

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235 D. Subdivision to Reflect Ownership. Plats for further subdivision of a
236 commercial, industrial, or multi-unit residential lot may be recorded at the owner's
237 discretion to reflect a change in ownership, deed, mortgage or lease line as follows:

238 1. A plat to create or delete an internal lot to reflect a deed, mortgage, or
239 lease line within a lot intended for commercial, industrial, or multi-unit residential
240 uses, or a mix of these uses; or create ownership lots within a previously recorded
241 lot, if:

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

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

247 c. all land in the original subdivision lot is included in the plat;
248 and

249 d. any necessary cross easements, covenants, or other deed
250 restrictions necessary to implement all the conditions of approval on the lot
251 in the original subdivision and for issuance of building permits as reviewed
252 and approved by the Department of Permitting Services are executed before
253 recording the plat.

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

257 a. used to determine building setbacks or to establish conformance
258 with any other law or regulation;

259 b. a bar to receiving a building permit or other approval necessary
260 to develop or use any of the ownership lots and structures on such lots,
261 including structures that cross an ownership line provided that the owner

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

262 maintains compliance with requirements of the International Building Code,
263 National Fire Protection Code or other life safety codes adopted by the State
264 of Maryland or pursuant to Montgomery County Code, Chapters 8 and 22.;
265 and

266 c. a change to any condition of approval for the subdivision that
267 created the lot in the original subdivision.

268 3. Ownership lots may not be used to create the outside
269 boundaries of a private road right-of-way parcel.

270 4. For ownership lots, all buildings and accesses on the parent lot
271 must be shown on the plan submitted with the application for building
272 permit in accordance with Chapter 8.

273 E. _____

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274 C. Plat Drawing. The plat drawing prepared with the application must be an
275 18-inch by 24-inch sheet, including a margin of one-half inch outside ruled border
276 lines. It must be accurately drawn to a scale approved by the Planning Board, and
277 must include the following items:

278 1. Title Block. The title block must appear in the lower right-hand corner
279 of the sheet, and must include the following information:

280 a. The words "Subdivision Record Plat;"

281 b. Approved name of the subdivision and the section thereof,
282 including blocks, lots, parcels, and outlots;

283 c. Election district, County and State, or name of town instead of
284 election district, if the subdivision is in an incorporated town;

285 d. Scale of drawing;

286 e. Name of firm of licensed land surveyor who prepared the Plat
287 and date of completion; and

288 f. A description of the general purpose of the plat, including
289 without limitation, plat of correction or resubdivision.

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

290 2. Graphic details. The plat must show the following, as applicable in
291 each case:

292 a. All property boundary lines necessary to identify the property
293 included in the subdivision with reference to the previous conveyance by
294 which the property was acquired. Where the subdivision is a part of such
295 conveyance, the boundaries shown must include the last complete line
296 touched on by the subdivision or an indicated dimension describing the
297 remainder of the complete line. Where a subdivision includes all or parts of
298 2 or more conveyances, the boundaries of such separate deed descriptions
299 must be indicated by light lines running through the subdivision, together
300 with deed reference to each original tract or unplatted parcel;

301 b. Locations, widths and names of all road rights-of-way, public
302 and private, located in the subdivision;

303 c. Locations and widths of alley and mid-block pedestrian rights-
304 of-way or parcels;

305 d. Existing and Proposed Encumbrances

306 **Section 10.6 Enforcement of Chapter**

307 **A. Notice of Violation**

308 1. The Director-Enforcement Agent may issue a notice of violation to a
309 person whom the Director-Enforcement Agent believes committed a violation of a
310 Planning Board action or this Chapter. A notice of violation issued under this
311 Subsection must be served on the alleged violator personally, on the alleged
312 violator's agent at the site of the alleged violation or by certified mail to the alleged
313 violator's last known address.

314 2. The notice of violation must contain at least the following
315 information:

316 a. the name of the person charged;

317 b. the nature of the violation;

Comments submitted by the Department of Permitting Service Director on SRA 16-01
(The June 13 Staff Memorandum on SRA 16-01 incorporated these comments.)

318 c. the place where and the approximate date when the violation
319 occurred; and

320 d. a statement advising the alleged violator of the corrective or
321 remedial action which must be taken and the date by which the corrective or
322 remedial action must be completed. The corrective or remedial action may
323 include a meeting with Commission staff to establish a compliance plan.

324 B. Administrative Citation

325 1. The Director may deliver an administrative citation to a person whom
326 the Director believes committed a violation of a Planning Board action or this
327 Chapter. The Director must attest to the truth of the facts and allegations in the
328 administrative citation. An administrative citation issued under this Subsection
329 must be served on the alleged violator personally, on the alleged violator's agent at
330 the site of the alleged violation or by certified mail to the alleged violator's last
331 known address.

332 2. The administrative citation must contain at least the following
333 information:

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

335 b. the nature of the violation;

336 c. the place where and the approximate date when the violation
337 occurred;

338 d. the amount of fine assessed;

339 e. where, when, and to whom the fine may be paid; and

340 f. a statement advising the violator of the right to a hearing before
341 the Planning Board or its designee.

342 C.

343

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CORRECTED ADDENDUM

PHED Committee #2

June 20, 2016

DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Al R. Roshdiah
Director

MEMORANDUM

June 16, 2016

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

FROM: Al R. Roshdiah, Director
Department of Transportation

SUBJECT: Subdivision Regulations Amendment No. SRA 16-01
Subdivision Regulations Amendment

This memorandum is to provide MCDOT's comments on your June 9, 2016 recommendations memorandum. This memorandum is in follow-up to the June 13, 2016 PHED Committee meeting.

From last Monday's Committee worksession, the impression that there is a fundamental disconnect between Executive Branch agencies and the Planning Department on development-related issues is not the case. While each agency reviews proposed developments in accordance with their individual policies and procedures, our staffs work in a collaborative manner. When differences between agencies and/or utilities cannot be resolved at the staff level, the remedies outlined in the May 6, 2011 Conflict Resolution Memorandum of Understanding remain available, prior to final consideration by the Planning Board.

With this in mind, I offer you the following comments on your June 9th memorandum:

o Pages 4-10, Private Roads:

Much has been written (and remains to be discussed) on the issue of private roads. I will defer to the Office of the County Attorney (on the legal implications of public access easements versus right-of-way dedications) and the Department of Permitting Services (on the issue of structures under such streets and ownership lots).

However, as you and I have discussed in the past, I do not favor MCDOT having any role in the design, permitting, construction, inspection, operation, and/or ultimate maintenance of private roads – beyond where such private facilities intersect the County-maintained rights-of-way and easements. MCDOT has no statutory or budgetary responsibility on private roads. I do not recommend amending Chapter 49 to authorize Executive Branch agencies to perform such reviews and/or inspections. Where private roads are proposed to be used by our RideOn buses, site specific agreements should be executed between the property owners and MCDOT to enable those movements.

Office of the Director

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301-251-4850 TTY

Mr. Jeffrey L. Zyontz
SRA 16-01
June 16, 2016
Page 2

Simply put, in those instances when the Planning Board approves a private road, MCDOT will have no role in the future maintenance of that facility. We will require a note be added to the plan(s) and subsequent record plat(s) that the private road(s) will not be accepted for future maintenance by Montgomery County.

In a number of meetings, I have heard people cite the parking structure under Woodmont Avenue as an example of where structures have been allowed under a public road. Those parties should realize that that example required construction of a bridge structure (with transfer slabs) at considerable public expense to properly support the loadings. Also, since the County is responsible for the maintenance of Woodmont Avenue, we have a direct interest in ensuring the adjacent underground parking structure is routinely inspected and properly maintained. Developers wanting to construct parking structures under private roads – particularly those that may be used for emergency vehicle access – should properly budget for the additional expense necessary to design, construct, regularly inspect, and maintain the private bridge structure.

Regarding the comments on pages 7 and 8 about private streets, MCDOT (in consideration of prior comments from the Permitting Services and Planning Departments) offer the following suggestions on the memorandum's text and table:

- 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 not 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
 - All roads that contain WSSC public service mains (existing and planned)
 - Urban and business district roads must be public in the absence of a compelling need that makes it infeasible for the road to be public
- Consideration will be given to making the following roads private when the proposed road is not needed to: i) maintain area circulation ii) provide continuous corridors to serve other public and quasi-public needs such as communication, utility and future potential

transportation or other systemic needs that serve the public on a long-term basis, and iii) is not needed to be part of the network modeled 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.
- Private roads should not be permitted if they will create a segmented road ownership pattern, unless approved by the Planning Board.
- Private roads must not be permitted if they will negatively affect development of other properties.
- Reviews of private streets:
- MCDOT will not have any role in the design, permitting, construction, inspection, operation, and/or ultimate maintenance of private roads – beyond where such private facilities intersect the County-maintained rights-of-way and easements.
 - If the proposed private road will not be located above a structure, we defer to the Planning Board to determine the design, construction, maintenance, and legal characteristics of that road (including but not limited to width of the private parcel in which the road will be located, typical section, horizontal and vertical alignments, storm drainage and stormwater management, driveway and internal intersection spacings, pedestrian and bicycle amenities, street trees and streetscaping, street lights, maintenance, access easements, etc.).
 - If the private road will be located above a structure, we defer to the Department of Permitting Services to comment on the building/structural aspects of that proposal.
- Page 8, MCDOT reviews of Design Exception requests:

Since MCDOT typically does not comment on site plans or permit applications, our comments must be provided at the preliminary plan stage. Reviewing these changes at the preliminary plan stage typically facilitates the preparation, review, and approval of the right-of-way construction drawings at the permit stage.

However, in response to the development community's requests to expedite MCDOT review and approval of Design Exception requests, I have directed my staff to be more flexible and proactive in these matters. For instance, we will:

- Provide responses to Design Exception requests within thirty (30) calendar days of receipt. If applications are found to be incomplete, my staff will contact the applicant's representatives to advise of the actions necessary to remedy the deficiency.
- Publish a list of Design Exception approvals and policy documents to be shared with the development community and other agencies. An example policy document is our attached

May 11, 2016 policy letter providing guidance on the location of utilities in the public [County] rights-of-way.

- When a Design Exception has been granted, that decision shall typically become an approved adjustment to the policy; that precedent will then be applied to other plan reviews when the deviation on the subsequent project matches the conditions of the original Design Exception approval.
 - When the situation on the subsequent project matches the conditions of the original Design Exception approval, subsequent applicants will not be required to submit a Design Exception package for MCDOT approval.
 - I strongly recommend that applicant’s representatives proactively consult with my staff on proposed modifications to our standards, policies, and procedures. We are open for business and encourage such consultations in advance of plan submissions.
- Pages 14 and 15, Codification of “Transportation Management” Agreements:

One of the desires expressed in the efforts to streamline the Development Approval Process is to shorten the time for approval of Traffic Mitigation Agreements (TMAs). Our recommendation to codify certain routine parts of TMAs, which is based in part on discussions with the Office of the County Attorney, will help to achieve that goal by eliminating debate over these routine elements of those agreements. While we have commenced an inter-agency effort to formalize transportation demand measures Countywide, those discussions may not be completed for some time. We believe it would be wise for the Council to codify the proposed TMAg language in the meantime.

- Pages 15 through 20, Detail:

We request your consideration of additional information on the following line items:

Line(s)	Comment	Rationale for the Comment
436-438	Add a condition to require applicants to [provide documentation to Planning Department staff] that they have paid all applicable agency review fees prior to final acceptance of the application	While the Planning Department has taken satisfactory steps to remedy this concern on subdivision plan applications, it remains an issue for Traffic Impact Studies. In some cases, our reviews of these reports have been delayed for failure to pay the required MCDOT TIS review fee.
493-495	We recommend changing “design criteria of Chapter 49” to read “ <u>current American Association of State Highway and Transportation Officials (AASHTO) design criteria</u> ”	This comments applies only to the design of roadway profiles.
646-651	We recommend changing the title of this section to read “public” roads and amending lines 648-649 to read “approved in preliminary form by the transportation agency responsible for maintaining the existing and proposed public road(s).” An alternative approach to this comment would be to add an	Your recommended deletion of “County-maintained” from the title is a step in the right direction. However, we believe it does not recommend the authority of the Maryland State Highway Administration and local municipalities for the permitting and maintenance of public improvements on roads under their jurisdiction.

Mr. Jeffrey L. Zyontz
 SRA 16-01
 June 16, 2016
 Page 5

	overarching caveat at the beginning of Chapter 50 to indicate that references to County criteria are not applicable on roads under the jurisdiction of the MSHA and local municipalities. For those roads, State or municipal criteria apply.	
1166	Add "public" to the title	Since subsection (e) [lines 1180-1189] describe the criteria for the design of private streets, in our opinion, subsection (c) should apply only to publicly maintained roads.
1167	Add "bikeshare" to the list of potential public amenities to be provided by developers	Bikeshare facilities are a critical component of the Planning Department and Executive Branch strategies to promote alternative modes of travel and reduce congestion by increasing non-auto driver mode share.
1178-1179	Add "Master Plan" after "required by"	To address potential sidewalk and/or bicycle amenities on State highways (that are not currently required under Chapter 49)

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

Attachment

CC: Diane Jones, Director, Department of Permitting Services
 Gwen Wright, Planning Director, Planning Department
 Marc Hansen, County Attorney, OCA
 Ramona Bell-Pearson, Assistant Chief Administrative Officer, OCE
 Michael Smith, Development Ombudsman, OCE
 Emil Wolanin, Deputy Director, MCDOT
 Gary Erenrich, Acting Deputy Director, Transportation Policy, MCDOT
 Sandra Brecher, Chief, Commuter Services Section, MCDOT
 Gregory Leck, Chief, Development Review Section, MCDOT



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

June 16, 2016

Diane R. Schwartz Jones
Director

To: Nancy Floreen, Council President
From: Diane Schwartz Jones, Director 
Subject: Proposed Subdivision Regulation Amendment 16-01

This memorandum follows up on the PHED Committee briefing held on Monday, June 13, 2016 on proposed Subdivision Regulation Rewrite, SRA 16-01 ("SRA"). At that meeting Council Legislative Attorney Jeff Zyontz provided an overview of the subdivision process and what it does along with what is in the proposed rewrite followed by a presentation on behalf of the Montgomery County Planning Board summarizing the rewrite proposal. The Department of Permitting Services provided a brief presentation relating to the application of building and life safety codes to building plans and the importance and relationship of subdivision to life safety code analyses.

A request was made that the agencies provide the PHED Committee with specific comments on the recommendations in the Council staff packet. This memorandum provides responds to that request and to certain information in the letter dated June 9 from the Montgomery County Planning Department.

One of the reasons given for promoting private roads is to allow for greater stormwater management flexibility for underground stormwater facilities. The District of Columbia was offered as an example of this. It bears noting this is a question of Maryland law and the County's MS-4 permit. While DC may allow undergrounding of stormwater for projects, DC has recently moved to ESD as well and in some cases, has other more stringent requirements. Whether a road is public or private, the applicant will still be required to meet ESD for the treatment of stormwater in accordance with Maryland and Montgomery County requirements.

For ease of reference, the recommendations in Jeff Zyontz' June 13, 2016 packet are set out in the below table with the Department's response:

JZ Recommendation	DPS response	Rationale
1. Introduce a Bill to amend Chapter 8 to consolidate Building permit provisions currently in Chapter 8	Not necessary, however, for ownership lots, require that building permit application for any ownership lot include site plan for the parent lot and relationship to all existing buildings and services to buildings.	<ul style="list-style-type: none"> • Multiple buildings may have utilities running through sites that may require protection with separate ownership • Other buildings may have impacts on life safety provisions for egress and/or apparatus setup • Multiple buildings may be on single fire systems or electrical systems. Separate ownership may result in system changes in one building that impact another building, or maintenance in one structure may have consequences in another • Mechanical systems which impact new ownership lot need to be addressed • Potential for fire communication between buildings needs to be addressed
2. Amend Chapter 49 to allow a review of private roads with appropriate road standards	Disagree as proposed, however, agree that a permit to close any portion of a private road or refuge area, including a sidewalk, in connection with a private road should be obtained to assure life safety access	<ul style="list-style-type: none"> • The expressed purpose behind private roads is to avoid County road design standards, setbacks, ESD for SWM and to build private structures under the ROW • Under the SRA the PB could make decisions that differ

JZ Recommendation	DPS response	Rationale
		from adopted, vetted engineering standards <ul style="list-style-type: none"> Plans reviewers would not have published standards and vetted code modifications and should not accept design liability for departure from County adopted standards. DPS proposes instead that certification of design and construction from applicant's PE licensed in Maryland that the design meets sound engineering standards for safe use by pedestrians, bicyclists, vehicles (including service and emergency) considering horizontal and vertical alignments for the intended target speed, adequate typical section(s) for vehicles (including service and emergency), stormwater management, drainage, sight distances and points of access and parking
3. Change practices regarding design exceptions	See DOT comments	
4. ZTA to "create an even playing field between public and private roads"	To the extent this is intended to address setbacks – agree	

JZ Recommendation	DPS response	Rationale
5. Amend SRA to allow private roads only under certain circumstances	Agree and suggest definitive findings that public systems are not segmented such as drainage, water, sewer, utilities, communication facilities, fiber, broadband, future mass transit corridors and access (such as articulated buses, BRT, etc.) so that future systematic development is not subject to private approval, interference or made more expensive.	
6. Amend SRA to allow County engineering review of private roads	Disagree as proposed, see # 2 above; however, bridges are structures and <i>will</i> require building permits.	
7. Revise ownership lot provisions	Agree and language has been provided to JZ; see #1 above	see #1 above
8. Revise some provisions to respond to testimony		
9. Make the code more concise, precise and decisive	Agree but without interfering with administration of other laws	
10. Private roads – staff recommends public roads but notes that agency staff consensus is preferred to proposed SRA and recommends removing some of the reasons offered by the private sector – see below		
10.(1) MCDOT's design exception process is in need of change – publish allowed exceptions; known processing time	See MCDOT comments	
10.(2) time for context-sensitive design approval or denial by MCDOT is a	See MCDOT comments	

JZ Recommendation	DPS response	Rationale
resource issue that should be resolved without legislative change		
10.(3) New Zoning Ordinance mistakenly allows setback from private streets to be determined at site plan but is not allowed for public streets. Correct with a ZTA to determine at site plan.	Agree	
10.(4) Staff does NOT recommend changes to the building code or allowing structure under either private or public rights-of-way	<ul style="list-style-type: none"> • Agree that code must not be changed 	Need to consider – <ul style="list-style-type: none"> • Segmentation of public utility system (public water will not be placed above a structure) • Segmentation of public drainage system • Segmentation of county council controlled franchise system (recommend reserving conduit for future county authorized systems) • Impact on public transit systems • Maintenance challenges and long term accessibility problems that could affect future occupancies – important to assure design minimizes this risk (structural independence) • Single purpose entity risks • Increased costs for future occupants
If a private road is to be established, add a definition	Agree and condition on finding by the fire marshal for	Private roads with structures underneath are being

JZ Recommendation	DPS response	Rationale
<p>of a private road that it is an easement for the benefit of adjacent property owners shown on a record plat</p>	<p>fire equipment access, set up and use and that a PE must make design certification as described in # 2 rationale</p>	<p>proposed in areas of highest density, concentration of population and building heights. MUST be able to provide emergency services for population and safe setup for emergency responders</p>
<p>Amending Chapter 49 to give DPS and DOT necessary authority to review private roads. Inspections should be a DPS function as is the inspection of a private building.</p> <p>Fn. 4 -- need to look at liability for County liability for reviewing design</p>	<p>Disagree in part.</p> <ul style="list-style-type: none"> • DPS agrees to have site plan enforcement staff enforce conditions of site plan for required certifications for design and construction. • DPS agrees that a closure permit (in whole or in part and including sidewalks) should be required for assuring safe emergency egress and access is maintained. <p>DPS agrees that there is a liability concern for design of something that is being undertaken to avoid vetted, engineered standards</p>	<ul style="list-style-type: none"> • Building codes are based on nationally adopted engineered standards. • Public roads are designed and constructed based on County adopted engineered standards. • Private roads as proposed are only loosely related to adopted standards that may be modified at PB discretion. • Design reviews and inspection of private roads would have budget implications – – 3 plans reviewers who would need to be professional engineers with transportation and structural expertise and 2 inspectors which would result in additional annual budget of approximately \$450,000 and approximately \$150,000 - \$200,000 initial expenses

JZ Recommendation	DPS response	Rationale
Ownership lots should be reviewed by DPS and need changes to address submission	Agree	See #1 and further note that anyone contemplating ownership lot where there are multiple buildings served by single fire protection system and electrical system should check with property insurer before determining appropriate transaction structure
Other	<ul style="list-style-type: none"> • DPS recommends including its site plan enforcement function in definition as Enforcement agent • Editing changes as noted in packet for definition of right-of-way • NAIOP has asked for opportunity to begin site work before certified site plan, this may be an opportunity to streamline to allow greater flexibility • Delete sentence on line 692 that would have PB overriding legislatively conferred authority of other agencies as being contrary to state and local laws 	

Cc: Jeff Zyontz, Legislative Counsel
 Casey Anderson, Chair, MCPB
 Bonnie Kirkland, ACAO
 Al Roshdieh, Director, MCDOT
 Gwen Wright, Director Planning Department
 Hadi Mansouri, COO, MCDPS