

PHED Committee #1
September 12, 2016

MEMORANDUM

September 8, 2016

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Subdivision Regulation Amendment 16-01, Subdivision Regulations Rewrite,
Worksession #4

On July 18, 2016, the Committee deferred its recommendation until September 12, 2016. The Committee did this to allow time for all interested parties to digest the 107-page revised SRA in the July 18 staff report for the Committee and provide comments. The entire packet for the July 18 PHED meeting is attached to this memorandum.

On August 2, 2016, two ZTAs were introduced by the Council. ZTA 16-11 would remove the incentive for private roads. ZTA 16-12 would delete the provisions for building permits, consistent with the redrafted SRA 16-01. Bills to amend Chapter 8 (Bill 35-16, which concerns building permit provisions currently in the Zoning and Subdivision codes, and provisions for ownership units) and Chapter 49 (Bill 34-16, which concerns private roads, design criteria, and obstructions in public and private roads consistent with the redrafted SRA 16-01), were also introduced on that date.

The approval of ZTA 16-12 should only proceed if the Council approves SRA 16-01. If the Council chooses not to approve ZTA 16-12 or Bill 34-16 or Bill 35-16, then SRA 16-01 should be revised. The portion of Bill 34-16 concerning permanent obstructions in the right-of-way and a portion of Bill 35-16 concerning ownership units could be approved without the approval of SRA 16-01. ZTA 16-11, which allows the same setback for public roads that is currently allowed for private roads, could be approved or disapproved without the approval of SRA 16-01. The Committee's worksession on ZTA 16-11 will occur at a later date.

All line numbers in this memorandum refer to the draft of SRA 16-01 in the Committee's July 18 packet (attached). Staff did **not** produce a new draft of SRA 16-01 that includes the recommendations from this memorandum.

Staff would address questions from the development community as follows:

1. Change required by another agency after Planning Board approval

The July 18 Staff recommended draft significantly revised a provision that would prohibit an agency from requiring substantial change to a plan that had received Planning Board approval. (See lines 756-759.¹) The development industry noted that there is no requirement for any explanation or justification by the agency.

During the July 18 PHED Committee meeting, Staff reported that changes in law and regulations may require a change to a plan. Currently, the state grandfathering provisions for stormwater management are shorter than the life of a preliminary plan. Those state requirements may prevent final stormwater management approval by DPS after Planning Board approval. The revised text acknowledges that possibility, but did not limit the reasons for an agency's decision.

Staff recommends the following revision to the July 18 draft:

The Board must approve a resolution containing findings supporting its decision. Following approval of a preliminary plan by the Board, any substantial change in the plan may only be required by another agency in order to comply with a law or regulation. Any such change must be allowed by the Board's conditions of approval or a plan amendment under Section 4.2.F.

2. Private road justification²

Lines 1374-1378 in the Staff proposed draft stated:

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 compelling circumstances of the property being developed.

Saul Centers, Inc. recommends revising this by deleting the words "in all circumstances" and the word "compelling". In their opinion, these create unnecessary and counter-productive hurdles to private roads.

Staff recommends retaining the word "compelling" given the future foreseeable problems with private roads. *Staff recommends adding " , except when a private road is specifically recommended by a master plan " after "in all circumstances"*.

¹ 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]] any substantial change in the plan [[unless]] required by another agency must be allowed by the Board's conditions of approval or a plan amendment under Section 4.2.F.

² Staff previously recommended a far more restrictive policy toward private roads. Private roads will make water and sewer services for surrounding property more complicated. Any future public needs for the right-of-way will be barred. After maintenance problems occur or the maintenance organization fails, the County will be petitioned to make the substandard private road public. The County currently has 3 such requests at this time. In Staff's opinion, private roads will be a future problem, and such roads should be limited to culs-de-sac and townhouse parking areas. The Committee disagreed with this proposed policy.

Lines 1379-1382 in the Staff proposed draft stated:

A subdivider who proposes a private road must include a list of proposed design elements that cannot be accommodated using context-sensitive road design standards or modified under a Design Exception. The justification for a private road must not be based solely on the installation of non-standard amenities that could be addressed under a Maintenance and Liability Agreement with the County.

The development industry believes that an applicant would not know what can be modified under a Design Exception without going through the process of trying to get the exception.

The Department of Transportation will have nothing to do with the design or construction of a private road. The subdivider must have an engineer certify that each private road has been designed to meet the standards required by the code. The subdivider must then certify to the Department of Permitting Services that all construction complies with the design before release of the bond for the road. (See lines 1442-1447.)

Staff would recommend revising this text to read as follows:

A subdivider who proposes a private road must provide a list of the proposed design elements that do not meet public road standards, including context-sensitive road design standards or a previously approved Design Exception, and justify why those design elements are necessary for the proposed development. The justification for a private road must not be based solely on the installation of non-standard amenities that could be addressed under a Maintenance and Liability Agreement with the County.

It was not the intent of this provision to require a Design Exception denial before the approval of a private road. Design exceptions will not be required with a private road under SRA 16-01 as revised.

Staff does not have a problem adding after line 1400:

If a road is allowed to be a private road, the approval of the road will not require the Department of Transportation to approve a Design Exception for any aspect of the road's design.

Staff would recommend enhancing the Department of Transportation's authority to determine when a road is not needed to serve the general public. (A determination that the road is needed to serve the general public would prohibit the road from being a private road). Staff would recommend starting the first full sentence in line 1401 with:

When the Department of Transportation determines that the proposed road...

Saul Centers, Inc. objected to lines 1420-1421, which read:

Private roads must not be permitted if they will negatively affect development of other properties.

In their opinion, the provision is vague, speculative, and would give other properties undue influence over a development application.

Staff recommends retaining lines 1420-1421. The purpose of subdivision regulations is the harmonious development of land, which includes coordinated new transportation facilities. This cannot be accomplished by only looking at the applicant's property.

Staff would recommend adding the following at the beginning of line 1422:

Except where a Master Plan specifically recommends that a Business District street should be private...

The July 18 draft would require an engineer to certify that each private road has been designed to the standard required by this section. Saul Centers, Inc, believes that this certification would be premature before the completion of final engineering. *Staff does not recommend a change.*

3. Private road platting

Line 1527 requires a separate parcel for a private roadway. The development community questioned this requirement.

Staff finds no reason to treat private roads differently from public roads. The Department of Permitting Services will not approve a building permit for a structure crossing a lot line. Lot lines protect the area needed for roads and necessary associated infrastructure (sidewalks, storm drains, stormwater management facilities, water and sewer, etc.) from encroachment by buildings and associated building structures.

Separating areas for roads from building lots makes it clear the separated area is intended to stay a road. Having separate areas also leaves open opportunities to upgrade or improve the road. The owners of a private road may want that road to become public road in the future. Having separate parcels ensures that the road area won't have been included in any minimum square footage required for a lot.

Where a structure is intended to go below or above the private road, the proposed code includes a provision that would allow a private road to be included as part of a lot. (See lines 1530-1534.)

4. Underground public utilities

The development industry asked if the requirement for underground utilities represented increased burdens and a change in policy. Those burdens are detailed in the attached memorandum from the Ad Hoc Subdivision Regulation Task Force.

The current Road Code generally requires undergrounding utilities when such utilities are relocated for roadway improvements.³ The current Subdivision Code, Section 50-40 follows:

- (a) General. Pipelines, electric power and energy transmission and distribution lines and cables, and telephone and telegraph lines and cables shall be underground in a subdivision where the preliminary subdivision plan is filed subsequent to June 6, 1967.
- (b) Installation. Underground installation shall be required but not limited to total of six (6) or more buildings in a subdivision. Temporary overhead lines shall be permitted for any total of less than six (6) buildings in a subdivision.

The revised code is trying to make clear that the Board may require the existing lines located along a roadway in front of a subdivision to be underground. For a major development or redevelopment project having significant frontage on existing roads with overhead service, it is appropriate to do so. All new utilities must be underground in any event both under the new and current code. The proposed code provision reads See lines 1640 -1643.

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

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

The development industry believes that the “infeasibility standard is too vague. In addition industry also asked to exclude exiting utilities from the requirement for undergrounding. In light of large projects, Staff recommends a middle ground.

³ Sec. 49-19. Conversion of overhead lines to underground locations.

If the construction or improvement of any County road requires any person to relocate any overhead electric, telephone, or other overhead line or related facility in any County road right-of-way, the County Executive must, by regulation adopted under method (3), require that any affected line must be installed underground if the Executive finds that underground installation is desirable after considering the following factors:

- (a) Any fire hazard or possible interference with firefighting equipment due to the location of the line;
- (b) A close proximity of the line to any place where people may congregate;
- (c) The anticipated increase of traffic on the road to be reconstructed or improved;
- (d) The population of the area, increase in population, and future conditions reasonably anticipated in the normal course of development;
- (e) Air traffic in the general area of the road, proximity of any airport, location of the line in an approach to an existing or anticipated runway, or other future hazard to air traffic;
- (f) The comparative costs of relocating the line overhead and installing it underground;
- (g) The comparative maintenance costs for overhead and underground lines;
- (h) The comparative frequency of interruptions in service for overhead and underground lines;
- (i) The improvement in the appearance of the area which would result from installing the line underground;
- (j) Any location or relocation of an overhead line in a Metro Station Policy Area, Town Center Policy Area, or other area expressly identified for this purpose in a Council resolution; or
- (k) Any other condition that affects the public convenience, health, safety, or general welfare.

Any regulation to implement this Section must require the replacement of any street light removed during the conversion of any line to an underground location.

Staff would recommend revising this text to read as follows:

- I. Public utilities. Pipelines, electric power and energy lines, and telecommunications lines must be provided by the developer in all subdivisions.
 1. Installation.
 - a. Within the property being subdivided, the developer must install any new pipelines, electric power and energy lines, and telecommunications lines underground.
 - b. The developer may also be required to underground any above-ground or overhead utilities that exist either, within the property being subdivided, or within road right-of-way along the frontage of the property being subdivided, if the Board determines it is necessary based upon the size and density of a proposed subdivision.

5. Easements for future utilities (including ultraMontgomery)

The development industry also had concerns about the proposed text for public utility easements for future installation or the relocation of utilities. The development industry recommends removing lines 1647-1645 from SRA 16-01. In the alternative, they propose the following text:

Upon a determination by the Board that an area will be needed for future installation or relocation of dry utilities, the Board may require the applicant to provide reasonable accommodations for an area either adjacent to a public road or, alternatively, in an appropriate location within the development sites mutually agreed to by the applicant and the utilities.

Staff does not recommend defining a location for a public utility, easement provided the easement is accessible without trespassing. Staff recommends that the easement section to at least read as follows for requirements of the subdivision:

Easements.

- a. All utilities that are installed or relocated by the developer within the subdivision must be placed in a Public Utility Easement on the record plat, that:
 - i. provides the minimum area needed to maintain each of the lines as specified by the utility provide; and
 - ii. is adjacent to, or accessible from, a road right-of-way.

The ultraMontgomery requirements have been stated as follows for private roads:

- A 4-foot wide easement along a road for communications services.
- A 4-foot wide easement for communications services extending to each building.
- For a small residential unit (e.g., townhouse), the easement extending to the residential unit needs to reach a point where communications utilities will enter the dwelling.
- For large commercial or residential buildings, the easement needs to reach the communications room.
- For a commercial building or large multi-tenant building, require a second path to the building to allow diverse connections to the building.
- The easement should include installation of four 4-inch conduits along the right-of-way deeded to the County that the County may use for government or commercial use (the County should make at least two of the conduits available on an open access basis).

- For a commercial building or large multi-tenant building, there should also be four 4-inch conduits in the path extending to the building.
- If there is a requirement for a second diverse path easement to the building, that easement should also have four 4-inch conduits in the path extending to the building.
- If the conduit will be encased in concrete, then require access points, vaults, or handholds.

If ultraMontgomery is to be useful, it cannot be an option. A far more general provision, which allows placement flexibility, would be to add a second provision as follows:

- b. The Board must also require the developer to provide public infrastructure easement area adjacent to private roads, or in other appropriate locations within the development to provide for future:
 - i. relocation of existing utilities permitted to remain in a road right-of-way; and
 - ii. installation of new utility lines.

When a structure is proposed under a private road, and the public infrastructure easement is located under the road, the easement must be established by the construction of conduits to the County's specification.

Councilmember Riemer recommends codifying ultraMontgomery's specific requirements. The following is an alternative to section b, above:

- b. The Board must require the developer to provide a public infrastructure easement area abutting any private roads and going from the road to each building. The easement abutting the road must be 4 feet wide and include four 4-inch conduits and junction boxes built to County standards.
 - i. For all non-residential buildings and any multi-unit building:
 - (a) the four 4-inch conduits must extend from the easement abutting the road to the communication room; and
 - (b) a second easement with conduits from the road to either the building's communication room or second communication stack, if constructed, must also be provided for any non-residential building larger than 100,000 square feet of gross floor area or any multi-unit building with more than 50 units.
 - ii. For all buildings not included in Subsection i, the easement from the road must reach a point where communications utilities will enter the building.
 - iii. The easements must be provided abutting both sides of any private road if the road is wider than 50 feet.

6. Grandfathering

The development industry would want an option for all filed pending preliminary plans to proceed under the current code. Staff has no objection to an uncodified provision to the effect but notes that private

streets may be more permissively allowed under the Planning Board’s current administration of the subdivision regulations.

7. Waivers

The proposed waiver provisions in SRA 16-01 allows the Planning Board to grant a waiver of any provision if it finds that “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.”⁴ The development industry would want that provision expanded to include any case where the application of the provision lead to an undesirable result.

Staff does not recommend the expansion proposed by the development industry. If a provision produces an undesirable result due to the specific circumstances of the plan, the Board has the authority to waive a provision. If a provision consistently yields a bad result, then that provision should be brought to the Council’s attention and changed by the amendment process.

Detailed edits

<u>Line Numbers</u>	<u>Edit</u>
11	Delete the word “transportation”.
61	Add the word “published” before the word “policy”.
217	Add “an ownership plat or on,” before the phrase “a record plat”.
253	Add at the end of the first sentence “or described by a deed of dedication under Section 50.3.3.A.3.”
256	Add “, state or other governmental body” at the end of the sentence after “County”.
431	Delete “fire, wind, falling debris, water or other”.
526	Change existing references to “Chapter 49” to “the Road Design and Construction Code”.
554	Change existing references to “Chapter 49” to “the Road Design and Construction Code”.
800	Add “that results in greater adequate public facility impact” after the word density.
1010	Delete everything after “Chapter 59”.
1044	Add after the last sentence: “The dimensions of a lot must be able to accommodate any proposed building and other infrastructure deemed necessary to serve the lot including but not limited to any accessory structure, stormwater management, parking, access drive, and off-street service.”
1275	Change existing references to “Chapter 49” to “the Road Design and Construction Code”.
1285-1286	Replace the phrase “right-of-way” with the word “easement” in both places.
1459	Replace “bikeways, or improvements with “or bikeway improvements”.
1460	Replace “bikeways, or improvements with “or bikeway improvements”.
1524	Revise to read “The area for roads, when shown on a record plat, must be shown on a record plat to the full width of the required right-of-way.”

⁴ Lines 2713-2716.

1527	Revise to read “A private road must be platted as a road parcel, except as allowed by Subsection c, and remain open....”.
1644-1646	Renumber the section and add “and installation by the developer has been assured under Section 10.2” to the end of the sentence.

Lines 2636-2642. Modify the section as follows:

1. With the exception of a minor subdivision, as defined in this Chapter, no plat may be approved unless it complies with [the] an approved preliminary plan [as approved by the Board] or administrative subdivision plan; however, the Board may allow for minor modifications from [the preliminary] these plans which, in its opinion, do not alter the intent of [its] the previous approval.
2. In those situations where a site plan is required, the Board may refuse to approve a plat until a site plan is approved under Section 59-7.3.4. Changes made to the lot layout as part of a site plan approval may be included on the plat without the need for amendment of the preliminary plan.

MEMORANDUM

July 14, 2016

TO: Planning, Housing, and Economic Development Committee

FROM:  Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Subdivision Regulation Amendment 16-01, Subdivision Regulations Rewrite,
Worksession 3

At the Committee's direction, staff made changes to SRA 16-01 as introduced. Those changes are in the attached document in legislative format. All departments involved (Planning, Permitting Services, and Transportation) are content with the draft as amended. It resolves **all** issues raised by their prior testimony in a manner consistent with the Committee's recommendation. It provides a path for the approval of private roads and ownership units that avoids what could have been road blocks in the development process.

Private Roads

The most significant unresolved issue from the Committee's June 20 meeting was the circumstances under which a private road would be allowed for a business district street. The department heads agreed to the following provision:

A Business District road may be a private road only when it is not required to provide an adequate traffic level of service. A private Business District street may be approved only when the proposed road is not either a connector between two higher classification roads or a road that is planned to extend beyond the boundary of the preliminary plan.

This revised provision is consistent with the private roads that the Board has recently approved.

The revised draft also attempts to accommodate the County's interest in providing ultra-fast data connections to buildings.¹ As part of the public facilities section, the department heads recommended adding the following provision:

¹ This is not an issue when a public right-of-way is required.

Easements. The Board must require the applicant to provide area for future installation or relocation of utilities adjacent to public and private roads, or in other appropriate locations within the development site.

The details of this provision will be resolved with each plan.

Under the revised amendment, all private roads would be subject to a covenant that describes the rights and responsibilities of the private road owners. In particular, the department heads recommend the following provision be included:

All private roads must be recorded with a restrictive covenant approved by the Board that at a minimum ensures:

- i. that the road is designed and constructed in a manner that satisfies the requirements of this Chapter, and all requirements made by the Montgomery County Fire Marshal for emergency access, egress, and apparatus;*
- ii. regular maintenance of the road by the property owner, with certification of regular inspections, and appropriate financial reserves required for short- and long-term maintenance and capital repairs;*
- iii. that the road remains open at all times unless approved by the Department of Permitting Services and the Fire Marshal; and*
- iv. that the County and the Commission must be fully indemnified from all liability claims, demands, losses, or damages to person or property.*

Ownership units

The reasons given by the private sector for ownership units are the same reasons the property owners create lots. The rationale starts out being to create financing lines. To be useful, such lines would avoid creating zoning setback requirements. These “lots” have turned into full ownership and control, with cross easements for all descendants of the original lot. It would allow a sale of land and improvements, not just financing the improvements. The Department of Permitting Services had expressed concern about possible fire code and health/safety (air intake) problems when these lines are created without review. The concerns over ownership units were resolved to the satisfaction of department heads. The proposed provisions allow for ownership units to be created by a separate plat.

Ownership units to reflect deed, mortgage, or lease lines may be created by an ownership plat if:

- a. the lot on which the ownership units are created is included on a plat approved by the Board and has site plan approval under Section 59-7.3.4;*
- b. the location and design of all structures on the ownership units satisfy Chapters 8, 19, and Chapter 22;*
- c. the ownership units do not violate any other provision of law or adversely affect any conditions of approval for the subdivision plan that created the underlying lot, or for the site plan;*
- d. any necessary cross easements, covenants, or other deed restrictions necessary to implement all conditions of approval are executed before recording the ownership plat; and*

- e. *the ownership units are suitable for the type of development, the use contemplated, and the available utilities and services.*

Keeping Chapter 50 from overriding other Code chapters

As introduced, SRA 16-01 would prohibit an agency from requiring a substantial change in the plan. No agency makes a change to an approved plan without a substantial reason to do so. There are occasions where a change may be required by state law. For example, the state law provisions for stormwater facilities grandfather some approved plans but not all approved plans. State law may require action, which SRA 16-01 as introduced would prevent. The department heads resolved this situation by requiring the applicant to seek a preliminary plan amendment if another agency requires a change:

The Board must approve a resolution containing findings supporting its decision. Following approval of a preliminary plan by the Board, any substantial change in the plan required by another agency must be allowed by the Board's conditions of approval or a plan amendment under Section 4.2.F.

New issue raised on Hearing Date Schedule

SRA 16-01 establishes a time limit for staff to review plans and get them to the Planning Board. A timeline is possible when the plan applications are reviewed for completeness, and the clock starts after that review. Planning Staff is responsible for the completeness review. The issue was raised that, while Planning Staff's intake review checklist includes items needed by other agencies in doing their review (such as storm drain analyses that are part of the road plans), the intake staff do not necessarily have the expertise to determine if the information is complete before accepting it.² Since the hearing date must be set when the application is accepted, the agency would lose part of their review time due to an incomplete submittal. To address this, a request was made to change the requirements in both the proposed Chapter 50 and existing Chapter 59 that a public hearing be scheduled within 120 days after an application is accepted, to within 120 days from the date of a scheduled Development Review Committee meeting. Department Heads did not object to this recommendation.

Staff notes that the existing language provides options for the Planning Director or Board to postpone the hearing date and extend the review time, which can be used to provide the extra time needed to deal with incomplete information. Staff has no doubt that the request of a reviewing agency to extend the review time would be honored. *The Committee may wish to review this recommendation.*

Minutes from the PHED meeting on June 20, 2016

On June 20, 2016, the Committee recommended adding the following provisions to establish when private roads should be allowed:

² This discussion was held at the end of a 3 hour meeting with department heads, in a 90 degree room with improper air circulation.

- 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, unless otherwise specifically recommended to be private in a master plan:
 - 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.

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"/> TO BE DETERMINED
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).

The Committee requested provisions to require third party certification of the safety and construction quality of any private road that does not require a permit. Any bridge required to span an underground structure would require DPS permits and inspections.

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

MCDOT's design exception process and procedure should change as indicated by the MCDOT Director:

- 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, including requests for context sensitive design accommodations.

Staff was directed to draft a ZTA to put public roads on a more equal footing. Setbacks can always be established in the site plan approval process.

The Committee recommended the APFO provisions as introduced.

Ownership lot

The Committee agreed with a provision proposed by DPS:

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.

Codification of Minimum Spacing between Intersections

The Committee recommended revising DOT's recommended table to address the minimum spacing between intersections by deleting the design speed column. The Committee recommended table is as follows.

Classification of the Frontage Road	Locale	Distance between Intersections (feet)
Tertiary Residential	All	150
Secondary Residential	Urban	200
	Suburban	200
	Rural	200
Primary Residential and Principal Secondary	Urban	300
	Suburban	400
	Rural	400
Business District	Urban	300*
	Suburban	400*
	Rural	400*
Industrial	Urban	300*
	Suburban	400*
	Rural	400*
Country Road	Suburban	400
	Rural	400
Country Arterial	Rural	800

Classification of the Frontage Road	Locale	Distance between Intersections (feet)
Minor Arterial	Urban	300
	Suburban	500
	Rural	800
Arterial	Urban	300*
	Suburban	600*
	Rural	800*
Major Highway	Urban	300*
	Suburban	800*
	Rural	1000*
Controlled Major Highway	Urban	300*
	Suburban	1000*
	Rural	1000*
Parkway	Urban	300*
	Suburban	600*
	Rural	800*

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

However, 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. A design exception from MCDOT would not be required with Planning Board approval. A driveway entrance is not an intersection.

Traffic Management Agreements

The Committee did not recommend including in the code the detailed contents of traffic management agreements as proposed by MCDOT.

This Packet Contains
SRA 16-01 Revised

Circle Number
1 – 107

Subdivision Regulation Amendment No.: 16-01
Concerning: Subdivision Regulations Rewrite
Draft No. & Date: 5 – 07/14/16
Introduced: January 12, 2016
Public Hearing: February 23, 2016
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 M. Reference to County Standards. For infrastructure under the jurisdiction of
60 State or local municipalities, references in these regulations to County
61 standards, policy, and procedures include the applicable standards, policy,
62 and procedures of the agency responsible for maintaining the infrastructure.

63 **Section 2.2. Definitions**

64 All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have
65 the same meanings as the definitions in those Chapters, unless otherwise defined
66 here. In this Chapter, the following words and phrases have the meanings
67 indicated.

68 A.

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

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

74 Administrative Subdivision Plan: A plan for a proposed subdivision prepared and
75 submitted for [[Director]] the Director’s approval before the preparation of a plat.

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

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

84 B.

85 *Bikeshare Station or Stations:* A designated area on publicly or privately owned
86 real property that contains one or more of the following items: bikeshare dock,
87 terminal, technical platform, battery, and map frame.

88 *Bicycle Facilities:* Any infrastructure or amenity required to provide for or enhance
89 use of bicycles for transportation or recreational purposes by the public, including
90 but not limited to the following: bikeways, bicycle parking equipment or
91 structures, bicycle repair stands, bikeshare stations, and end-of-trip services such as
92 showers and changing rooms.

93 *Board:* The Montgomery County Planning Board of the Maryland-National Capital
94 Commission.

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

97 *Building Restriction Line:* A line designating an area in which development or
98 building is prohibited by the Board under Section 50.4.3.K of these regulations.

99 C.

100 *Citation:* A document noting a violation of a Board action, seeking to impose a
101 civil fine or corrective action.

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

104 *Commission:* The Maryland-National Capital Park and Planning Commission.

105 *Council:* The Montgomery County Council sitting as the District Council.

106 *County Executive:* The Montgomery County Executive.

107 D.

108 *Department of Permitting Services:* The Montgomery County Department of
109 Permitting Services.

110 Department of Transportation: The Montgomery County Department of
111 Transportation.

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

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

118 Developer: see “Applicant”.

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

121 Director: The Director of the Montgomery County Planning Department or such
122 Director’s designee.

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

125 E.

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

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

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

136 Engineer: A professional engineer registered in Maryland.

137 Environmentally Sensitive Area: In this Chapter, environmentally sensitive areas
138 are limited to: (a) slopes equal to or exceeding 25 percent, wetlands, streams, and
139 associated buffers as defined in the latest version of the “Guidelines for
140 Environmental Management of Development in Montgomery County”; and (b)
141 critical habitats for threatened or endangered wildlife or plant species as defined in
142 the Code of Maryland Regulations (COMAR) 08.03.08, or for species designated
143 by the Maryland Wildlife and Heritage Service Natural Heritage Program,
144 Department of Natural Resources as rare, watchlist, or in need of conservation.

145 F.

146 Floodplain: as defined in Chapter 19.

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

148 G.

149 H.

150 I.

151 Improvements: Required public or private infrastructure needed to support the
152 development, including the following: roads; alleys; grading; road pavement; curbs
153 and gutters; sidewalks; pedestrian ways or paths; bicycle infrastructure, including
154 bikeshare facilities; water mains; sanitary sewer lines; water supply and sewage
155 disposal; storm drain facilities; curb returns; sidewalk and driveway entrances in
156 right-of-way; guard rails; retaining walls; sodding; planting; street trees;
157 monuments; street lights; and stormwater management.

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

160 J.

161 K.

162 L.

163 Licensed Land Surveyor: A land surveyor who is licensed in the State to “practice
164 land surveying” as [[such terms are]] defined in the Maryland Business

165 Occupations and Professions Code Ann. Section 15-101 (1995 Repl. Vol.), as
166 amended.

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

169 Lot: A discrete area of land that is described by a plat recorded in the land records
170 for which the [[County]] Department of Permitting Services may issue a building
171 permit.

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

175 M.

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

178 Maryland-Washington Regional District in Montgomery County: An area defined
179 by the Land Use Article of the Annotated Code of Maryland as the entire County;
180 however, subdivision, planning, and zoning matters within the jurisdictional
181 boundaries of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville,
182 Gaithersburg, and Washington Grove are governed only by each municipality's
183 ordinance.

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

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

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

200 N.

201 Notice of Hearing: An administrative [[notice]] document issued by the Director
202 that [[notifies]] informs an alleged violator where and when an enforcement
203 hearing will be held by the Board or the Board's designee to address an alleged
204 violation.

205 Notice of Violation: A [[notice]] document issued by an enforcement agent that
206 [[notifies]] informs a recipient of a violation and specifies the remedial action that
207 the recipient must take to avoid further enforcement action.

208 O.

209 Outlot: An area of land shown on a record plat [[that must not be occupied]] on
210 which the construction of [[by]] a building or other structure requiring a building
211 permit is prohibited.

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

214 Ownership Plat: A plat approved by the Board and recorded in the land records for
215 the convenience of the property owner that designates land as separate units for
216 purposes of ownership identification only.

217 Ownership unit: An area of land shown on a record plat created only for the
218 convenience of the owner under Section 7.1.D of this Chapter that reflects a deed,
219 mortgage, or lease line but does not subdivide the underlying lot.

220 P.

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

223 Person: An individual, partnership, corporation, organization, or other legal entity
224 [[, or combination thereof]] that owns property or otherwise has an interest in a
225 property.

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

228 Planning Board: see "Board".

229 Planning Board Action: A final decision on a preliminary plan, site plan, project
230 plan, sketch plan, water quality plan, or other plan, including all associated terms,
231 conditions, requirements, and other obligations or limits, made by the Board under
232 State law and Chapters 50 and 59, including any regulations issued under State or
233 County law. For the purposes of an enforcement action, a Planning Board Action
234 [[does not include]] excludes a decision made by the Board under Chapter 22A.

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

239 Preliminary Plan: A [[plan]] drawing for a proposed subdivision prepared and
240 submitted for Board approval before the preparation of a plat.

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

243 Q.

244 R.

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

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

249 Resubdivision: A change to any lot line created by a previously recorded
250 [[subdivision]] record plat. Resubdivision includes the assembly of recorded lots or
251 parts of previously recorded lots. A resubdivision is a subdivision.

252 Right-of-Way: Land intended for the passage of people, vehicles, or utilities, as
253 shown on a record plat. [[The maker of the plat must dedicate on the plat any
254 right-of-way involving maintenance by a public agency to public use.]] Any right-
255 of-way for a public road must be dedicated to public use by the maker of the plat.
256 The land area of a public right-of-way may be donated in fee to the County. The
257 parcel or area delineated on a plat for a private road is the private road right-of-
258 way.

259 Road: Any street, highway, avenue, lane, alley, or viaduct, or any segment of any
260 of them. Roads must be created by a subdivision plan under this Chapter and be
261 shown on a record plat[[,]] or [[otherwise be]] deemed a road [[by]] under Chapter
262 49.

263 Road, Centerline of: A line established as a centerline of a road right-of-way by
264 any State, County, or other official agency or governing body with jurisdiction and
265 shown on an officially adopted plan or recorded plat. In the absence of an official
266 centerline, the Board must establish the centerline with consultation from the
267 applicable agency with jurisdiction over the road.

268 Road Design and Construction Code: Article 3 of Chapter 49 and any regulation
269 [[which]] that implements and amends that Article.

270 S.

271 State: The State of Maryland.

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

276 Subdivider: see “Applicant”.

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

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

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

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

287 T.

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

292 Turnaround: The termination of a road in the approximate shape of a “T”, built to
293 allow vehicles to reverse direction using a 3-point turn. A temporary turnaround
294 may become the permanent terminus of a public street when it is so approved by
295 the Director of the Department of Transportation.

296 U.

297 V.

298 W.

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

302 WMATA: The Washington Metropolitan Area Transit Authority.

303 WSSC: The Washington Suburban Sanitary Commission.

304 X.

305 Y.

306 Z.

307 **Division 50.3. General Requirements**

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

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

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

313 B. A]] a good faith division of exclusively agricultural land that is not made for
314 development purposes.

315 **Section 3.2. Record Plat Required**

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

319 B. [[The County Department of Permitting Services may only issue a building
320 permit for the construction of a building located]] Construction of a new
321 principal building may only occur on a lot or parcel shown on a plat
322 recorded in the County Land Records or on a property that is exempt under
323 Section 3.3.B.

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

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

328 1. Court action. Partition of land through action of a court of competent
329 jurisdiction unless or until development of the land is proposed.

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

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

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

334 1. [[Certain uses on agricultural land:]] Agricultural land used for
335 residential dwellings. An unplatted parcel of agricultural land at least

336 25 acres in size used for a primary dwelling unit if density and
337 development rights are available.

338 [[a. a dwelling unit on an unplatted parcel of agricultural land at
339 least 25 acres in size, if density and development rights are
340 available;

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

344 c. any equestrian facility or other agricultural building on land
345 classified in the Agricultural Reserve zone.]]

346 2. *Public transfer.* A part of a lot previously shown on a record plat that
347 was created by transfer of part of the lot for public use by reference to
348 a recorded instrument, if the outlines and dimensions of such
349 remainder can be determined by reference to the previously recorded
350 plat. This provision also applies to any property that qualified for an
351 exemption under this Section before the transfer.

352 3. *Adjoining property.* A part of a lot created by deed recorded before
353 May 19, 1997 between owners of adjoining platted properties for the
354 purpose of small adjustments in boundaries. This applies only to an
355 adjustment that was less than either a total of 2,000 square feet or one
356 percent of the combined area, if additional lots were not created and
357 the total area of resulting ownership was not reduced below the
358 minimum size required by this Chapter or by Chapter 59.

359 4. *Property for Single-Unit Living:*

360 a. ~~[[One detached house on a]]~~ An unplatted parcel ~~[[not~~
361 previously included on a record plat,]] or a part of a previously
362 platted lot, proposed for single-unit living, which has not
363 changed in size or shape since June 1, 1958, if a description and
364 location of the property and proposed structure are submitted to
365 the Planning Department, before issuance of a building permit,
366 sufficient to:

- 367 i. locate the property on the tax maps of Montgomery
368 County;
- 369 ii. show that the approval of the building permit application
370 would not result in obstructing the future opening,
371 extension, or widening of any necessary road, or
372 otherwise jeopardize any planned public facility;
- 373 iii. show that the property and use comply with the zoning
374 ordinance, and show the setbacks and any other
375 information needed to check compliance with
376 regulations, including provisions for water and sanitary
377 service, and establishment of a building restriction line
378 along any existing or proposed road sufficient to provide
379 for future expansion or opening of such road to its
380 ultimate width; and
- 381 iv. show that the approval of the permit would not adversely
382 affect the General Plan.
- 383 b. [[Reconstruction]] An unplatted parcel or a part of a previously
384 platted lot used for reconstruction of an existing detached house
385 under Chapter 59, Section 7.7.1.
- 386 c. An unplatted parcel created by combining the entirety of two or
387 more contiguous parcels that qualified for an exemption under
388 Subsection (a).
- 389 [[5. Telecommunications facilities. Telecommunications towers/antennas,
390 including associated accessory structures.]]
- 391 [[6]]5. *Certain residential property in the City of Takoma Park.*
392 Property located in the portion of the City of Takoma Park annexed
393 into Montgomery County on July 1, 1997 that was recorded by a deed
394 before January 1, 1982 and remains otherwise buildable under the
395 Prince George's County Zoning and Subdivision Regulations on June
396 30, 1997, if a description and locational survey drawing of the

397 property and proposed structure are submitted to locate them on the
398 tax map of Montgomery County.

399 [[7]]6. *Certain commercial properties adjoining State highways. An*
400 addition to a building on property zoned for commercial uses:

401 a. adjoining a State highway;

402 b. located within a State-approved Community Legacy Plan Area
403 on October 30, 2012;

404 c. with less than 10,000 square feet of gross floor area on October
405 30, 2012, where subsequent building permits cumulatively
406 allow increases in total gross floor area by less than 2,000
407 square feet; and

408 d. that includes a description and boundary survey drawing of the
409 property and proposed structure at a 1-inch-equals-50-foot scale
410 or another appropriate scale as determined by the Director that
411 demonstrates that the additional floor area will not extend into
412 any adopted master plan road right-of-way.

413 [[8]]7. *Certain commercial properties adjoining State highways in Rural*
414 *Village Overlay zones. An addition, reconstruction, or replacement of*
415 *a building on commercially zoned property:*

416 a. adjoining a State highway;

417 b. located in the Rural Village Overlay zone;

418 c. with less than 10,000 square feet of existing gross floor area
419 where later building permits cumulatively allow net increases in
420 total gross floor area of less than 2,000 square feet;

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

426 e. that is submitted within one year after demolition or destruction
427 of the previous building was substantially completed.

428 8. Certain non-residential properties. An unplatted parcel or a part of a
429 previously platted lot used for reconstruction of a non-residential
430 structure involuntarily demolished by fire, wind, falling debris, water,
431 or other force of nature if the floor area, height, and footprint of the
432 new replacement structure are not increased.

433 **Section 3.4. Approving Authority**

434 The Board administers this Chapter.

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

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

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

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

441 1. Except for an administrative or minor subdivision under Divisions
442 50.6 and 50.7, the subdivider must submit a complete preliminary
443 plan application form and payment of the required fee.

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

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

452 C. Properties with a pending water or sewer category change request. The
453 Director may reject a subdivision plan application for a property undergoing
454 review by the Council for a water or sewer category change request, and

455 require Council action to approve the request before a preliminary plan
456 application is accepted.

457 ~~[[C]]~~D. Area within pending zoning map amendments. The Director may reject a
458 subdivision plan if all or any part of the plan [lies] is located within the
459 boundaries of a pending amendment to the zoning map. The subdivider may
460 resubmit the plan immediately after the final disposition of the pending
461 amendment. This Subsection must not apply if any map amendment is still
462 pending 6 months after the date of the submission of the plan.

463 ~~[[D]]~~E. Area within pending master plan. The Board may defer action on a
464 proposed subdivision plan application, if all or any part of the plan is located
465 in the boundaries of a pending master plan or master plan amendment. For
466 purposes of this Section, a pending master plan or master plan amendment is
467 the public hearing draft master plan or master plan amendment.

- 468 1. The subdivider may resubmit a proposed subdivision plan deferred
469 under this Section to the Board either:
- 470 a. after the final disposition by the District Council of the pending
471 master plan or master plan amendment; or
 - 472 b. no later than 12 months from the date the Board approves the
473 public hearing draft master plan or master plan amendment,
474 unless there is a determination by the Board that the subdivision
475 plan application presents a substantial conflict with the
476 proposed public hearing draft master plan or master plan
477 amendment, in which case the Board may defer a subdivision
478 plan application for a maximum of 18 months from the date the
479 Board approves the public hearing draft master plan or master
480 plan amendment, but in no event beyond the period in
481 Subsection (a).

482 **Article II. Subdivision Plans**

483 **Division 50.4. Preliminary Plan**

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

489 **Section 4.1. Filing and Specifications**

490 **A. Application and fee.**

- 491 1. The subdivider must file the preliminary plan with the Board, together
492 with the completed application form, supporting information, and
493 payment of the required fee.
- 494 2. The subdivider must own the property or be authorized by the owner
495 to file the application.
- 496 3. If property is owned or controlled by the State, Montgomery County,
497 or another political subdivision, government entity or agency, or
498 WMATA, the subdivider must obtain authorization from the
499 government entity, agency or WMATA to include the property as part
500 of the subdivision.

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

- 504 1. scaled drawing of [[at least]] a maximum of 100 feet to the inch, or as
505 specified by the Director;
- 506 2. title block information;
- 507 3. certificate of [[registered professional]] an engineer [[and]] or licensed
508 land surveyor to affirm the accuracy of boundary lines, topographic
509 data, and other engineering or survey data, and to certify that the
510 subdivision plans and supporting documents were prepared in a
511 manner that satisfies all submission requirements and applicable
512 agency standards, policies, and procedures;

- 513 4. locations and names of abutting and confronting subdivisions with lot,
514 block, and record plat number of subdivided land, and deed references
515 for unplatted land;
- 516 5. existing scenic easements, scenic vistas designated by the Rustic
517 Roads Plan, or designated historic resources;
- 518 6. vicinity location map; and
- 519 7. graphic representation of the proposed subdivision, including:
- 520 a. bearings referenced to the Maryland Coordinate System, except
521 that an application filed to correct an approved preliminary plan
522 may be referenced to the plat meridian used on the original
523 approved preliminary plan or the record plat;
- 524 b. lot and block layout;
- 525 c. all roads labeled as public or private with construction details.
526 The subdivider must show the applicable Chapter 49 design
527 standards or typical sections for the proposed roads and must
528 list any proposed modifications;
- 529 d. location of existing and proposed utilities;
- 530 e. existing topography with contour intervals of 5 feet or less;
- 531 f. location and width of existing and proposed pedestrian and
532 bicycle facilities, including sidewalks, shared-use paths and on-
533 road bicycle lanes and connections to existing off-site facilities;
- 534 g. sites for public uses and open spaces;
- 535 h. location, type, and width of all existing and proposed rights-of-
536 way and easements, including roads, slopes, paths, utilities, on-
537 and off-site storm drainage, and other improvements;
- 538 i. the proposed use of all lots on the preliminary plan and the
539 scaled dimensions and approximate area of each use;

- 540 j. lines showing the limits of each zone, if the property is located
541 in more than one zone; and
- 542 k. all existing topography, structures, and paving [[within 100 feet
543 of]] on adjoining properties within 100 feet.

544 C. Supporting information.

- 545 1. An approved Natural Resources Inventory/Forest Stand Delineation.
- 546 2. A preliminary forest conservation plan or forest conservation
547 exemption.
- 548 3. Verification from the County and other applicable agencies showing
549 payment of any required fees in connection with the County’s review
550 process.
- 551 4. Concept road grade and profile. [[A]] For a public road, an
552 [[registered]] engineer or [[registered professional]] a licensed land
553 surveyor must prepare conceptual road grade and profile plans
554 [[according to]] under the design criteria of Chapter 49 and indicate
555 the percentage of tangent grades, lengths of crest and sag, vertical
556 curves and elevations, and elevations of all intersecting roads. The
557 plan must indicate the direction of water flow. Where the topography
558 makes the determination of the adequacy of the road grades difficult,
559 the Director may require additional supporting information.
- 560 5. Storm drainage capacity and impact analysis. The concept road grade
561 plan must be supported by a preliminary storm drain study prepared
562 under the [[County’s storm drain specifications]] drainage design
563 criteria of the transportation or permitting agency with jurisdiction
564 over the road.
- 565 6. Sight distance evaluation for all proposed driveways and proposed
566 road intersections prepared under the criteria of the applicable State or
567 County transportation agency.
- 568 7. Hydraulic Planning Analysis. For lots located in areas where the
569 subdivider proposes connection to public water and sewer facilities,

570 the subdivider must submit verification from WSSC that the
571 subdivider has applied for a Hydraulic Planning Analysis.

572 [[7]]8. *Wells and septic systems.* For lots located in areas where the
573 subdivider proposes the installation of individual wells and septic
574 systems, the preliminary plan must also show:

575 a. the proposed locations of water wells for each lot and existing
576 wells on the property and within 100 feet of the property;

577 b. a circular area with a radius of 100 feet around each well to
578 denote clear space in which no final sewage system is to be
579 located;

580 c. the “usable area” for sewage disposal that satisfies the
581 Executive Regulations for on-site sewage disposal;

582 d. any existing sewage disposal systems located on the property
583 and within 100 feet of the property;

584 e. wetlands, rock outcrops, and floodplains; and

585 f. a 10-foot zone surrounding the water service line to buildings,
586 free and clear of any sewer lines, systems, or part thereof.

587 [[8]]9. *Phasing schedule.*

588 a. The preliminary plan approval establishes the plan validity and
589 adequate public facilities validity periods for the entire project.

590 b. Where the subdivider proposes a phased project that will
591 cumulatively exceed the minimum validity periods under
592 Sections 4.2.G.2.a and 4.3.J.5.a, the applicant must submit a
593 recording and construction phasing schedule as part of the
594 preliminary plan for approval by the Board. The schedule must
595 indicate the portions of the preliminary plan for which record
596 plats and building permits will be obtained during each of the
597 proposed phases, up to the expiration of the maximum adequate
598 public facilities validity period under Section 4.3.J.5.a.

599 c. When applicable, the phasing schedule must identify the timing
600 for the completion of construction and conveyance to unit
601 owners of such things as common open areas and recreational
602 facilities. In addition, the phasing schedule must indicate the
603 timing for the provision of moderately priced dwelling units,
604 and infrastructure improvements associated with each phase.
605 The subdivider must design such a phasing schedule to
606 minimize dependence on features (other than community-wide
607 facilities) that will be provided in subsequent phases and have
608 minimal impact during construction on phases already built and
609 occupied.

610 d. If a phasing plan for a preliminary plan included land or
611 building space that the County accepted for an arts or
612 entertainment use under Section 59-C-6.2356 of the zoning
613 ordinance in effect on October 29, 2014, approval of a site plan
614 under Section 59-7.3.4 for the phase containing that land or
615 building space validates all remaining phases of the preliminary
616 plan and the project plan for the purpose of Section 59-D-2.7(b)
617 of the zoning ordinance in effect on October 29, 2014.

618 ~~[[9]]~~10. Transfer of development rights.

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

622 i. the number of lots permitted for the tract by zoning
623 without the use of density increases as allowed by
624 Transferable Development Rights (TDR) or the
625 Moderately Priced Dwelling Unit (MPDU) programs;

626 ii. the number of development rights to be conveyed to the
627 receiving property;

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

- 630 iv. the total density, in dwelling units, of the proposed
631 subdivision; and
- 632 v. the density recommended by the adopted master plan.
- 633 b. A preliminary plan that uses transferable development rights in
634 the Rural Residential and Residential zones must include at
635 least two-thirds of the number of development rights permitted
636 to be transferred to the property under the appropriate master
637 plan. However, the Board may reduce the two-thirds
638 requirement if it finds the reduction is more appropriate for
639 environmental or compatibility reasons.

640 [[10]]11. Draft Traffic Mitigation Agreement. A preliminary plan
641 application for property located in a Transportation Management
642 District (TMD), designated under Chapter 42A, Article II, must
643 contain a draft Traffic Mitigation Agreement (TMAg) prepared by the
644 applicant that meets the requirements of that Article.

645 12. Title Search. A title abstract for the property identifying any
646 easements or other encumbrances on the land being subdivided.

647 D. Application processing.

648 1. The applicant must submit an initial application to the Director. The
649 Director must review the application for completeness within 10 days
650 after receipt. An application is incomplete if any required element is
651 missing or is facially defective, e.g., a drawing that is not to scale. An
652 application filed without all required fees is also incomplete. The
653 assessment of completeness must not address the merits of the
654 application.

655 2. The applicant must submit any required revisions to the Director. The
656 Director must review the revised application for completeness within
657 10 days after receipt.

658 3. After the Director verifies that the application is complete, or if the
659 review is not completed within 10 days after receipt, the Director will

660 accept the application and establish a hearing date under Section
661 4.1.E.

662 4. Public notice is required [[per]] to satisfy a regulation approved under
663 Section 10.1.

664 E. Hearing date. The Board must schedule a public hearing to begin within 120
665 days after the date [[the Director accepts an application]] of the scheduled
666 Development Review Committee meeting on the application. The Director
667 may postpone the public hearing by up to 30 days once without Board
668 approval. The Director or applicant may request one or more extensions
669 beyond the original 30 days with Board approval. The Board must notice the
670 public hearing and indicate the new hearing date on the Board’s agenda. An
671 application that was filed before {effective date of legislation} is not subject
672 to this subsection.

673 **Section 4.2. Approval Procedure**

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

678 1. WSSC, for water and sewer service;

679 2. the [[County]] Department of Transportation, for roads, streets,
680 intersection locations, site access, sight distances, traffic calming,
681 paths, pedestrian and bicycle facilities (including bike share), parking,
682 transit facilities, transportation demand management elements, and
683 storm drainage within County-maintained rights-of-way and
684 easements;

685 3. the [[County]] Department of Permitting Services, for stormwater
686 management, floodplain delineation, sanitation, wells, and septic
687 systems;

688 4. the Montgomery County Department of Environmental Protection, for
689 water and sewer adequacy and tree variances;

- 690 5. Montgomery County Fire and Rescue Service, for requirements for
691 adequate fire protection and access;
- 692 6. the State Highway Administration, for right-of-way requirements and
693 access on state roads;
- 694 7. any appropriate agency of the federal government;
- 695 8. any municipality that has filed a request with the Board for an
696 opportunity to review subdivision or resubdivision plans for property
697 located in that municipality;
- 698 9. Montgomery County Public Schools, for school site planning;
- 699 10. any other Montgomery County Executive agency, for the adequacy of
700 public facilities and services and any proposed public use; and
- 701 11. local utility providers.

702 B. Review and recommendation.

703 1. Timing of review.

- 704 a. [[Reviewing]] The Director must allow reviewing State and
705 County agencies and utilities [[must get]] a minimum of 14
706 days to review plans [[and]]. Those agencies and utilities must
707 submit initial comments to the Director before the Development
708 Review Committee meeting when one is scheduled.
- 709 b. The applicant must submit revised drawings at least 65 days
710 before the date of the hearing to address all comments received.
711 The Director may extend the deadline if the applicant submits a
712 written request within 15 days after the revised drawings were
713 due. If no written request is received or if the requested
714 extension is not granted, the application is deemed withdrawn.
- 715 c. State and County agencies and utilities must each submit their
716 final recommendations on the application at least 45 days
717 before the date of the Board hearing or must request an
718 extension.

719 2. Approvals from public agencies. The following agency approvals are
720 [[needed]] required before the Board approves the preliminary plan:

721 a. Design of County-maintained roads. The [[County]]
722 Department of Transportation must approve in preliminary
723 form the typical section, concept road profile, intersection and
724 site access locations, sight distances, utility location, and storm
725 drain adequacy for improvements along County-maintained
726 roads and paths within its jurisdiction;

727 b. Wells and septic systems. The [[County]] Department of
728 Permitting Services must approve lots with individual wells or
729 septic systems, the well, and septic plan. Proposed wells and
730 septic systems within existing rights-of-way or easements are
731 prohibited;

732 c. Stormwater management. The [[County]] Department of
733 Permitting Services must approve a stormwater management
734 concept and floodplain delineation, if required under Chapter
735 19;

736 d. Water Quality Plan. If a water quality plan is required under
737 Chapter 19, the Board must not approve a preliminary plan or
738 any extension until all requirements of Chapter 19 for plan
739 approval are satisfied. The Board must make the compliance
740 with a required water quality plan, including any plan reviewed
741 on a preliminary or final basis, a condition of any approved
742 preliminary plan; and

743 e. Water and sewer service. If water and sewer are proposed to
744 serve the property, the Board may approve a preliminary plan
745 only if WSSC [[agrees with]] has reviewed the proposed water
746 and sewer service layout.

747 3. Director. The Director must publish a report and recommendation at
748 least 10 days before the Board hearing.

749 C. Planning Board Action.

- 750 1. The Director must present every preliminary plan to the Board for its
751 review and action. The Board must take one of the following actions
752 or defer action to obtain more information:
- 753 a. approve, if the plan conforms to the purposes and other
754 requirements of this Chapter;
- 755 b. approve, with any conditions or modifications necessary to
756 bring the proposed development into compliance with all
757 applicable requirements; or
- 758 c. deny, if the plan is contrary to the purposes and other
759 requirements of this Chapter.
- 760 2. All necessary improvements to support the development must be
761 completed or assured, as specified in Section 10.2.
- 762 3. Where a site plan is required, the approval of the preliminary plan
763 must not allow clearing or grading to occur before approval of the site
764 plan, unless otherwise specified by the Board.
- 765 4. The Board must approve a resolution containing findings supporting
766 its decision. Following approval of a preliminary plan by the Board,
767 [[no agency may require a]] any substantial change in the plan
768 [[unless]] required by another agency must be allowed by the Board's
769 conditions of approval or a plan amendment under Section 4.2.F.
- 770 D. Required Findings. To approve a preliminary plan, the Board must find that:
- 771 1. [[the preliminary plan substantially conforms to the master plan;]] the
772 layout of the subdivision, including size, width, shape, orientation and
773 density of lots, and location and design of roads is appropriate for the
774 subdivision given its location and the type of development or use
775 contemplated and the applicable requirements of Chapter 59;
- 776 2. [[public facilities will be adequate to support and service the area of
777 the subdivision]] the preliminary plan substantially conforms to the
778 master plan;

779 3. [[the layout of the subdivision, including size, width, shape,
780 orientation and density of lots, and location and design of roads are
781 appropriate for the subdivision given its location and the type of
782 development or use contemplated, considering the recommendations
783 included in the master plan and the applicable requirements of
784 Chapter 59;]] public facilities will be adequate to support and service
785 the area of the subdivision;

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

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

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

791 E. Plan Certification. Every preliminary plan approved by the Board must be
792 certified by the Director to confirm that the plan reflects the Board's
793 approval. Any modification of the plan conditioned by the Board's approval
794 must be included in the plan before receiving the approval stamp. The
795 approved plan must be filed in the records of the Board.

796 F. Amendments.

797 1. A major amendment to an approved preliminary plan must follow the
798 same procedures, meet the same criteria, and satisfy the same
799 requirements as the original preliminary plan.

800 a. A major amendment includes any requests to change density; or
801 make major changes to lot configuration or location, or right-
802 of-way width or alignment; or make a change to any condition
803 of approval, except a change to validity period phasing as
804 permitted in Section 4.2.F.2.

805 2. A minor amendment to an approved preliminary plan must follow the
806 same procedures, meet the same criteria, and satisfy the same
807 requirements as the original preliminary plan, except as modified
808 under Section 4.2.F.2.b.

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

814 b. The Board may approve a minor preliminary plan amendment
815 without a public hearing if the Director publishes a report and
816 recommendation on the amendment a minimum of 10 days
817 before the Board meeting. The Director may also approve a
818 minor amendment to change validity period phasing as
819 permitted in Section 4.2.H.1.b.

820 G. Plan Validity.

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

823 a. 30 days from the date of mailing indicated on the written
824 resolution; or

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

829 2. Duration.

830 a. Single-phase project.

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

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

836 b. Multi-phase project.

- 837 i. An approved preliminary plan for a multi-phase project
838 remains valid for the period of time allowed in the
839 phasing schedule approved by the Board.
- 840 ii. The applicant must propose a phasing schedule and the
841 duration of the validity period for each phase as part of
842 an application for preliminary plan approval or
843 amendment. The Board must assign each phase a validity
844 period after considering the size, type, and location of the
845 project.
- 846 iii. The time allocated to any phase must be 60 months or
847 less after the initiation date for that particular phase for
848 any preliminary plan approved after March 31, 2009, but
849 before April 1, 2017, and 36 months after the initiation
850 date for that particular phase for any preliminary plan
851 approved after March 31, 2017.
- 852 iv. The cumulative validity period of all phases must be
853 shorter than or equal to the APFO validity period which
854 begins on the initiation date of the first preliminary plan
855 approval, including any extension granted under Section
856 4.3.J.7.
- 857 v. If the recordation of an approved preliminary plan occurs
858 within 5 years of approval for a multi-phase project that
859 includes land or building space to be transferred to the
860 County for an arts or entertainment use under Section 59-
861 C-6.2356 of the zoning ordinance in effect on October
862 29, 2014, all phases of the preliminary plan are validated.
863 After approval, an amendment or modification to the
864 phasing plan or the preliminary plan will not affect the
865 validations if the requirements of this Subsection have
866 otherwise been met.
- 867 3. Validation. A preliminary plan or phase of a preliminary plan is
868 validated when the applicant has secured all government approvals

869 necessary to record a plat, and a plat for all property shown on the
870 plan or in that phase has been recorded in the County Land Records.

871 4. Effect of a preliminary plan amendment on validity period. For any
872 action taken by the Board to amend a previously approved preliminary
873 plan, the Board will determine, on a case-by-case basis, whether it
874 should extend the validity period and, if so, for what duration. In
875 making the determination, the Board must consider the nature and
876 scope of the requested amendment.

877 H. Extension of plan validity period.

878 1. Extension request.

879 a. Only the Board is authorized to extend the validity period. The
880 [[Board]] applicant must [[receive]] submit a request to extend
881 the validity period of an approved preliminary plan in writing
882 before the previously established validity period expires. [[Only
883 the Board is authorized to extend the validity period.]]

884 b. The Director may approve a request to amend the validity
885 period phasing schedule of an approved preliminary plan if the
886 length of the total validity period of the preliminary plan is not
887 extended. The [[Director]] applicant must [[receive]] submit the
888 request in writing before the previously established validity
889 period of the phase expires.

890 c. The written request must detail all reasons to support the
891 extension request and include the anticipated date by which the
892 plan will be validated. The applicant must certify that the
893 requested extension is the minimum additional time required to
894 record all plats for the preliminary plan.

895 2. Effect of [[timing]] failure to submit a timely extension request.

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

899 b. Where a preliminary plan has been allowed to expire due to the
900 applicant's failure to file a timely request for extension, the
901 Board may reinstate the preliminary plan and establish a new
902 validity period if practical difficulty or undue hardship is
903 demonstrated by the applicant. The Board may require the
904 applicant to get a new APFO review and approval by the Board
905 as a prerequisite or condition of its action to extend an expired
906 plan.

907 3. Grounds for extension.

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

910 i. delays by the government or some other party after the
911 plan approval have prevented the applicant from meeting
912 terms or conditions of the plan approval and validating
913 the plan, provided such delays are not caused by the
914 applicant; or

915 ii. the occurrence of significant, unusual and unanticipated
916 events, beyond the applicant's control and not caused by
917 the applicant, have substantially impaired the applicant's
918 ability to validate the plan, and exceptional or undue
919 hardship (as evidenced, in part, by the efforts undertaken
920 by the applicant to implement the terms and conditions of
921 the plan approval in order to validate the plan) would
922 result to the applicant if the plan were not extended.

923 b. The applicant bears the burden of establishing the grounds in
924 support of the requested extension.

925 4. Planning Board considerations for extension.

926 a. The Board may condition the grant of an extension on a
927 requirement that the applicant revise the plan to conform with
928 changes to the requirements of this Chapter since the plan was
929 approved.

930 b. The Board may deny the extension request if it finds that the
931 project, as approved and conditioned, is no longer viable. The
932 Board must consider whether the project is capable of being
933 financed, constructed, and marketed within a reasonable time
934 frame. The Applicant must demonstrate the project's viability
935 upon request by the Board or the Director.

936 5. Planning Board action.

937 a. After a duly noticed public hearing [[for which notice was duly
938 given]], the Board must determine whether it should grant a
939 request for an extension. The requirements for noticing and
940 conducting a public hearing must follow the requirements for a
941 preliminary plan.

942 b. If voting to approve an extension, the Board must only grant the
943 minimum time it deems necessary for the applicant to validate
944 the plan.

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

948 d. An applicant may request, and the Board may approve, more
949 than one extension.

950 e. Once a phasing schedule is approved by the Board as part of a
951 preliminary plan approval, the Board must treat any revision or
952 alteration to the schedule other than an amendment approved
953 under Section 4.3.J.7 as a minor amendment to the preliminary
954 plan. Board approval of a revised phasing schedule is required
955 to extend the total length of the validity period.

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

957 1. If a preliminary plan is not timely validated in whole or in part before
958 the expiration of the validity period, any remaining portion of the plan
959 [[expires]] is void. For multi-phased plans, the failure on the part of an

960 applicant to timely validate a phase, in whole or in part, voids the
961 balance of the preliminary plan approval for that phase and all
962 subsequent non-validated phases.

963 2. In those instances where an applicant has timely validated only a
964 portion of a plan and no extension is granted, the applicant seeking to
965 develop only that portion of the project remains responsible for fully
966 complying with all of the terms, conditions, and other requirements
967 associated with the portion of the plan approval that has been
968 implemented.

969 3. If a preliminary plan or a phase of the plan is not timely validated, any
970 APFO determination made by the Board associated with the
971 [[expired]] void portion of the preliminary plan is also [[expires]]
972 void. In such event, the applicant loses any further rights to claim any
973 vehicle trips associated with the expired APFO approval. The filing of
974 a new preliminary plan application does not provide the basis for
975 reclaiming vehicle trips lost by the termination of the APFO approval.

976 4. A preliminary plan approval conditionally linked to a sketch plan or
977 project plan approval under Chapter 59 expires if the sketch plan or
978 project plan expires.

979 J. Revocation of approval.

980 1. The Board may revoke approval of a preliminary plan by resolution at
981 any time before the Board approves the final plat covering the
982 proposed preliminary plan.

983 2. To revoke a preliminary plan approval, except in response to a
984 violation of this Chapter, the Board must find that completing a
985 portion of the plan has been rendered impractical by reason of an
986 amendment to the General Plan, or by a conflict with a proposed
987 public improvement or other conditions or circumstances not
988 previously considered by the Board that make the plan contrary to
989 public health, safety, or welfare.

990 3. The Board must give a subdivider notice and an opportunity to be
991 heard by the Board before taking any action to revoke approval of a
992 preliminary plan [[by sending]]. Notice to the owner and subdivider
993 [[a notice]] must be sent by certified mail at least 30 days before the
994 date of the proposed action [[and]] giving the time and place of the
995 hearing. The notice must state the reasons for the proposed revocation.

996 **Section 4.3. Technical Review**

997 In making the findings under Section 4.2.D, the Board must [[review]] consider the
998 following [[technical]] aspects of the application.

999 A. *Relation to master plan.*

1000 1. [[In determining whether to approve a preliminary plan, the Board
1001 must consider the applicable master plan or Urban Renewal Plan.]] A
1002 preliminary plan must substantially conform to the applicable master
1003 plan or Urban Renewal Plan, including maps and text. However, if a
1004 site plan is not required under Chapter 59, Article 59-7.3.4, the Board
1005 may find that events have occurred to render the relevant master plan
1006 or Urban Renewal Plan recommendation no longer appropriate.

1007 2. A preliminary plan that requires a site plan approval under Chapter
1008 59, Article 59-7.3.4 may exceed any dwelling unit per acre or floor
1009 area ratio (FAR) limit recommended in a master plan, as provided in
1010 Chapter 59, to permit construction of all MPDUs under Chapter 25A,
1011 or workforce housing units required under Chapter 59 or Chapter
1012 29A.

1013 B. *Block design.*

1014 1: *Residential blocks.* The Board must approve the length, width, and
1015 shape of any residential block as follows:

1016 a. *Length.* The length of a residential block must be compatible
1017 with existing development patterns and the land use goals for
1018 the area of the subdivision. The maximum length of a block is
1019 1,600 feet.

- 1020 b. Width. Blocks must be designed with sufficient width to
1021 provide 2 tiers of lots. The Board may approve exceptions to
1022 block width design for blocks adjacent to heavy traffic ways,
1023 railroads, streams, drainage courses, or for land uses where it is
1024 appropriate to establish blocks with 1 tier of lots.
- 1025 c. Pedestrian paths. The Board may require paths for pedestrian
1026 access to schools, playgrounds, parks, and other public areas
1027 and through long blocks.
- 1028 d. Multi-unit or apartment blocks. The Board must review and
1029 approve the design and arrangement of access roads within a
1030 subdivision for multi-unit or apartment dwellings, together with
1031 the required parking facilities and pedestrian walks, to
1032 determine that resulting blocks are a suitable length and width
1033 for pedestrian and vehicle circulation.
- 1034 2. Nonresidential blocks. The Board must determine if the blocks
1035 designed for business or industry are a suitable length and width,
1036 including adequate provision for pedestrians, parking, deliveries, and
1037 truck maneuvering.
- 1038 C. Lot design.
- 1039 1. General requirements.
- 1040 a. Lot dimensions. [[The Board must find that lot]] Lot size,
1041 width, shape, and orientation [[will]] must be appropriate for
1042 the location of the subdivision and for the type of development
1043 or use contemplated, considering the recommendations of the
1044 master plan and the applicable requirements of Chapter 59.
- 1045 b. Lots to abut on a public or private road. Except as specified
1046 below, every lot must abut on a public or private road. A public
1047 road must be dedicated or donated to public use or have
1048 acquired the status of a public road under Chapter 49. A private
1049 road must be [[created by]] shown on a record plat [[and be
1050 made available for public use through an access easement]].

- 1051 i. The Board may approve a maximum of 2 lots that do not
1052 abut a public or private road if the lots will be served by a
1053 private driveway that serves no other lots without
1054 frontage.
- 1055 ii. The [[Board must find that]] access to lots with no road
1056 frontage [[is]] must be adequate to serve the lots for
1057 emergency vehicles and for installation of public utilities.
1058 In addition, the [[Board must find that the]] lots [[are]]
1059 must be accessible for other public services and [[are]]
1060 not detrimental to future [[subdivision]] development of
1061 adjacent lands.
- 1062 c. Side lines. Side lines of interior lots must to the extent possible
1063 be aligned perpendicular to the road line or radial to a curved
1064 road line.
- 1065 d. Through lots. The Board must not approve through lots, except
1066 where unusual topography, orientation, or the size of the
1067 subdivision permit no other feasible way to subdivide.
- 1068 e. Alley or pedestrian paths for residential lots. If a mid-block
1069 alley or pedestrian right-of-way is provided in a residential
1070 subdivision, the subdivider must increase the lot widths
1071 adjoining the alley or right-of-way to provide for a parallel side
1072 building restriction line 15 feet from the alley or right-of-way.
- 1073 D. Public sites and adequate open spaces. A preliminary plan must provide for
1074 required public sites and adequate open space areas.
- 1075 1. Master planned sites. When a tract being subdivided includes a
1076 proposed site for a park, playground, school, or other public use
1077 recommended in the applicable master plan, and that use is deemed
1078 necessary by the Board and applicable public agency, the preliminary
1079 plan must show the site for the use for dedication or acquisition and
1080 subsequent record plat. Land that is not dedicated may be acquired by
1081 donation, purchase, or condemnation, or reserved under Subsection 5.

1082 2. Local recreation. The Board must require platting and dedication to
1083 public use of adequate spaces for recreation wherever it is reasonable
1084 to do so, considering the recommendations in the applicable master
1085 plan, the circumstances existing where a subdivision is located, and
1086 the size and character of the subdivision. The subdivider may be
1087 required to provide what is determined by the Board to be an area
1088 relevant to the recreational needs of the present and future inhabitants
1089 of the subdivision. Whenever the necessary recreational area is larger
1090 than the subdivider is required to dedicate, the balance of the needed
1091 area must be reserved for acquisition under Subsection 5.

1092 3. Area for public roads and associated utilities and storm drainage.

1093 a. Roads. In its consideration of the approval of a subdivision, the
1094 Board must require dedication and platting of adequate area to
1095 provide public roads and other public transportation facilities.
1096 These must be coordinated with other existing, planned, or
1097 platted roads, other features in the district, or with any road plan
1098 adopted or approved as a part of the General Plan.

1099 b. Rights-of-way and easements other than roads. The Board may
1100 require dedication to public use of rights-of-way or platting of
1101 easements necessary for public uses, such as pedestrian paths,
1102 equestrian trails, [[bicycle infrastructure (including, but not
1103 limited to, bikeways and bike-share facilities)]] bicycle
1104 facilities, water and sanitary sewer, and stormwater
1105 management and storm drainage facilities. The Board must
1106 approve the extent, location, and width of each pedestrian path,
1107 equestrian trail, and bikeway right-of-way after considering the
1108 master plan. The extent and width of water and sanitary sewer
1109 rights-of-way must be determined by the Washington Suburban
1110 Sanitary Commission in its jurisdiction. The extent and width
1111 of drainage rights-of-way must be determined by the [[County]]
1112 Department of Permitting Services after receipt of drainage
1113 studies prepared by the applicant's engineer.

1114 4. Areas not suitable for public use.

1115 a. When a preliminary plan includes a proposed dedication of land
1116 to public use, the Board must determine if the land is suitable
1117 for the intended public use. In its evaluation, the Board must
1118 consider, among other relevant factors, any criteria for the
1119 intended use adopted by the receiving agency and the agency's
1120 recommendations, the natural features of the site, and the extent
1121 of site preparation work. Site preparation may include
1122 excavation of rock, excessive grading, grading of steep slopes,
1123 remedial environmental measures, and similar work required to
1124 prepare the site for the public use. In evaluating the natural
1125 features of a site, the Board may require the applicant to
1126 perform soil borings or to provide other detailed topographical
1127 or subsurface information not otherwise submitted under
1128 Section 4.1.B. The applicant's engineer must certify the
1129 information provided to the Board. Factors relevant to a
1130 determination of the magnitude of site preparation work include
1131 estimated costs, acreage, agency experience with similar sites
1132 and construction industry practices.

1133 b. Based on the analysis, the Board may refuse to approve the
1134 dedication and:

1135 i. require the rearrangement of lots in the subdivision to
1136 provide for a suitable site;

1137 ii. permit the applicant to pay for additional site preparation
1138 that makes the site suitable for the public use; or

1139 iii. with the concurrence of the receiving agency, permit the
1140 applicant to provide an alternative location offsite.

1141 5. Reservation.

1142 a. Procedure. When the Board determines that a tract being
1143 subdivided includes land that is necessary for public use but
1144 will not immediately be acquired by donation, dedication,

1145 purchase, or condemnation when the plat is recorded, the Board
1146 must determine the need to reserve the land. The Board may
1147 require a reservation for a period of time less than 3 years [[or
1148 less]] for road rights-of-way, public school and building sites,
1149 parks, playgrounds, recreational areas, or other public purposes.

1150 i. Referral to agency concerned with acquisition. If a
1151 reservation of land appears to be in the public interest,
1152 the Board must refer the plan to the public agency
1153 concerned with acquisition for consideration and report.
1154 The Board may propose alternate areas for such
1155 reservation and must allow such public agency 30 days
1156 for reply. The agency's recommendation, if affirmative,
1157 must include a map showing the boundaries and area of
1158 land to be reserved and an estimate of the time required
1159 to complete the acquisition.

1160 ii. Resolution. The Board must approve a declaration of
1161 public reservation by resolution, stating the period during
1162 which the reservation is effective. Notice of the same
1163 must be carried once each in two newspapers of general
1164 circulation in the County and a plat must be recorded in
1165 the land records of the County showing in detail the land
1166 so reserved. Certified copies of the resolution must be
1167 sent to the property owner and to the agency concerned
1168 with acquisition.

1169 iii. Taxes. The Board must advise taxing and assessing
1170 bodies of all public reservations, and such public
1171 reservations must be exempt from all State, County, and
1172 local taxes during the reservation period.

1173 iv. Preservation. During the reservation period, any use of
1174 the reserved land that involves constructing buildings or
1175 structures, removing trees, or clearing and grading must
1176 be approved by the Board. A person must not remove or

1177 destroy trees, topsoil, or cover; grade; or build a storm
1178 drainage structure that discharges water on the reserved
1179 land, except according to a storm drainage plan approved
1180 by the [[County]] Department of Permitting Services or
1181 the [[County]] Department of Transportation. Nothing in
1182 this Section relieves the landowner from the
1183 responsibility to maintain the property according to law
1184 or prohibits the owner from removing weeds or trash
1185 from reserved land or from selling the reserved land after
1186 approval of the Board.

1187 v. Posting. The Board must post properties in reservation
1188 with an appropriate sign, warning against violation of the
1189 preservation provisions and the penalties for a violation.

1190 b. Expiration of plan. The expiration or revocation of approval of
1191 a preliminary plan must not affect a reservation if, before the
1192 expiration date, a reservation plat has been recorded in the Land
1193 Records.

1194 E. Roads.

1195 1. Plan requirements.

1196 a. Master plan roads. Preliminary plans must include roads shown
1197 on any adopted Master Plan of Highways, in satisfaction of the
1198 Road Design and Construction Code. Where applicable, an
1199 approved plan must include recommendations of the State
1200 Highway Administration for construction and access to State
1201 roads. Where private roads are specifically recommended by a
1202 master plan, the roads must be provided to the standards for
1203 private roads under this Section.

1204 b. Continuation of roads. The subdivision must provide for
1205 continuation of any existing roads (constructed or recorded)
1206 [[that satisfy]] in satisfaction of the Road Design and

- 1207 Construction Code, unless otherwise determined by the Board,
1208 considering the recommendations of other appropriate agencies.
- 1209 c. Future subdivisions. A tract in a preliminary plan application
1210 must be divided to not preclude future road openings and
1211 further logical subdivision of adjacent land.
- 1212 d. Alleys. The Board, in consultation with the appropriate
1213 transportation agency, may require alleys where they are
1214 necessary to provide access.
- 1215 e. Railroad crossings. A preliminary plan involving new or
1216 existing roads crossing railroad tracks must provide an adequate
1217 right-of-way, including approach right-of-way and slope
1218 easements, for construction of an underpass or overpass unless
1219 otherwise determined by the Board, considering the
1220 recommendations of other appropriate agencies.
- 1221 f. Residential roads paralleling railroads. A residential road
1222 paralleling a railroad must be located at least 160 feet from the
1223 track to provide lots with sufficient depth backing to the
1224 railroad right-of-way.
- 1225 g. Railroad tracks. Existing railroad tracks must not be included
1226 within the rights-of-way of roads, except for crossings or rail
1227 transit lines outside the paved traveled portion of the road.
- 1228 2. Design standards.
- 1229 a. Right-of-way. Area for a road on a subdivision plan must
1230 include the full width of all rights-of-way recommended for the
1231 applicable road classification in the adopted master plan and in
1232 the Road Design and Construction Code.
- 1233 i. The Board may approve a narrower than standard road
1234 right-of-way if it meets minimum fire access
1235 requirements and the Board finds that a narrower right-
1236 of-way is environmentally preferable, improves

1237 compatibility with adjoining properties, or allows better
1238 use of the tract under consideration.

1239 ii. In determining the width of a less than standard right-of-
1240 way, the Board must consider:

1241 (a) the recommendations of the [[County]]
1242 Department of Transportation or other applicable
1243 state or municipality transportation permitting
1244 agency;

1245 (b) the amount of traffic expected to use the proposed
1246 roads;

1247 (c) the maximum road right-of-way or improvement
1248 required for the proposed land use; and

1249 (d) the increased traffic, travel lane, and right-of-way
1250 requirements that would be created by maximum
1251 use and development of land using the road.

1252 [[b. Slope easement. When required for construction or road
1253 maintenance, the subdivision plan must establish an easement
1254 for a 2:1 slope along both sides of each road right-of-way for
1255 public use. The easement must be at the front setback line per
1256 zoning, or as determined by a site-specific slope study in
1257 coordination with the road grade approved under this Chapter.]]

1258 [[c]]b. *New roads, sidewalks, etc.* The subdivider must design and
1259 construct the roads, alleys, bicycle facilities, sidewalks, and
1260 pedestrian ways with drainage, street trees, and other integral
1261 facilities in each new subdivision [[as required by the Road
1262 Design and Construction Code or a municipality, whichever
1263 applies]] as required by the appropriate transportation or
1264 permitting agency.

1265 [[d. Existing public roads. In a preliminary plan or administrative
1266 subdivision plan application containing lots fronting on an

1267 existing State, County, or municipally maintained road, the
1268 subdivider must provide any additional required right-of-way
1269 dedication and reasonable improvement to the road in front of
1270 the subdivision, including sidewalks and bicycle facilities, as
1271 required by the approved Master Plan, Road Design and
1272 Construction Code or by a municipality, whichever applies.

1273 e. Private roads. Private roads must be built to the applicable
1274 structural standard, grade, and typical section based on the
1275 comparable functional classification in Chapter 49. Private
1276 roads must conform to the horizontal alignment requirements of
1277 this Chapter. The subdivider must have a registered engineer
1278 certify to the County Department of Permitting Services that
1279 each private road has been designed to meet the structural
1280 standards required by this Section. The subdivider must then
1281 certify to the County Department of Permitting Services that all
1282 construction complies with the design.]]

1283 [[f]]c. Mid-block pedestrian right-of-way. The minimum right-of-way
1284 must be 20 feet for a mid-block pedestrian right-of-way.

1285 [[g]]d. Drainage right-of-way. The minimum for an enclosed
1286 drainage right-of-way must be 20 feet, unless otherwise
1287 determined by the [[County]] Department of Permitting
1288 Services or other applicable public agency.

1289 [[h]]e. Non-through roads. The Board must not approve any road that
1290 does not connect to another road at its beginning and end,
1291 unless a determination is made that:

1292 i. a through road is infeasible due to a property's unusual
1293 shape, size, topography, environmentally sensitive areas,
1294 or the characteristics of abutting property;

1295 ii. the road provides access to no more than 75 [[lots]]
1296 dwelling units;

1297 iii. the road is properly terminated in a cul-de-sac or other
1298 turnaround; and

1299 iv. the road is less than 500 feet in length, measured along
1300 its centerline to the nearest through street, unless the
1301 Board determines that a longer length is necessary
1302 because of the unusual shape, size, topography, or
1303 environmentally sensitive areas of the subdivision.

1304 [[i]]f. Intersection.

1305 i. Roads must be laid out to intersect as nearly as possible
1306 at right angles. The Board must not approve a proposed
1307 intersection of new roads at an angle of less than 70
1308 degrees.

1309 ii. Proposed road intersections, excluding alleys and
1310 driveways, must be spaced as shown in the table below,
1311 as measured from the centerline of the intersections[[,
1312 except in an Urban Area as defined in Chapter 49]].
1313 When the Board finds that a greater or lesser spacing is
1314 appropriate, the Board may specify a greater or lesser
1315 spacing than otherwise required after considering the
1316 recommendation of the [[County Department of
1317 Transportation]] transportation agency responsible for
1318 maintaining the road.

1319

<u>Road Classification</u>	<u>Locale</u>	<u>Distance Between Intersections (FT)</u>
<u>Tertiary Residential</u>	<u>All</u>	<u>[[200]]150</u>
<u>Secondary Residential</u>	<u>Urban</u>	<u>[[300]]200</u>
	<u>Suburban</u>	<u>200</u>
	<u>Rural</u>	<u>200</u>
<u>Primary and Principal Secondary</u>	<u>Urban</u>	<u>[[400]]300</u>
	<u>Suburban</u>	<u>400</u>
	<u>Rural</u>	<u>400</u>
<u>Business District and Industrial</u>	<u>Urban</u>	<u>300*</u>
	<u>Suburban</u>	<u>400*</u>
	<u>Rural</u>	<u>400*</u>
<u>Country Road</u>		<u>400</u>
<u>Country Arterial</u>		<u>800</u>
<u>[[Arterial and]] Minor Arterial</u>	<u>Urban</u>	<u>[[500]]300</u>
	<u>Suburban</u>	<u>500</u>
	<u>Rural</u>	<u>800</u>
<u>Arterial</u>	<u>Urban</u>	<u>300*</u>
	<u>Suburban</u>	<u>600*</u>
	<u>Rural</u>	<u>800*</u>
<u>[[Controlled]] Major Highway[[, Major Highway and Parkway]]</u>	<u>Urban</u>	<u>[[1000]]300*</u>
	<u>Suburban</u>	<u>800*</u>

	<u>Rural</u>	<u>1000*</u>
<u>Controlled Major Highway</u>	<u>Urban</u>	<u>300*</u>
	<u>Suburban</u>	<u>1000*</u>
	<u>Rural</u>	<u>1000*</u>
<u>Parkway</u>	<u>Urban</u>	<u>300*</u>
	<u>Suburban</u>	<u>600*</u>
	<u>Rural</u>	<u>800*</u>

1320 *NOTE: Median breaks on divided roadways must be no closer than 600 feet.

1321 iii. Corner lots at an intersection must be truncated by
 1322 straight lines joining points 25 feet back from the
 1323 theoretical property line intersection in each quadrant.
 1324 When more or less width is needed for traffic safety and
 1325 operations, the Board may specify a greater or lesser
 1326 truncation than otherwise required. Any alley intersection
 1327 or abrupt change in alignment in a block must have the
 1328 corners truncated sufficiently for safe vehicular turning.

1329 [[j]]g. Horizontal alignment. In all public and private primary,
 1330 secondary and tertiary residential streets and culs-de-sac, the
 1331 alignment must be designed so that all deflections in horizontal
 1332 alignment are accomplished through segments of circular
 1333 curves properly incorporated into the design. The minimum
 1334 permitted centerline radii must be:

- 1335 i. Primary roads 300 feet
- 1336 ii. Secondary roads 150 feet
- 1337 iii. Tertiary roads 100 feet

1338 The Board must specify greater radii when safety requires. A tangent
 1339 at least 100 feet long must be used between two reverse curves, except
 1340 in a secondary or tertiary residential street. The Board may specify a

1341 lesser radii when the Department of Transportation has previously
1342 issued a design exception for a similar design.

1343 3. *Additional requirements for public roads.*

1344 a. *Slope easement.* When required for construction or road
1345 maintenance, the subdivision plan must establish an easement
1346 for a 2:1 slope along both sides of each public road right-of-
1347 way for public use. If a Public Utility Easement (PUE) is
1348 required along a road, that PUE is to be graded when the road is
1349 constructed on a side slope not to exceed 4:1; the 2:1 maximum
1350 side slope may commence outside the limit of the PUE. The
1351 Slope Easement must provide adequate room for proper
1352 transition grading at the toe or top of slope. The easement must
1353 be at the front setback line per zoning, or as determined by a
1354 site-specific slope study in coordination with the road grade
1355 approved under this Chapter. A retaining wall instead of a slope
1356 easement may be allowed by the reviewing agency.

1357 b. *Existing public roads.* In a preliminary plan or administrative
1358 subdivision plan application containing lots fronting on an
1359 existing State, County, or municipally maintained road, the
1360 subdivider must provide any additional required right-of-way
1361 dedication and reasonable improvement to the road in front of
1362 the subdivision, including sidewalks and bicycle facilities, as
1363 required by Master Plan, the Road Design and Construction
1364 Code or by a municipality, whichever applies.

1365 c. *Storm drainage.* The subdivider must grade and provide
1366 drainage structures and storm sewers according to a storm drain
1367 plan and permit approved by the Department of Transportation
1368 and Department of Permitting Services or applicable
1369 municipality in coordination with the construction of public
1370 roads.

1371

1372 4. Additional standards for private roads.

1373 a. Designating Private roads.

1374 In general, creation of public roads is preferred in all
1375 circumstances; a developer must justify the use of a private
1376 road based upon the criteria below and the specific compelling
1377 circumstances of the property being developed.

1378 b. Justification for a private road:

1379 A subdivider who proposes a private road must include a list of
1380 proposed design elements that cannot be accommodated using
1381 context-sensitive road design standards or modified under a
1382 Design Exception. The justification for a private road must not
1383 be based solely on the installation of non-standard amenities
1384 that could be addressed under a Maintenance and Liability
1385 Agreement with the County.

1386 c. Standards. Private roads must be built to the construction
1387 specifications of the corresponding public road concerning
1388 paving detail and design data, including surface depth and
1389 structural design. The road must be designed in accordance with
1390 sound engineering principles for safe use including horizontal
1391 and vertical alignments for the intended target speed, adequate
1392 typical sections for vehicles, pedestrians, and bicyclists,
1393 compliance with the Americans with Disabilities Act, drainage
1394 and stormwater management facilities, intersection spacing and
1395 driveway locations, parking, lighting, landscaping or street
1396 trees, and utilities. The width and cross section of a private
1397 road must meet the right-of-way specified in a master plan or be
1398 equal to the corresponding public road standard unless modified
1399 by the Board. Private roads must conform to the horizontal
1400 alignment requirements of this Chapter.

1401 d. Road Classifications. When the proposed road is not needed to
1402 maintain area circulation, provide continuous corridors to serve

- 1403 the general public and quasi-public needs such as
1404 communication, utility, and future potential transportation or
1405 other systemic needs that serve the public on a long-term basis,
1406 and is not needed to be part of the network modeled for area
1407 capacity, consideration will be given to making the following
1408 roads private:
- 1409 i. Only roads classified as either Business District,
1410 Industrial, Secondary, Tertiary, or Alley may be
1411 considered by the Board to be private. All other road
1412 classifications must be public unless specifically
1413 permitted to be a private road by a master plan.
- 1414 ii. Private roads with improvements above or below the
1415 pavement are only allowed in projects that require site
1416 plan review and approval.
- 1417 iii. Private roads should not be permitted if they will create a
1418 segmented road ownership pattern, unless approved by
1419 the Planning Board.
- 1420 iv. Private roads must not be permitted if they will
1421 negatively affect development of other properties.
- 1422 v. A Business District road may be a private road only
1423 when it is not required to provide an adequate traffic
1424 level of service. A private Business District street may
1425 be approved only when the proposed road is not either a
1426 connector between two higher classification roads or a
1427 road that is planned to extend beyond the boundary of the
1428 preliminary plan.
- 1429 vi. An industrial road may a private road only when the road
1430 is part of roads internal to the industrial site and the road
1431 is not a connector between higher classified roads.
- 1432 vii. A secondary road may be a private road only when it
1433 connects to no more than one higher classification road

1434 and the road does not need to be extended onto adjacent
1435 property to facilitate a future subdivision of land.

1436 viii. A tertiary road, when a cul-de-sac, must be less than 500
1437 feet in length.

1438 ix. A private alley will not require an access easement if the
1439 alley only serves one building or if the alley is a
1440 secondary access to one-family residential dwellings.

1441 e. Certification. Before the Board may approve a preliminary
1442 plan, the subdivider must have an engineer certify that each
1443 private road has been designed to meet the standards required
1444 by this Section. The subdivider must then certify to the
1445 Department of Permitting Services that all construction
1446 complies with the design before release of the surety for the
1447 road.

1448 [[3]]5. Additional roadway provisions.

1449 a. Road names. The Board must approve any road name before it
1450 is used. The Board must not approve any road name that is
1451 already used, or closely resembles any road name already used,
1452 anywhere else in the County. If a new road is an extension of or
1453 in a direct line with an existing road, the Board should continue
1454 the name of the existing road.

1455 b. Off-site sidewalks and bikeways. In approving a preliminary
1456 plan, the Board may, after considering the recommendation of
1457 the Department of Transportation or other applicable
1458 transportation agency, require a developer to provide a
1459 reasonable amount of off-site sidewalks, bikeways, or
1460 improvements. Off-site sidewalks, bikeways, or improvements
1461 may be required to provide necessary connections from the
1462 proposed development to an existing sidewalk or bikeway, an
1463 existing or master plan proposed bus or other public transit
1464 stop, an existing or proposed bikeshare station, or a public

1465 facility. The Board must find that such facilities will be used by
1466 residents or users of the development or for handicapped
1467 access. The developer must not be required to obtain any right-
1468 of-way to build or improve a sidewalk or bikeway unless
1469 required under another provision of law.

1470 c. *Rustic roads.* In approving a preliminary plan, the Board must
1471 not require improvements that are contrary to Chapter 49,
1472 Article 8 or Executive Regulations governing rustic roads. The
1473 Board may waive any requirement of Sections 4.3.E.2. [[c]] b
1474 and 4.3.E. [[2.d]] 3.b that is incompatible with the rustic road or
1475 substitute any alternative requirement that is consistent with the
1476 goals of the rustic roads law. The Board may only require those
1477 improvements that retain the significant features of the road
1478 identified by the Council for preservation. If the Board is
1479 otherwise directed by this Section to require improvements that
1480 are contrary to the rustic roads law or Executive Regulations,
1481 the Board must consider the recommendations of the Rustic
1482 Roads Advisory Committee and evaluate the feasibility of trip
1483 reduction and alternative road improvements to the local
1484 roadway network. If the Board determines that no feasible
1485 alternative exists, it may require improvements that are
1486 necessary for traffic safety [[and]] or operational requirements.

1487 d. *Road grade approval.* No final grading, sidewalk or pavement
1488 construction, or installation of utilities must be permitted in the
1489 bed of any proposed public or private road in any preliminary
1490 plan or administrative subdivision plan until the grade has been
1491 approved under this Chapter.

1492 e. *Pedestrian paths.* When a pedestrian path is included in a
1493 preliminary plan or administrative subdivision plan, the
1494 subdivider must grade and construct the path according to the
1495 plan approved by the Board, [[County]] Department of
1496 Permitting Services, or applicable municipality.

1497 [[f. Storm drainage. The subdivider must grade and provide
1498 drainage structures and storm sewers according to a plan
1499 approved by the County Department of Transportation and
1500 County Department of Permitting Services or applicable
1501 municipality in coordination with the construction of new
1502 roads.]]

1503 [[g]]f. Street lights. The subdivider must provide street lights under
1504 the standards required by the Road Design and Construction
1505 Code. The [[County]] Department of Transportation may waive
1506 any requirement under this Subsection for any new subdivision
1507 that abuts a rustic road if the requirement is incompatible with
1508 the rustic road, or may substitute any alternative requirement
1509 that is consistent with the goals of the rustic roads law.

1510 [[h]]g. Traffic calming. The Board, [[in consultation with]] after
1511 considering the recommendation of the appropriate
1512 transportation agency, may require any traffic calming feature
1513 [[under Section 49-30]] as a condition of subdivision approval.

1514 [[4]]6. Platting roads. [[Area for roads must be shown on a record plat
1515 to the full width of the required right-of-way. A public road must be
1516 dedicated to public use. A private road must be platted as a road
1517 parcel with an access easement for the public and remain open and
1518 unobstructed for use at all times as part of the project common area.
1519 Inthe Commercial/Residential, Employment, Industrial, and Planned
1520 Unit Development zones, a private road may be platted by an
1521 easement alone delineated within a lot on the plat if the Board finds it
1522 necessary to permit a structure that would otherwise cross a lot line
1523 created by a road parcel.]]

1524 The area for roads must be shown on a record plat to the full width of
1525 the required right-of-way.

1526 a. A public road must be dedicated to public use.

1557 Department of Environmental Protection, as applicable, concerning
1558 the proper type of water supply and sewage disposal.

1559 2. Requirements.

1560 a. The applicant must install or assure installation of any required
1561 public or private water and sewage disposal systems for each
1562 lot.

1563 b. Central water and sewer systems. All lots must have access to
1564 public central water and sewer facilities, and necessary private
1565 connections to such facilities, when conditions affecting the
1566 subject property result in one of the following determinations:

1567 i. public water and sewer connections are available to the
1568 proposed lots for existing mains;

1569 ii. existing public water and sewer mains can be extended to
1570 serve the lots; or

1571 iii. the County Department of Environmental Protection
1572 determines that an interim central water supply or sewage
1573 disposal facility, or both, must be constructed for public
1574 health and safety, pending future extension of the WSSC
1575 system or other public system.

1576 c. Use of County roads and State roads. For locations of any
1577 private connection to the public system within County or State
1578 road rights-of-way, the subdivider must obtain necessary
1579 permits to use public roads from the County or State, as
1580 applicable.

1581 3. Septic tiers.

1582 a. The Board must review any plan that includes residential lots
1583 under the Growth Tier rules as follows:

1584 i. in this Subsection:

1585 (a) a major subdivision is a division of land that would
1586 create 8 or more residential building lots; and

1587 (b) a minor subdivision is a division of land that
1588 would create 7 or fewer residential building lots.

1589 b. The Board must not approve any subdivision that would be
1590 served by one or more septic systems on land located in the
1591 Tier I area.

1592 c. The Board must not approve any major subdivision that would
1593 be served by one or more septic systems on land located in the
1594 Tier II area.

1595 d. The Board may approve a subdivision for any number of
1596 residential lots that would be served by one or more septic
1597 systems on land located in the Tier III area.

1598 e. The Board may approve a minor subdivision that would be
1599 served by one or more septic systems on land located in the
1600 Tier IV area.

1601 f. The Board may approve a major subdivision that would be
1602 served by one or more septic systems on land in the Tier IV
1603 area.

1604 g. The official map displaying the Growth Tier areas as allowed
1605 under the Maryland Sustainable Growth and Agricultural
1606 Preservation Act of 2012 is located on the Planning Department
1607 website. The Council may amend the official map either by:

1608 i. adopting Tiers in a General Plan amendment; or

1609 ii. an amendment under Section 10.7.

1610 The latest version of the map may be accessed from the
1611 Planning Department website at
1612 www.montgomeryplanning.org.

1613 G. Markers and monuments.

- 1614 1. The subdivider must have metal property line markers, approximately
1615 1/2-5/8 inch in diameter and 18 inches in length, or other generally
1616 accepted survey markers, placed in the ground at all lot corners,
1617 intersections of roads, intersections of roads and alleys with
1618 [subdivision] record plat boundary lines, and at all points on road,
1619 alley and boundary lines where there is a change in direction or
1620 curvature, unless such point coincides with the location of a reference
1621 monument. All markers must be properly set in the ground before the
1622 roads and alleys are accepted for public maintenance. For projects that
1623 do not include public roads, the owner and licensed land surveyor
1624 must certify to the [[County]] Department of Permitting Services that
1625 all property corner markers have been set by a licensed land surveyor.
- 1626 2. The licensed land surveyor hired by the owner must place markers
1627 and monuments in the ground after road grading and paving in the
1628 subdivision and grading and landscaping of adjacent lots are
1629 completed. The markers and monuments must be located as specified
1630 on the plat. The licensed land surveyor must certify to the [[County]]
1631 Department of Permitting Services, or other appropriate governmental
1632 agency or the municipality that all survey monuments and markers are
1633 in place before the County or municipality accepts any road or alley
1634 established by the plat for maintenance. The amenity bonds must not
1635 be released by M-NCPPC until the licensed land surveyor certifies to
1636 the Department of Permitting Services that all survey monuments are
1637 in place.
- 1638 H. Stormwater management. All stormwater management requirements must
1639 satisfy Chapter 19.
- 1640 I. Public utilities. Pipelines, electric power and energy lines, and
1641 telecommunications lines must be underground in all subdivisions.
- 1642 1. Installation. Unless the Board determines that it is infeasible, the
1643 developer must install new and existing utilities underground.

- 1644 2. Completion. The Board may not approve a final plat until the
1645 developer demonstrates that the applicable utility companies or public
1646 agencies are able to provide utility service to the subdivision.
- 1647 3. Easements. The Board must require the applicant to provide area for
1648 future installation or relocation of utilities adjacent to public and
1649 private roads, or in other appropriate locations within the development
1650 site.
- 1651 J. Adequate Public Facilities Ordinance (APFO).
- 1652 1. Definitions. Words and phrases used in this Subsection have the
1653 meanings indicated in Chapter 8, Section 8-30.
- 1654 2. Applicability. The Board may only approve a preliminary plan when it
1655 finds that public facilities will be adequate to support and service the
1656 subdivision. Public facilities and services to be examined for
1657 adequacy include roads and transportation facilities, sewer and water
1658 service, schools, police stations, firehouses, and health clinics.
- 1659 3. Exemptions. The following developments are exempt from the
1660 requirements of this Subsection:
- 1661 a. exclusively residential development on a lot or parcel recorded
1662 by plat before July 25, 1989, or otherwise recorded in
1663 conformance with a preliminary plan approved before that date;
- 1664 b. any place of worship or use associated with a place of worship
1665 that does not generate peak hour vehicle trips that exceed the
1666 limits of the Subdivision Staging Policy traffic test; and
- 1667 c. any addition to a school associated with a place of worship that
1668 existed before July 25, 1989.
- 1669 4. Approval procedure.
- 1670 a. Each applicant for a preliminary plan must submit sufficient
1671 information for the subdivision to demonstrate the expected

1672 impact on and use of public facilities and services by the
1673 subdivision.

1674 b. The Board must consider the recommendations of the
1675 Executive and other agencies in determining the adequacy of
1676 public facilities and services under the Subdivision Staging
1677 Policy or other applicable guidelines.

1678 c. If the Board finds, under criteria and standards adopted by the
1679 Council, that additional transportation facilities or traffic
1680 mitigation measures are necessary to ensure that [[public]]
1681 transportation facilities will be adequate to serve the
1682 subdivision and to meet the transportation goals established by
1683 a master plan or the Subdivision Staging Policy for that portion
1684 of the County, the subdivision plan must be subject to the
1685 execution of a Traffic Mitigation Agreement (TMAg).

1686 5. Validity period.

1687 a. A determination of adequate public facilities made under this
1688 Chapter is timely and remains valid:

1689 i. for 12 years after the preliminary plan is approved for
1690 any plan approved after July 24, 1989, but before
1691 October 19, 1999;

1692 ii. for no less than 5 and no more than 12 years after the
1693 preliminary plan is approved, as determined by the Board
1694 when it approved the plan, for any plan approved after
1695 October 18, 1999, but before August 1, 2007;

1696 iii. for no less than 7 and no more than 12 years after the
1697 preliminary plan is approved, as determined by the Board
1698 when it approved the plan, for any plan approved after
1699 March 31, 2009, but before April 1, 2017; and

1700 iv. for no less than 5 and no more than 10 years after the
1701 preliminary plan is approved, as determined by the Board

1702 when it approved the plan, for any plan approved after
1703 July 31, 2007, and before April 1, 2009, or after March
1704 31, 2017.

1705 b. If an applicant requests a longer validity period than the
1706 minimum specified in 5.a, the applicant must submit a
1707 development schedule or phasing plan for completion of the
1708 project to the Board for its approval.

1709 i. At a minimum, the proposed development schedule or
1710 phasing plan must show the minimum percentage of the
1711 project that the applicant expects to complete in the first
1712 5 or 7 years, whichever is the applicable minimum, after
1713 the preliminary plan is approved.

1714 ii. To allow a validity period longer than the specified
1715 minimum, the Board must find that the size or
1716 complexity of the subdivision warrant the extended
1717 validity period and would not be adverse to the public
1718 interest. The Board must condition a validity period
1719 longer than the specified minimum on adherence to the
1720 proposed development schedule or phasing plan, and
1721 may impose other improvements or mitigation conditions
1722 if those conditions are needed to assure adequate levels
1723 of transportation or school service during the validity
1724 period.

1725 6. *Validity period – County arts or entertainment use.*

1726 a. A determination of adequate public facilities made under this
1727 Chapter is timely and remains valid for 10 years after the date
1728 of the conveyance of land to the County, or possession of
1729 building space by the County for an arts or entertainment use,
1730 under a preliminary plan for an optional method of
1731 development project approved under Section 59-C-6.2356 of
1732 the zoning ordinance in effect on October 29, 2014.

- 1733 b. The Board must grant an application to extend the validity
1734 period established under this paragraph for an additional 5 years
1735 if:
- 1736 i. at least 20 percent of the approved development,
1737 excluding the arts or entertainment use, either separately
1738 or in combination:
- 1739 (a) has been built;
- 1740 (b) is under construction;
- 1741 (c) is subject to building permits that have been
1742 issued;
- 1743 (d) is subject to a valid lease; or
- 1744 (e) has had a site plan approved under Sections 59-
1745 7.3.4 or 7.7.1.B; or
- 1746 ii. at any time during the 24 months before the application
1747 for extension being filed, the vacancy rate for class A
1748 office buildings in the Central Business District in which
1749 the project is located reaches 10 percent for direct and
1750 sublet space combined, as measured by a commercial
1751 Multiple Listings Service benchmark; or
- 1752 iii. the applicant makes a binding commitment to the County
1753 to make a contribution, as compensation for potential loss
1754 of property tax revenues, an amount equal to \$2 for each
1755 square foot of approved taxable improvements and
1756 thereafter makes the contribution within 6 months of
1757 final approval of the extension.
- 1758 c. The validity period is extended for the duration of any
1759 government imposed moratorium, or other government action
1760 resulting in a similar effect, that would prevent the applicant
1761 from:

- 1762 i. completing the regulatory approvals necessary for
1763 obtaining a building permit; or
- 1764 ii. obtaining a building permit.
- 1765 d. If the applicant proposes to change a use in a project that is
1766 approved under Section 59-C-6.2356 of the zoning ordinance in
1767 effect on October 29, 2014, and the new use would have the
1768 same or lesser impact as the original determination of adequate
1769 public facilities, the adequate public facilities approval for the
1770 project remains valid.
- 1771 7. Extensions.
- 1772 a. Application. Only the Board may extend the validity period for
1773 a determination of adequate public facilities; however, a request
1774 to amend any validity period phasing schedule may be
1775 approved by the Director if the length of the total validity
1776 period is not extended.
- 1777 i. The applicant must file an application for extension of an
1778 adequate public facilities determination or amendment of
1779 a phasing schedule before the applicable validity period
1780 or validity period phase expires.
- 1781 ii. The applicant must submit a new development schedule
1782 or phasing plan for completion of the project for
1783 approval.
- 1784 iii. For each extension of an adequate public facilities
1785 determination:
- 1786 (a) the applicant must not propose any additional
1787 development above the amount approved in the
1788 original determination;
- 1789 (b) the Board must not require any additional public
1790 improvements or other conditions beyond those
1791 required for the original preliminary plan;

- 1792 (c) the Board may require the applicant to submit a
1793 traffic study to demonstrate how the extension
1794 would not be adverse to the public interest; and
- 1795 (d) an application may be made to extend an adequate
1796 public facilities period for a lot within a
1797 subdivision covered by a previous adequate public
1798 facilities determination if the applicant provides
1799 sufficient evidence for the Board to determine the
1800 amount of previously approved development
1801 attributed to the lot.
- 1802 b. The Board may approve an amendment to the new development
1803 schedule approved under paragraph 7.a.ii if the applicant shows
1804 that financing has been secured for either:
- 1805 i. completion of at least one new building in the next stage
1806 of the amended development schedule; or
- 1807 ii. completion of infrastructure required to serve the next
1808 stage of the amended development schedule.
- 1809 c. *Exclusively residential subdivisions.* The Board may extend a
1810 determination of adequate public facilities for an exclusively
1811 residential subdivision beyond the otherwise applicable validity
1812 period if the [[County]] Department of Permitting Services has
1813 issued building permits for at least 50 percent of the entire
1814 subdivision before the application for extension is filed. The
1815 Board may approve one or more extensions if the aggregate
1816 length of all extensions for the development does not exceed:
- 1817 i. 2.5 years for a subdivision with an original validity
1818 period of 7 years or less; or
- 1819 ii. 6 years for a subdivision with an original validity period
1820 longer than 7 years.
- 1821 d. *Nonresidential or mixed-use subdivisions.*

- 1822 i. The Board may extend a determination of adequate
1823 public facilities for a preliminary plan for nonresidential
1824 or mixed-use development beyond the otherwise
1825 applicable validity period if:
- 1826 (a) the [[County]] Department of Permitting Services
1827 issued building permits for structures that will
1828 generate at least 40% of the total approved peak-
1829 hour vehicle trips associated with the development;
- 1830 (b) all of the infrastructure required by the conditions
1831 of the original preliminary plan approval has been
1832 constructed, or payments for its construction have
1833 been made; and
- 1834 (c) the [[County]] Department of Permitting Services
1835 either issued occupancy permits or completed a
1836 final building permit inspection for:
- 1837 (1) structures that generate at least 10 percent of
1838 the total peak-hour vehicular trips associated
1839 with the project within the 4 years before an
1840 extension request is filed; or
- 1841 (2) structures that generate at least 5 percent of
1842 the total peak-hour vehicular trips associated
1843 with the project within the 4 years before an
1844 extension request is filed, if structures that
1845 generate at least 60 percent of the total peak-
1846 hour vehicular trips associated with the
1847 project have been built or are under
1848 construction.
- 1849 ii. For any development that consists of more than one
1850 preliminary plan, the requirements of 7.d.i apply to the
1851 combined project. A project consists of more than one
1852 preliminary plan if the properties covered by the

- 1853 preliminary plans of subdivision are contiguous and were
1854 approved at the same time.
- 1855 iii. The length of any extension of the validity period granted
1856 under 7.d.i must be based on the approved new
1857 development schedule under 7.a.ii, but must not exceed:
- 1858 (a) 2.5 years for a subdivision with an original validity
1859 period of 7 years or less; or
- 1860 (b) 6 years for a subdivision with an original validity
1861 period longer than 7 years.
- 1862 iv. The extension expires if the applicant has not timely
1863 requested an extension and the development is not
1864 proceeding in accordance with the phasing plan, unless
1865 the Board or the Director has approved a revision to the
1866 schedule or phasing plan.
- 1867 v. In addition to the extension permitted under 7.d.iii, the
1868 Board may approve one or more additional extensions of
1869 a determination of adequate public facilities, not to
1870 exceed a total of 2.5 or 6 years, as applicable, if:
- 1871 (a) development that generates 30% or less of the total
1872 peak-hour vehicular trips remains to be built of
1873 either the entire approved development or the
1874 share of the development to be built by that
1875 applicant; or
- 1876 (b) the applicant will commit to reduce the amount of
1877 unbuilt development by at least 10%, and the
1878 validity period for the amount to be reduced will
1879 expire as scheduled.
- 1880 e. The Board may extend a determination of adequate public
1881 facilities once for up to 12 more years beyond the otherwise
1882 applicable validity period if the Board finds that:

- 1883 i. the preliminary plan for the development required a
1884 significant commitment of funds by the applicant,
1885 amounting to at least \$3 million, as adjusted annually by
1886 the consumer price index, to comply with specified
1887 infrastructure conditions;
- 1888 ii. the applicant has met or exceeded the required
1889 infrastructure conditions during the original validity
1890 period; and
- 1891 iii. the applicant's satisfaction of the required infrastructure
1892 conditions provides a significant and necessary public
1893 benefit to the County by implementing infrastructure
1894 goals of an applicable master plan.
- 1895 f. The validity period of a finding of adequate public facilities is
1896 not automatically extended under any circumstance, including
1897 when an applicant has completed all conditions imposed by the
1898 Board at the time of preliminary plan approval to meet adequate
1899 public facilities requirements.
- 1900 g. If a new adequate public facilities determination is required
1901 under this Subsection, the procedures in Chapter 8, Section 8-
1902 32 apply.

1903 K. *Environment.*

- 1904 1. *Forest conservation.* If a forest conservation plan is required under
1905 Chapter 22A, the Board must not approve a preliminary plan or any
1906 extension until all applicable requirements of that Chapter are
1907 satisfied. The Board must make compliance with a required forest
1908 conservation plan a condition of any approved preliminary plan,
1909 including any plan reviewed on a preliminary or final basis.
- 1910 2. *Restriction of subdivision for environmental protection.*
- 1911 a. *Affected land.*

- 1912
1913
1914
1915
- i. Floodplains. The Board must restrict subdivision or development of any property that is located in the 100-year floodplain as required by the [[County]] Department of Permitting Services under Chapter 19, Article III.
- 1916
1917
1918
1919
1920
1921
- ii. Unsafe Land. The Board must restrict the subdivision or development of any land it finds to be unsafe for development because of potential for flooding or stream erosion, soils with structural limitations, unstabilized slope or fill, steep slopes, or similar environmental or topographical conditions.
- 1922
1923
1924
1925
1926
- iii. Trees, forests, and environmentally sensitive areas. The Board may restrict the subdivision or development of land to protect environmentally sensitive areas and achieve the objectives of Chapter 22A relating to conservation of tree and forest resources.
- 1927
- b. Restrictions.
- 1928
1929
1930
1931
- i. General. In addition to any requirement imposed under Chapter 22A, the proposed preliminary plan or administrative subdivision plan may be restricted under this Section by:
- 1932
1933
- (a) deletion or rearrangement of proposed lots, roads, utilities, and other facilities;
- 1934
1935
1936
- (b) the establishment of building restriction and land disturbance limit lines, and other protective measures or conditions; or
- 1937
1938
1939
- (c) requirement of conservation easements, deed restrictions, or covenants over portions of lots or unplatted parcels to be recorded.
- 1940
1941
- ii. Building restriction line. The Board may require a building restriction line shown on the plat to protect

- 1942 floodplain and other environmentally sensitive or unsafe
1943 building areas.
- 1944 iii. Limit of disturbance line. The Board may require a limit
1945 of disturbance line to protect environmentally sensitive
1946 areas or unsafe land.
- 1947 iv. Floodplain or unsafe land on a lot. The Board may allow
1948 a platted lot to contain floodplain or unsafe land when
1949 there is sufficient safe ground to erect a building within
1950 the required setbacks of the zoning classification. The
1951 Board may require a building restriction line on the plat.
1952 The restriction line must provide at least a 25-foot
1953 setback between any building and the unsafe areas. A
1954 greater setback must be provided where necessary for
1955 positive drainage between the building and unsafe area.
- 1956 v. [[Denial of a building permit. The County Department of
1957 Permitting Services must not issue a permit for a new
1958 building within any area for which building or land
1959 disturbance is restricted under this Section.]]
- 1960 Regulations. The Planning Board may use regulations
1961 adopted under Chapter 22A to administer this Section.
- 1962 L. Residential cluster subdivision.
- 1963 1. Purpose. The cluster method of subdivision is intended to promote
1964 both flexibility in lot size and variety of housing types in residential
1965 communities without changing existing densities or neighborhood
1966 character. This method of development is also intended to encourage
1967 the preservation of existing topography, priority forests, and
1968 environmentally sensitive areas while providing useful community
1969 green or open space. [[The Board must approve the use of this
1970 optional method of subdivision.]]

- 1971 2. Conditions for use. The use of the cluster method of development is
1972 subject to Board approval and the following conditions and
1973 requirements:
- 1974 a. the requirements in Chapter 59 in the applicable zone;
- 1975 b. except in the Rural Cluster zone or as recommended by a
1976 master plan in the Residential Estate-2C zone, [[an applicant
1977 may only propose a cluster development]] when WSSC will
1978 serve the development by public water and sewer;
- 1979 c. the open space and green areas proposed by the applicant in the
1980 cluster development must comply with the general purpose of
1981 cluster development, and the application must include a plan
1982 detailing the post-development maintenance responsibilities and
1983 use of those areas; and
- 1984 d. the Board must count the land dedicated to public use for
1985 school and park sites in the tract area for the purpose of
1986 calculating density, and allow the use of the resulting density
1987 development of the remaining land when this can be
1988 accomplished in compliance with the purposes of this Section.
- 1989 3. Procedure for approval.
- 1990 a. In addition to any other required information in the preliminary
1991 plan application, the applicant must include a statement
1992 outlining the ownership and use of the common open space and
1993 green area within the subdivision, and a plan showing the
1994 construction staging of all improvements. The Board must
1995 make the staging plan part of the preliminary plan approval and
1996 must be subject to approval by the Board.
- 1997 b. The Board must determine whether the site is appropriate for
1998 cluster development and will accomplish the purposes of the
1999 cluster method of development. In making this determination,
2000 the Board must consider the following:

- 2001 i. the influence that the proposed development may have on
2002 existing or future development in nearby areas;
- 2003 ii. the spatial relationship between the buildings and the
2004 open space and green area;
- 2005 iii. the location, character, area, and dimensions of the open
2006 space and green area and its usefulness for the common
2007 recreational or other purposes for its intended use;
- 2008 iv. the adequacy of the staging plan;
- 2009 v. the nature of the site; and
- 2010 vi. the use and zoning of nearby land.

2011 **Division 50.5. Pre-Preliminary Submissions**

2012 **Section 5.1. Filing and Specifications**

2013 A. Filing. Before a subdivider submits a preliminary plan, the subdivider may
2014 seek advice on limited aspects of a future subdivision plan from the Planning
2015 Department Staff, the Development Review Committee, or the Board as
2016 appropriate, or seek a binding decision from the Board. The Applicant must
2017 file a pre-preliminary submission and applicable supporting information,
2018 together with an application form and fee under Section 4.1.A.

2019 B. The drawing. A pre-preliminary drawing must contain the location of the
2020 property and sufficient information concerning the issue on which advice or
2021 a decision is requested. The drawing may include, but is not limited to:

- 2022 1. the generalized layout of the subdivision;
- 2023 2. the location and classification of roads, public rights-of-way, existing
2024 and proposed easements, and dedications of land;
- 2025 3. the method of controlling erosion, sediment, and stormwater;
- 2026 4. the relationship to existing or planned subdivisions;
- 2027 5. the provisions for water and sewerage; and

2028 6. any other features or information the applicant chooses to submit.

2029 **Section 5.2. Approval Procedure**

2030 A. Referral. Application processing and referral of the plan must satisfy
2031 Sections 4.1.D and 4.2.A.

2032 B. Hearing date. The Board must schedule a public hearing to begin within 90
2033 days after the date an application is accepted. The Director may postpone the
2034 public hearing once, by up to 30 days, without Board approval. The Director
2035 or applicant may request an extension beyond the original 30 days with
2036 Board approval. Any extension of the public hearing must be noticed and on
2037 the Board's hearing agenda with the new public hearing date indicated.

2038 C. Action on a pre-preliminary submission.

2039 1. Advisory. The Development Review Committee must provide
2040 recommendations on the pre-preliminary plan on the day of the
2041 scheduled committee meeting. Planning Department Staff must
2042 transmit the recommendations provided by agencies outside of the
2043 committee meeting to the applicant when they are received.

2044 2. Binding.

2045 a. After receiving the recommendations of the public agencies and
2046 the advice of the Development Review Committee, the
2047 Planning Department Staff must present the application to the
2048 Board, together with its recommendations for approval,
2049 disapproval, or approval with conditions. The Board must act
2050 to:

2051 i. approve the pre-preliminary submission;

2052 ii. disapprove it, stating in writing the reasons for
2053 disapproval; or

2054 iii. approve it, subject to such conditions or modifications as
2055 the Board finds necessary. Approval of any feature of a
2056 pre-preliminary submission does not limit the ability of

2057 the Board to impose further conditions at the time of
2058 preliminary plan on features not included in the Board's
2059 binding decision.

2060 3. Modification of preliminary plan procedures after pre-preliminary
2061 submission approval.

2062 a. A subdivider must file an application for a preliminary plan
2063 within 90 days after the date of mailing of the Board resolution
2064 for the pre-preliminary plan; otherwise, the approval will
2065 expire.

2066 b. The procedures in Sections 4.1 and 4.2 are modified as follows:

2067 i. the preliminary plan application must contain the
2068 statement of the Board's action on the pre-preliminary
2069 application;

2070 ii. in their review of the preliminary plan under Section 4.2,
2071 the agencies to which the preliminary plan is referred and
2072 the Planning Department Staff must not recommend
2073 changes or modifications to the binding pre-preliminary
2074 decision made by the Board, unless requested in writing
2075 by the applicant or unless the applicant substantially
2076 changes some feature of the approved pre-preliminary
2077 submission. The Board must review any conditions
2078 imposed as part of the Board's binding decision to
2079 determine that the preliminary plan satisfied those
2080 conditions; and

2081 iii. the Board, in its review of the preliminary plan, must
2082 consider only those features of the preliminary plan that
2083 are not in conformity with the conditions imposed by the
2084 Board in the pre-preliminary application review, plus any
2085 features not considered or acted upon in that review.

2086 **Division 50.6. Administrative Subdivision Plan**

2087 **Section 6.1. Applicability**

2088 The subdivider may file an administrative subdivision plan application instead of a
2089 preliminary plan under the following circumstances. The Director must review the
2090 necessary technical requirements of the administrative subdivision plan under
2091 Section 4.3.

2092 A. *Existing places of worship and institutional uses.* The Board may approve a
2093 lot created for existing facilities such as: places of worship, private schools,
2094 country clubs, private institutions, and similar uses located on unplatted
2095 parcels, if:

- 2096 1. the applicable requirements for adequate public facilities under
2097 Section 4.3.J are satisfied before approval of the plat;
- 2098 2. any required road dedications, or covenants for future dedications, are
2099 shown on the record plat;
- 2100 3. requirements for meeting forest conservation, stormwater
2101 management, and environmental protection, if applicable, are satisfied
2102 before approval of the plat;
- 2103 4. it is located in a special protection area and all applicable special
2104 protection area requirements and guidelines are satisfied before
2105 approval of the plat;
- 2106 5. a landscaping and lighting plan including the parking lot layout is
2107 submitted for Planning Department Staff approval before approval of
2108 the plat; and
- 2109 6. the property is the subject of an approved conditional use and all
2110 conditions of the conditional use approval remain in full force.

2111 B. *Subdivision for creation of certain residential lots located in the*
2112 *Agricultural Reserve zone.* Up to 5 lots for detached houses are permitted
2113 under these procedures in the AR zone if:

- 2114 1. written approval for a proposed well and septic area is received from
2115 the [[County]] Department of Permitting Services before approval of
2116 the plat;
- 2117 2. any required road dedications and public utility easements along the
2118 frontage of the proposed lots are shown on the record plat, and the
2119 applicant provides any required improvements;
- 2120 3. the requirements for adequate public facilities under Section 4.3.J are
2121 satisfied before approval of the plat;
- 2122 4. a covenant is recorded for the unplatted balance of the tract noting that
2123 density and development rights have been used for the new lots [[.
2124 This covenant must be]] and noted on the record plat for the lots;
- 2125 5. lots created in the AR zone through this procedure are 5 acres or less,
2126 unless approved by the Board; and
- 2127 6. forest conservation and environmental protection requirements are
2128 satisfied before approval of the plat.
- 2129 C. Subdivision for creation of certain residential lots. Up to 3 lots for detached
2130 houses are permitted in any residential zone under these procedures [[in the
2131 Residential Estate-2, Rural, Rural Cluster, and Rural Neighborhood Cluster
2132 zones, or one lot for a detached house created in any residential zone by
2133 platting the entirety of one existing unplatted parcel created before October
2134 8, 1985,]] if:
- 2135 1. the lots are approved for standard method development;
- 2136 2. written approval for any proposed well and septic area is received
2137 from the [[County]] Department of Permitting Services, Well and
2138 Septic Section before approval of the plat;
- 2139 3. any required road dedications and associated public utility easements
2140 are shown on the plat and the applicant provides any required
2141 improvements;

- 2169 A. Filing. The Applicant must file the administrative subdivision plan and
2170 applicable supporting information, together with an application form and fee
2171 to satisfy Subsection 4.1.A.
- 2172 B. Application processing.
- 2173 1. The applicant must submit an initial application to the Director. The
2174 Director must review the application for completeness within 5 days
2175 after receipt. An application is incomplete if any required element is
2176 missing or is facially defective, e.g., a drawing that is not to scale. The
2177 assessment of completeness must not address the merits of the
2178 application.
- 2179 2. The applicant must resubmit a revised application within 10 days from
2180 the date of the written rejection, or the application will be
2181 automatically withdrawn. The Director must review the revised
2182 application for completeness within 5 days after receipt.
- 2183 3. The administrative subdivision plan is deemed filed when the
2184 application has been accepted as complete for review.
- 2185 4. Public notice is required per a regulation approved under Section 10.1.
- 2186 C. The drawing. An administrative subdivision plan must contain sufficient
2187 information relevant to the aspects of the submission. The plan must include
2188 the generalized layout of the subdivision and any other features or
2189 information needed to support submission of a plat.

2190 **Section 6.3. Approval Procedures**

- 2191 A. Referral of plan. Immediately after accepting an application, the Director
2192 must send a copy to the Development Review Committee and other
2193 reviewing agencies for the agencies' comments concerning the plan. The
2194 Development Review Committee must provide recommendations to the
2195 Director on the administrative subdivision plan at or before the committee
2196 meeting.
- 2197 B. Action on an administrative subdivision plan.

- 2198 1. After receiving the recommendations of the Development Review
2199 Committee and other reviewing agencies, and considering
2200 correspondence from other interested parties, the Director must
2201 approve or disapprove the administrative subdivision plan in writing.
2202 In the alternative, the Director may require that the plan be acted on
2203 by the Board. When applicable, the Director must schedule Board
2204 action on its next available agenda. If approved, the plan will remain
2205 valid under Section 4.2.G, by which time a plat must be recorded.
- 2206 2. All necessary improvements to support the development must be
2207 completed or assured under Section 10.2.
- 2208 ~~[[3. If correspondence is received, the Director must decide whether any~~
2209 ~~comment is substantive enough to require that the plan be acted on by~~
2210 ~~the Board. When applicable, the Director must schedule Board action~~
2211 ~~on its next available agenda. If approved, the plan will remain valid~~
2212 ~~under Section 4.2.G, by which time a plat must be recorded.]]~~
- 2213 ~~[[4]]3. The Director must take action on an administrative subdivision plan~~
2214 ~~or schedule a public hearing within 90 days after the date an~~
2215 ~~application is accepted. The Director may postpone the public hearing~~
2216 ~~once, by up to 30 days, without Board approval. The Director or~~
2217 ~~applicant may request an extension beyond the original 30 days with~~
2218 ~~Board approval. Any extension of the public hearing must be noticed~~
2219 ~~and on the hearing agenda with the new public hearing date indicated.~~
- 2220 C. Appeal of an administrative subdivision plan.
- 2221 1. Appeal to the Planning Board. After the Director issues a written
2222 decision on an administrative subdivision plan, an applicant or party
2223 who ~~[[received notice of the application and]]~~ testified or submitted
2224 testimony on the plan may appeal the decision to the Board within 30
2225 days.
- 2226 2. Hearing. The Board must hold a *de novo* hearing on the appeal. The
2227 Board must adopt a written resolution explaining its decision. For

2228 purposes of judicial review, the decision of the Board is the final
2229 agency action.

2230 **Division 50.7. Minor Subdivision**

2231 **Section 7.1. Applicability**

2232 The submission of a preliminary plan or administrative subdivision plan under
2233 Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

2234 A. *Minor lot line adjustment.* The sale or exchange of part of a lot between
2235 owners of adjoining lots for the purpose of small adjustments in boundaries,
2236 if:

2237 1. the total area of the adjustment is 5 percent or less of the combined
2238 area of the lots affected by the adjustment;

2239 2. additional lots are not created;

2240 3. the adjusted lot line is approximately parallel with the original lot line
2241 or, if it is proposed to intersect with the original line, it does not
2242 significantly change the shape of the lots involved;

2243 4. the owner submits a scaled drawing for review and approval by the
2244 Director. The drawing may be a copy of the existing record plat and
2245 must contain the following information:

2246 a. proposed lot line adjustment as a dashed line;

2247 b. any buildings, driveways, or other improvements located within
2248 15 feet of the proposed adjusted lot line;

2249 c. any minimum building setback that would be altered by the
2250 minor lot line adjustment; and

2251 d. the amount of lot area affected by the minor lot line adjustment;

2252 5. The drawing is approved, revised, or denied by the Director in writing
2253 within 10 days after the drawing is submitted or it is deemed
2254 approved.

2255 A record plat application must be submitted to the Director within 90
2256 days after approval or the approval is void.

2257 Any minor lot line adjustment between properties that occurred before May
2258 19, 1997 remains as an exemption to platting under Subsection 3.3.B.3.

2259 B. *Conversion of an outlot into a lot.* An outlot may be converted into a lot if:

2260 1. the outlot is not required for open space or green area, or is otherwise
2261 constrained in a manner that prevents it being converted into a
2262 buildable lot;

2263 2. there is adequate sewerage and water service to accommodate
2264 development on the lot;

2265 3. all applicable requirements or agreements under the Adequate Public
2266 Facilities Ordinance in Subsection 4.3.J and the Subdivision Staging
2267 Policy are satisfied before recording the plat;

2268 4. all applicable conditions or agreements applicable to the original
2269 subdivision approval creating the outlot apply to the new lot. The
2270 conditions and agreements may include, but are not limited to, any
2271 adequate public facilities agreement, conservation easement, or
2272 building restriction lines; and

2273 5. the outlot is located within a special protection area and all applicable
2274 special protection area requirements and guidelines, including the
2275 approval of a water quality plan, are satisfied before recording the
2276 plat.

2277 C. *Consolidation.* Adjoining properties in the Rural Residential or Residential
2278 Detached zones, not developed under cluster provisions, may be combined
2279 in the following ways:

2280 1. by consolidating 2 or more lots into a single lot, consolidating lots and
2281 an outlot into a single lot, or consolidating a lot and an abandoned
2282 road right-of-way, if:

2283 a. any conditions applicable to the original subdivision remain in
2284 effect;

2285 b. the number of trips generated on the new lot do not exceed
2286 those permitted for the original lots; and

2287 c. all required right-of-way dedication is provided.

2288 2. by consolidating an existing platted lot or part of a lot that contains a
2289 legally constructed detached house, with a piece of land created as a
2290 result of a deed, if:

2291 a. the portion of land created by deed cannot itself be platted
2292 under the area and dimensional standards of the zone;

2293 b. any conditions applicable to the existing lot remain in effect on
2294 the new lot;

2295 c. any required road dedication is provided; and

2296 d. the existing platted lot was not identified as an outlot on a plat.

2297 D. Subdivision to reflect ownership. A recorded lot approved [[Plats]] for a
2298 commercial, industrial, or multi-unit residential [[lot]] use may be
2299 [[recorded]] resubdivided to create or delete an internal lot to reflect a
2300 change in ownership, deed, mortgage, or lease line [[as follows:

2301 1. a plat may be filed to create or delete an internal lot or create
2302 ownership lots within a previously recorded lot,]] if:

2303 [[a]]1.all conditions of approval for the original subdivision that
2304 created the lot remain in effect;

2305 [[b]]2. the total maximum number of trips generated on all new
2306 lots [[or ownership lots]] created will not exceed the number of
2307 trips approved for the lot in the original subdivision;

2308 [[c]]3.all land in the original subdivision lot is included in the plat;
2309 and

2310 [[d]]4. all necessary code requirements of Chapters 8, 19, and 22
2311 are met and any necessary cross easements, covenants, or other
2312 deed restrictions necessary to implement all the conditions of
2313 approval on the lot in the original subdivision are executed
2314 before recording the plat.

2315 [[2. for ownership lots, the lot in the original subdivision is considered a
2316 single lot of record. Any ownership lot created under this Subsection
2317 is only for the convenience of the owner; an ownership lot is not:

2318 a. used to determine building setbacks or to establish conformance
2319 with any other law or regulation;

2320 b. a bar to receiving a building permit or other approval necessary
2321 to develop or use any of the ownership lots and structures on
2322 such lots, including structures that cross an ownership line; and

2323 c. a change to any condition of approval for the subdivision that
2324 created the lot in the original subdivision.

2325 3. ownership lots may not be used to create the outside boundaries of a
2326 private road right-of-way parcel.]]

2327 E. *Ownership Plat.* An ownership plat may be recorded to delineate separate
2328 ownership units within a lot approved for a commercial, industrial, or multi-
2329 unit residential use as follows:

2330 1. Ownership units to reflect deed, mortgage, or lease lines may be
2331 created by an ownership plat if:

2332 a. the lot on which the ownership units are created is included on
2333 a plat approved by the Board and has site plan approval under
2334 Section 59-7.3.4;

2335 b. the location and design of all structures on the ownership units
2336 satisfy Chapters 8, 19, and 22;

- 2337 c. the ownership units do not violate any other provision of law or
2338 adversely affect any conditions of approval for the subdivision
2339 plan that created the underlying lot or for the site plan;
- 2340 d. any necessary cross easements, covenants, or other deed
2341 restrictions necessary to implement all conditions of approval
2342 are executed before recording the ownership plat; and
- 2343 e. the ownership units are suitable for the type of development,
2344 the use contemplated, and the available utilities and services.
- 2345 2. Ownership units must be depicted on the ownership plat with metes
2346 and bounds descriptions inside the boundary of the underlying lot as
2347 shown on the record plat.
- 2348 3. Private roads may not be delineated as a separate ownership unit on an
2349 ownership plat.
- 2350 4. No person can record an ownership plat, or sell any property with
2351 reference to an ownership plat, until the plat has been approved by the
2352 Board and recorded in the land records.
- 2353 5. The Board may apply conditions to the approval of an ownership plat.
- 2354 6. An ownership unit created under this section is not:
- 2355 a. a change to any condition of approval for the subdivision that
2356 created the lot in the original subdivision or the site plan; or
- 2357 b. used to establish building setbacks or to establish conformance
2358 with subdivision or zoning requirements.
- 2359 ~~[[E]]~~E. Plat of correction. A plat of correction may be used for any of the
2360 following:
- 2361 1. to correct inaccurate or incomplete information shown on a previously
2362 recorded plat, such as drafting or dimensional errors on the drawing;
2363 failure to include a required note, dedication, easement or other
2364 restriction; incorrect or omitted signatures; or other information
2365 normally required to be shown on a recorded plat. All owners and

2366 trustees of the land affected by the correction must sign the revised
2367 plat. In addition, the plat of correction must identify the original plat
2368 [[that is being replaced]] and contain a note identifying the nature of
2369 the correction;

2370 2. to revise easements to reflect a Board action;

2371 3. to improve clarity and legibility, the owner of any lands shown on a
2372 record plat may record an exact copy of the plat, except for necessary
2373 change of scale and the addition of any other necessary elements to
2374 make the plat conform to the requirements of this Chapter. The new
2375 plat must indicate that it is an exact copy of the original plat except for
2376 the changes made under this Subsection.

2377 ~~[[F]]~~G. Pre-1958 parcels. An unplatted parcel created by deed before June 1,
2378 1958, if the parcel is developable for only one detached house.

2379 ~~[[G]]~~H. Creation of a lot from a part of a lot. A part of a previously recorded
2380 lot in a Residential Detached zone that was created as a result of a deed
2381 transfer of land from the lot may be converted into a lot if:

2382 1. the part of lot was created by deed recorded before June 1, 1958, or

2383 2. the part of lot contains a legally constructed detached house; and

2384 3. all conditions or agreements applicable to the subdivision approval
2385 creating the original lot apply to the new lot. The conditions and
2386 agreements may include, but are not limited to, any adequate public
2387 facilities agreement, conservation easement or building restriction
2388 lines.

2389 **Section 7.2. Procedure for Platting Minor Subdivisions**

2390 The subdivider of a property that satisfies the requirements for a minor subdivision
2391 under Section 7.1 may submit an application for record plat for approval under
2392 Section 8.1 and Section 8.2.

2393 A. Additional considerations.

2394 1. In the case of minor subdivisions, no additional improvements beyond
2395 those required for the original subdivision are required until [[new]]
2396 development in excess of development in the original approval occurs.

2397 2. Any lot created through the minor subdivision process and any lot
2398 replatted as part of a minor lot line adjustment must satisfy all
2399 applicable zoning requirements in Chapter 59.

2400 **Article III. Plats**

2401 **Division 50.8. Plats – Generally**

2402 All subdivision of land must be recorded by plat in the County Land Records. The
2403 Clerk of the Circuit Court must only record plats approved under this Chapter.

2404 **Section 8.1. Filing and Specifications**

2405 All boundaries, road right-of-way lines, lot lines, and any other pertinent lines must
2406 be shown together with sufficient data to locate each line and property corner on
2407 the ground.

2408 A. *Application and fee.* The subdivider must file the plat drawing with the
2409 Board, together with the application form, supporting information, and the
2410 required plat fee. Any fees required by other County agencies in connection
2411 with their review of plats must also be paid.

2412 B. *Specifications.*

2413 1. The plat accompanying the application for approval must satisfy
2414 Section 8.1.C. The lack of information under any item specified or
2415 inadequate information supplied by the applicant may cause the Board
2416 to disapprove a plat.

2417 2. The Board may approve guidelines for the preparation of a record
2418 plat.

2419 C. *Plat drawing.* The plat drawing prepared with the application must be an 18-
2420 inch by 24-inch sheet, including a margin of one-half inch outside ruled
2421 border lines. It must be accurately drawn to a scale approved by the Board
2422 and must include the following:

- 2423 1. Title block. The title block must appear in the lower right corner of the
2424 sheet and must include the following information:
- 2425 a. the words “Subdivision Record Plat”;
- 2426 b. approved name of the subdivision and the Section thereof,
2427 including blocks, lots, parcels, and outlots;
- 2428 c. election district, County and State, or name of town instead of
2429 election district, if the subdivision is in an incorporated town;
- 2430 d. scale of drawing;
- 2431 e. name of firm of licensed land surveyor who prepared the plat
2432 and date of completion; and
- 2433 f. a description of the general purpose of the plat, including,
2434 without limitation, plat of correction or resubdivision.
- 2435 2. Graphic details. The plat must show the following, as applicable in
2436 each case:
- 2437 a. all property boundary lines necessary to identify the property
2438 included in the subdivision, with a reference to the previous
2439 conveyance by which the property was acquired. Where the
2440 subdivision is a part of such conveyance, the boundaries shown
2441 must include the last complete line touched on by the
2442 subdivision or an indicated dimension describing the remainder
2443 of the complete line. Where a subdivision includes all or parts
2444 of 2 or more conveyances, the boundaries of such separate deed
2445 descriptions must be indicated by light lines running through
2446 the subdivision, together with deed reference to each original
2447 tract or unplatted parcel;
- 2448 b. locations, widths, and names of all road rights-of-way located
2449 in the subdivision;
- 2450 c. locations and widths of alley and mid-block pedestrian rights-
2451 of-way or parcels;

- 2452 d. Existing and proposed encumbrances.
- 2453 i. Existing. The area and recordation reference for recorded
2454 easements or rights-of-way established for public
2455 services, conservation purposes or utilities, and other
2456 known encumbrances;
- 2457 ii. Proposed. Sufficient dimensions to identify the location
2458 of all easements or rights-of-way to be established by the
2459 plat and, as to each such encumbrance, the general
2460 purpose, and the grantee;
- 2461 iii. Environmental. Description of any conservation
2462 easement, in addition to any 100-year floodplain and
2463 100-year floodplain building restriction line required
2464 under Chapter 19, Article III;
- 2465 e. any areas to be reserved for common use by residents of the
2466 subdivision or for general public use, with the purposes
2467 indicated;
- 2468 f. bearings and lengths of all block and lot lines, together with the
2469 length of radii, arcs, and chords with chord bearings and central
2470 angles for all curves in the layout. A curve table must be used
2471 containing these data and referenced to the overall curves
2472 shown in the drawing.
- 2473 i. All bearings shown on plats must be referenced to the
2474 Maryland Coordinate System, and the survey must be
2475 accurately referenced to such system using conventional
2476 survey methods or other technology acceptable to the
2477 Board, except that a plat of resubdivision requiring no
2478 preliminary plan approval and plats of correction may be
2479 referenced to the plat meridian used on the original
2480 record plat; and

- 2481 ii. in all cases, the meridian used must be noted alongside
2482 the north arrow, which is required to be shown on each
2483 plat;
- 2484 g. Maryland coordinate values, tied to the Maryland Coordinate
2485 System, for at least 4 corners of the plan of subdivision shown
2486 on the plat, unless the survey is referenced to a record plat
2487 meridian. The identification names or numbers and coordinate
2488 values for the control stations used must be shown. Coordinate
2489 values and distance dimensions on plats must be expressed in
2490 feet, based on the United States Survey Foot;
- 2491 h. the location and nature of existing property corner markers
2492 found that coincide with property corners held referenced on
2493 the plat must be labeled as such;
- 2494 i. lots numbered in sequential order. In tracts containing more
2495 than one block, the blocks must be lettered in alphabetical
2496 order. In case there is a resubdivision of lots in any block, such
2497 resubdivided lots must be numbered sequentially, beginning
2498 with the number following the highest lot number in the block
2499 and the original lot lines shown dashed and original lot numbers
2500 shown dotted;
- 2501 j. area in square feet, or other units shown on the plat, of each lot,
2502 outlot, parcel, or land dedicated to public use;
- 2503 k. building setback lines, shown [[graphically]] with dimensions,
2504 where they exceed the minimum required in Chapter 59, and
2505 any other building restriction lines that may apply;
- 2506 l. bearings and lengths of tie connections between all blocks and
2507 the plat boundary;
- 2508 m. names and locations of adjoining subdivisions with lot and
2509 block numbers of immediately adjoining lots, together with plat
2510 references;

- 2539 v. any other element for inclusion on the plat that is authorized by
2540 law or regulation or required by the Board.
- 2541 3. Surveyor certificate. Certificate by the licensed land surveyor in a
2542 form required by the Board, certifying to the accuracy of the plat and
2543 to areas included on the plat and dedicated to public use. The
2544 certificate must also include conveyance information with recording
2545 references of the lands contained in the plat.
- 2546 4. Owner's Certificate. Certificate by the owner and all parties of
2547 interest, in a form required by the Board, adopting the plat; granting
2548 slope, utility, conservation, or any other easements; and establishing
2549 building restriction lines that are required to be drawn or noted on the
2550 plat per the conditions of the approved Preliminary Plan or
2551 Administrative Subdivision Plan and dedicating to public use roads,
2552 alleys, rights-of-way, and any other areas approved for dedication to
2553 public use by the Board. The owner must certify that a licensed land
2554 surveyor will be engaged to set all property corner markers under
2555 Subsection 4.3.G.
- 2556 5. Title information notice. A statement indicating that the plat does not
2557 show every matter affecting or restricting the ownership and use of
2558 the property, and does not replace an examination of title or that it
2559 notes all matters affecting title.
- 2560 6. Approval box. An approval box in a form required by the Board must
2561 be provided. The box must provide approval space for signatures by
2562 the Board and the [[County]] Department of Permitting Services.
- 2563 D. Multiple plats for a single subdivision. A plat may include only a portion of
2564 the approved preliminary plan if the portion covered is in substantial
2565 compliance with the approved staging schedule. The public improvements to
2566 be constructed in the area covered by the plat must be sufficient by
2567 themselves to support the development and to provide adequately for the
2568 health, safety, and convenience of the present and future residents and for
2569 adequate access to contiguous areas, schools, and other public sites. Any plat

2570 filed under this Subsection must show any dedication to the intersection of
2571 all roads abutting corner lots or any other road.

2572 E. *Other supporting information.* The following supporting information is also
2573 required with the plat application.

2574 1. *Documents and plans.* The following documents and plans must be
2575 submitted:

2576 a. copies of all resolutions of approved sketch, project,
2577 preliminary, and site plans upon which the plat is based;

2578 b. copies of any covenants, restrictions, or joint-use and
2579 maintenance agreements that are in effect or may be recorded as
2580 part of the subdivision must be filed with the Board, together
2581 with any other supporting plans or documents required under
2582 this Chapter and Chapter 22A;

2583 c. copies of approved, preliminary, or final forest conservation
2584 plan, as appropriate, or exemption letter; and

2585 d. such other information required by the applicable resolutions of
2586 the Board as a condition of approval of the preliminary plan,
2587 project plan, sketch plan, or site plan or listed in the plat
2588 application form.

2589 2. *Preliminary plans using transferable development rights (TDRs).* For
2590 a subdivision designated in sewer category 3 conditioned upon
2591 approval of a preliminary plan that uses TDRs, a new plat using less
2592 than the requisite number of TDRs may not be approved until the
2593 sewer category has been reconfirmed by the Council.

2594 3. *Submission of digital plat data.* Digital plat data must be submitted in
2595 a format approved by the Director.

2596 4. *Plat for a cluster subdivision.*

2597 a. Any plat for a cluster subdivision must be accompanied by
2598 covenants, agreements, or other documents showing the

2599 ownership and method of maintenance and uses of areas that
2600 are declared to be open space for common use. Development,
2601 construction, or other rights in the open space areas must be
2602 limited to the indicated recreational or scenic uses only. Public
2603 access to these areas may be limited. Covenants or agreements
2604 must be in perpetuity and must include necessary public utility
2605 easements.

2606 b. Plats may be submitted in phases; however, density on any one
2607 plat may not exceed 115 percent of the allowed density of the
2608 area included on the plat.

2609 c. Plats must contain a statement that the land shown on the plat
2610 lies within an approved cluster subdivision and resubdivision
2611 that would result in the creation of additional lots is not
2612 permitted after the property is platted.

2613 d. Covenants or joint use and maintenance agreements affecting
2614 the common lands must be recorded simultaneously with the
2615 plat.

2616 F. Application processing.

2617 1. The applicant must submit a plat application to the Director. The
2618 Director must review the application for completeness within 5 days
2619 after receipt. An application is incomplete if any required element is
2620 missing. The assessment of completeness must not address the
2621 accuracy of any of the elements or the merits of the application. The
2622 Director has the authority to reject the plat application if it does not
2623 contain the required information. The rejection must be in writing and
2624 specify the deficiencies.

2625 2. The applicant must resubmit a revised plat application within 10 days
2626 from the date of the written rejection, or the application will be
2627 automatically withdrawn.

2628 **Section 8.2. Approval Procedure**

- 2629 A. Referral of the plat application. After accepting a plat application, the
2630 Director must begin review and send a copy to each agency that has review
2631 authority for roads, utilities, or other public services that will serve the
2632 proposed subdivision, for the agency's recommendation concerning the plat.
- 2633 B. Review and recommendation. The Director and other reviewing agencies
2634 must submit final recommendation on the plat application within 90 days
2635 after the date the application is accepted.
- 2636 C. Plat to comply with approved preliminary plan and site plan where
2637 required.
- 2638 1. With the exception of a minor subdivision, as defined in this Chapter,
2639 no plat may be approved unless it complies with the preliminary plan
2640 as approved by the Board; however, the Board may allow for minor
2641 modifications from the preliminary plan which, in its opinion, do not
2642 alter the intent of its previous approval.
- 2643 2. In those situations where a site plan is required, the Board may refuse
2644 to approve a plat until a site plan is approved under Section 59-7.3.4.
- 2645 D. Road and storm drain plans. Before submitting a final plat, the applicant
2646 must obtain approval from the appropriate agency for the following plans:
- 2647 1. final grade and profile plan for roads and pedestrian paths, except
2648 where the grades of the roads have already been established; and
- 2649 2. a storm drainage concept plan.
- 2650 E. Final plat. The applicant must submit a final plat legibly printed in black ink
2651 on a permanent, reproducible medium acceptable to the Director that
2652 incorporates the recommendations of the reviewing agencies.
- 2653 F. Planning Board to act within 30 days. The Board must act to approve or
2654 disapprove a final plat within 30 days after its submittal; otherwise, the plat
2655 will be deemed approved. The applicant may waive this requirement and
2656 consent to an extension. If the plat is disapproved, the reasons must be stated
2657 in the minutes of the Board and provided to the applicant.

2658 G. *Planning Board may hold hearing on any plat. The Board may, upon its*
2659 *own motion, hold a hearing before acting upon any plat, with notice required*
2660 *by the Board’s Rules of Procedure.*

2661 H. *Planning Board may give conditional approval. In the case of a plat*
2662 *requiring additional supporting data, the Board may give conditional*
2663 *approval, requiring the applicant to provide the Board with the supporting*
2664 *data.*

2665 I. *Signing. A plat must be signed by applicable County agencies with review*
2666 *authority before Board action on the plat, unless the Board specifically*
2667 *permits the signature to be added as a condition of its approval. The plat*
2668 *must be signed by the authorized officers of the Board after the Board acts to*
2669 *approve the plat or, in cases of conditional approval, when the conditions are*
2670 *satisfied.*

2671 **Section 8.3. Recording Procedure**

2672 A. *Processing of plats.*

2673 1. *The Planning Department Staff must reproduce a sufficient number of*
2674 *copies of an original approved plat for applicable local agencies and*
2675 *the plat preparer.*

2676 2. *The official seal of the licensed land surveyor who prepared the plat*
2677 *must be impressed upon the original approved plat and reproductions.*

2678 B. *Recordation. The reproductions required by the Clerk of the Circuit Court*
2679 *must be transmitted with the appropriate recording fee within 7 days*
2680 *following completion of processing for recordation in the land records. Once*
2681 *recorded, the original approved plat must be filed in the vault provided by*
2682 *the Commission and remain there, unless required by court order as an*
2683 *exhibit.*

2684 C. *Indexing. The Clerk of the Circuit Court must record the plat and enter it in*
2685 *the general index of the land records. All plats filed and recorded must be*
2686 *indexed both in the name of the subdivision and in the name of the owners*
2687 *signing the plat.*

2688 D. Effect of filing. Plats, when filed and recorded under this Chapter, constitute
2689 a part of the land records of the County and have the same effect as properly
2690 recorded deeds.

2691 **Section 8.4. Abandonment of Land Dedicated for Public Use**

2692 A. Land dedicated to the County for public use. When a record plat contains
2693 land dedicated to the County for public use, the dedication must be in
2694 perpetuity and must not be altered or taken for private use. However, the
2695 person who originally filed the plat, any successor in interest, or the County
2696 may petition to abandon any land dedicated under this [[Subsection]]
2697 Section. Abandonment of all or part of the dedicated land may be authorized
2698 by:

- 2699 1. the Council under Section 49-63, if the land has been in public use; or
2700 2. the Board under Section 49-68, if the land has not been in public use.

2701 B. Land dedicated to other public entity. Land dedicated to a public entity other
2702 than the County, including the Commission, may be abandoned according to
2703 procedures adopted by or applicable to that public entity.

2704 **Article IV. Administration**

2705 **Division 50.9. Waivers from this Chapter**

2706 **Section 9.1. Authority of Planning Board**

2707 The Board may grant a waiver from a requirement of this Chapter after making the
2708 required findings.

2709 **Section 9.2. Application**

2710 A request for a waiver must be submitted to the Board in writing, stating all facts
2711 supporting approval of a waiver.

2712 **Section 9.3. Findings**

2713 A. To grant a waiver, the Board must find that:

- 2714 1. due to practical difficulty or unusual circumstances of a plan, the
2715 application of a specific requirement of the Chapter is not needed to
2716 ensure the public health, safety, and general welfare;
- 2717 2. the intent of the requirement is still met; and
- 2718 3. the waiver is:
- 2719 a. the minimum necessary to provide relief from the requirements;
2720 and
- 2721 b. consistent with the purposes and objectives of the General Plan.

2722 **Section 9.4. Conditions**

2723 The Board may condition the waiver approval.

2724 **Section 9.5. Procedure for Granting Waivers**

- 2725 A. Referral for recommendations. The Director must send a copy of each
2726 waiver request to the applicable Development Review Committee agencies
2727 for investigation, report, and written recommendation before acting on the
2728 request. For waivers requested as part of a preliminary plan, administrative
2729 preliminary plan, or pre-application submission, ~~[[Those]]~~ those agencies
2730 must submit any report and recommendation on the waiver in the timeframes
2731 required for those plans. For separate waiver requests, final recommendation
2732 must be provided to the Director within ~~[[20]]~~ 30 days after receiving the
2733 request, or the recommendation must be treated as favorable.
- 2734 B. The Director must publish a report and recommendation at least 10 days
2735 before the scheduled Board hearing. A waiver request filed under this
2736 Section may be used as grounds for a request to extend the time
2737 requirements in Sections 4.2 and 8.2.
- 2738 C. Resolution. The Board must make its decision by resolution.
- 2739 D. Non-waiver of other ordinances. When granting a waiver, the Board must
2740 not change any other requirement of law.

2741 **Division 50.10. Administrative Procedures**

2742 **Section 10.1. Regulations**

2743 The Board may adopt regulations and necessary procedures under Chapter 2A,
2744 Section 15, Method (2) to administer this Chapter.

2745 **Section 10.2. Bonding and Surety**

2746 A. *Guarantee of completion of improvements before recording final plat.*

2747 1. Before plat recordation, the Board or applicable public agency must
2748 certify that the subdivider has obtained the necessary permits and
2749 bonds or provided other surety that ensures completion of all required
2750 public and private improvements on the land covered by the plat being
2751 recorded.

2752 2. As an alternative to the requirements of Subsection 10.2.A.1, if
2753 approved by the applicable public agency, a public improvement
2754 agreement may be executed between the applicant and the agency to
2755 ensure completion of public improvements.

2756 3. When the subdivider or developer is required by regulations of the
2757 WSSC to record a final plat dedicating public roads in excess of a
2758 current building phase to obtain installation of water and sewer to the
2759 site, surety as required by the Road Design and Construction Code for
2760 road improvements for such excess platting may be delayed under the
2761 approved timing sequence of the proposed development approved by
2762 the applicable County agency.

2763 **Section 10.3. Establishment of Adequate Public Facilities Guidelines**

2764 A. The Council must establish by resolution, after public hearing, the process to
2765 determine the adequacy of public facilities and services. A subdivision
2766 staging policy approved by the Council may serve this purpose if it contains
2767 those guidelines. To provide the basis for the Council resolution, the Board
2768 and the County Executive must provide the following information and
2769 recommendations to the Council:

2770 1. the Board must provide analyses of current growth and the amount of
2771 additional growth that can be accommodated by public facilities and

2772 services. The Board must also provide recommendations of any
2773 changes in preliminary plan approval criteria it deems appropriate;
2774 and

2775 2. the County Executive must provide comments on the Board's
2776 analyses and recommendations and recommend criteria to determine
2777 the adequacy of public facilities.

2778 **Section 10.4. Establishment of a Development Review Committee**

2779 The Board must establish a review committee consisting of Planning Department
2780 Staff and staff of any County, State, and Federal agency; municipality; and utility
2781 companies to which a plan has been referred. The committee must meet with
2782 applicants and other interested persons to facilitate agency review of the plan, and
2783 may reconcile conflicting requirements by different agencies. Each reviewing
2784 agency must designate a representative to the committee. For the purpose of plan
2785 review, the head of any participating County agency must delegate authority to a
2786 representative to speak for the agency.

2787 **Section 10.5. Establishment of Fees**

2788 The Board must approve by resolution the fees necessary to cover the cost of
2789 administering this Chapter.

2790 **Section 10.6. Enforcement of Chapter**

2791 **A. Notice of violation.**

2792 1. The Director may issue a notice of violation to a person whom the
2793 Director believes committed a violation of a Planning Board Action or
2794 this Chapter. A notice of violation issued under this Subsection must
2795 be served on the alleged violator personally, on the alleged violator's
2796 agent at the site of the alleged violation, or by certified mail to the
2797 alleged violator's last known address.

2798 2. The notice of violation must contain at least the following
2799 information:

2800 a. the name of the person charged;

- 2801 b. the nature of the violation;
2802 c. the place where and the approximate date when the violation
2803 occurred; and
2804 d. a statement advising the alleged violator of the corrective or
2805 remedial action that must be taken and the date by which the
2806 corrective or remedial action must be completed. The corrective
2807 or remedial action may include a meeting with Planning
2808 Department Staff to establish a compliance plan.

2809 **B.** Administrative citation.

2810 1. The Director may deliver an administrative citation to a person whom
2811 the Director believes committed a violation of a Planning Board
2812 action or this Chapter. The Director must attest to the truth of the facts
2813 and allegations in the administrative citation. An administrative
2814 citation issued under this Subsection must be served on the alleged
2815 violator personally, on the alleged violator's agent at the site of the
2816 alleged violation, or by certified mail to the alleged violator's last
2817 known address.

2818 2. The administrative citation must contain at least the following
2819 information:

- 2820 a. the name and address of the person charged;
2821 b. the nature of the violation;
2822 c. the place where and the approximate date when the violation
2823 occurred;
2824 d. the amount of fine assessed;
2825 e. where, when, and to whom the fine may be paid; and
2826 f. a statement advising the violator of the right to a hearing before
2827 the Board or its designee.

2828 **C.** Notice of hearing.

- 2829 1. The Director may issue a notice of hearing to a person whom the
2830 Director believes committed a violation of a Planning Board Action or
2831 this Chapter. The notice of hearing must be served on the alleged
2832 violator personally, on the alleged violator’s agent at the site of the
2833 alleged violation, or by certified mail to the alleged violator’s last
2834 known address.
- 2835 2. The notice of hearing must contain at least the following information:
- 2836 a. the name of the person charged;
- 2837 b. the nature of the violation;
- 2838 c. the place where and the approximate date when the violation
2839 occurred; and
- 2840 d. a statement advising the alleged violator of the date, time, and
2841 location of the hearing before the Board or its designee.
- 2842 D. Civil fine and penalty.
- 2843 1. A citation may require the recipient to pay a civil fine for a violation
2844 of a Planning Board action.
- 2845 2. The fine for each violation of a Planning Board action is the
2846 maximum allowed by the Land Use Article §23-505 of the Maryland
2847 Code for each day that the violation continues.
- 2848 3. Each day that a violation has not been corrected is a separate
2849 violation, and the applicable fine may continue to accrue each day
2850 until the violation is corrected without issuing a new citation each day.
- 2851 4. In addition to any other remedy under this Article, a person who
2852 violates this Chapter, a Planning Board Action, any applicable
2853 regulation or any associated agreement or restriction may be subject to
2854 an administrative civil penalty. The administrative civil penalty must
2855 not exceed 150 percent of the estimated cost to bring the violation into
2856 compliance.

- 2857 5. In setting the amount of the administrative civil penalty, the Board or
2858 its designee must consider:
- 2859 a. the willfulness of the violation;
- 2860 b. the degree of deviation from the approved Planning Board
2861 action;
- 2862 c. the cost of any needed corrective action or restoration;
- 2863 d. any adverse impact on the immediate neighborhood and the
2864 larger community;
- 2865 e. the extent to which the subject violation is part of a recurrent
2866 pattern of the same or similar violations committed by the
2867 violator;
- 2868 f. any economic benefit that accrued to the violator or any other
2869 person as a result of the violation;
- 2870 g. the degree of cooperation shown, or voluntary mitigation
2871 measures taken, by the violator;
- 2872 h. the extent to which any other person contributed to the
2873 violation;
- 2874 i. the impact, if any, on the violator's ability to perform corrective
2875 actions because of a change in ownership of the property; and
- 2876 j. any other relevant factor.
- 2877 6. The Board, after a public hearing on the violation, must adopt a
2878 resolution specifying the amount of any administrative civil penalty
2879 and the Board's reason for imposing the penalty.
- 2880 E. Nonpayment of fine.
- 2881 1. If a person who receives an administrative citation does not pay the
2882 fine by the administrative citation's due date or file a request for
2883 hearing, a notice must be sent to the person's last known address. If
2884 the administrative citation is not satisfied within 15 days after the

2885 notice is issued, the recipient is liable for an additional fine, as
2886 specified in the notice. The additional fine must be less than twice the
2887 original fine.

2888 2. If the fine due is not paid within 35 days from the date the notice is
2889 issued, the Board may schedule and hold a hearing.

2890 F. Hearing.

2891 1. A person who receives a citation imposing a civil fine may elect a
2892 hearing before the Board or its designee by filing a written request for
2893 hearing with the Director. The request for a hearing must be received
2894 by the Director within 15 days after the administrative citation was
2895 issued. The filing of a request for a hearing does not stay an
2896 administrative order to stop work, stabilize a site, or stop a violation.

2897 2. If the Director receives a request to hold a hearing under this Article,
2898 the Director must promptly schedule a hearing, unless the requestor
2899 consents to a delay, and must issue a notice of hearing.

2900 3. The Board may assign a hearing officer, including a Hearing
2901 Examiner from the Office of Zoning and Administrative Hearings, to
2902 conduct a public hearing and submit a report and recommendation on
2903 any alleged violation of this Chapter or a Planning Board action. The
2904 hearing officer must submit the required report and recommendation
2905 to the Board not later than 30 days after the hearing record closes. The
2906 hearing officer may extend the time to file the report by notifying all
2907 parties.

2908 4. After holding the hearing, the Board may impose any civil fine or
2909 administrative civil penalty authorized by this Section, and also may:

2910 a. suspend or revoke the plan that is the subject of a Planning
2911 Board Action;

2912 b. approve a compliance program that lists each remedial action
2913 that must be taken;

- 2914 c. require the violator to post a bond or other surety to guarantee
2915 completion of a compliance program;
- 2916 d. allow the violator to propose modifications to the plan; or
- 2917 e. take any combination of these actions.
- 2918 5. All fines, penalties, or forfeitures collected under this Section must be
2919 remitted to the Board and placed in the general funds.
- 2920 6. The Board may spend funds from fines and penalties for project
2921 corrections, plan enforcement or, subject to Council appropriations,
2922 other Board purposes. The Board, in its sole discretion, may spend
2923 collected fines or penalties to perform or correct some or all violations
2924 noted in an administrative citation without obligating the Board,
2925 instead of the person responsible, to correct any violation.
- 2926 G. Enforcement rules; conduct of hearing.
- 2927 1. The Board must:
- 2928 a. adopt regulations to administer and enforce this Section as a
2929 method (2) regulation, subject to Council review under Chapter
2930 2A, Section 15; and
- 2931 b. conduct any proceeding under this Section as provided in those
2932 regulations.
- 2933 H. Stop work order.
- 2934 1. The enforcement agent may issue a stop work order if the
2935 enforcement agent reasonably finds that:
- 2936 a. a person is violating any element of a Planning Board Action;
2937 and
- 2938 b. the violation threatens or may threaten the public health, safety,
2939 or welfare.
- 2940 2. A stop work order must include the following information as
2941 applicable:

- 2942 a. the name and address of the person charged;
- 2943 b. the nature of the violation;
- 2944 c. the place where and the approximate date when the violation
2945 occurred; and
- 2946 d. a clear statement of the action that must be taken or
2947 discontinued to cure the violation, including any requirement to
2948 prepare a plan of compliance.
- 2949 3. The enforcement agent must attest to the truth of the facts and
2950 allegations in the order.
- 2951 4. The enforcement agent must prominently display the order near where
2952 the violation has occurred. In addition, the enforcement agent may
2953 deliver or mail a copy of the order to the last known address of the
2954 person who secured approval of the Planning Board Action.
- 2955 5. When a stop work order is posted, the recipient must immediately
2956 discontinue any further work activities until the order is rescinded. A
2957 stop work order suspends the Board approval of the entire underlying
2958 plan, unless:
- 2959 a. the Board approves phasing of the project; and
- 2960 b. the enforcement agent finds that the violation involves only:
- 2961 i. one or more phases of a project, but not other phases of
2962 the same project; or
- 2963 ii. activities on a single lot or parcel.
- 2964 In these instances, the order may only suspend the Board's
2965 approval as it relates to those phases or lots where the violation
2966 exists.
- 2967 6. The recipient of a stop work order may request a hearing to contest
2968 the validity of the order. If the enforcement agent finds that a hearing
2969 before the Board is not practical in a reasonable time, the Chair or

2970 Vice-Chair of the Board may review the order. A determination by the
2971 Chair or Vice-Chair has the same effect as if the Board reviewed the
2972 order. The Board or Chair, if applicable, must review the order *de*
2973 *novo*. If the violation is corrected and a plan of compliance prepared
2974 by the recipient of the order before the hearing is confirmed by the
2975 enforcement agent, the hearing must be cancelled.

2976 7. At the Board hearing, the enforcement agent must justify to the Board
2977 the grounds and reasoning for issuing the order. The recipient must
2978 explain why the order should be discontinued and may propose a plan
2979 of compliance indicating how and when the violations will be
2980 corrected. The Board must decide if the order should be continued,
2981 modified, or rescinded, and if a plan of compliance should be
2982 approved. The Board's decision that a stop work order must continue
2983 revokes any underlying Board approvals for the entire project or any
2984 part of the project as the Board specifies until the violation is
2985 corrected.

2986 8. A Board decision to continue or modify an order may be the subject
2987 of a petition for judicial review to the Circuit Court under the rules for
2988 the review of administrative agency actions.

2989 9. A stop work order must be rescinded when the Board or the
2990 enforcement agent finds that all violations specified in the order have
2991 been satisfactorily corrected, which determination must not be
2992 unreasonably withheld, or the Board approves a compliance plan that
2993 addresses any uncorrected violation.

2994 I. Other remedies. The authority in this Section to impose civil fines,
2995 administrative civil penalties, and stop work orders is in addition to any
2996 other authority of the Board to enforce its actions, including seeking
2997 injunctive, declaratory, or other relief. The decision to pursue one remedy
2998 does not preclude the Board from pursuing any other available remedy.

2999 J. Authority of the Office of the General Counsel. The General Counsel of the
3000 Maryland-National Capital Park and Planning Commission may prosecute

3001 and take any other necessary legal action regarding any violation under this
3002 Section.

3003 K. *Exclusive authority.* The Board or its designee has exclusive authority to
3004 enforce violations of a Planning Board action and any violations of this
3005 Chapter. The authority granted in this Chapter supersedes any other
3006 authority to enforce a Planning Board action granted to any other County or
3007 State agency.

3008 **Section 10.7. Amendment of Chapter**

3009 A. *Procedures.* The procedures for amending Chapter 50 must satisfy Section
3010 23-104 of the Land Use Article, Maryland Code, and the Council Rules of
3011 Procedure.

3012 B. *Hearing.* A public hearing under the Council Rules of Procedure is required.

3013 C. *Expiration.* Any subdivision regulation introduced to amend this Chapter
3014 expires 18 months after its introduction if it is not approved.

3015

3016 **Sec. 3. Effective Date.**

3017 This amendment takes effect 90 days after its approval by Council. The
3018 amendment applies to any Planning Board action after the effective date of this
3019 amendment.

3020

3021 **Sec. 4. Prior Approvals**

3022 The repeal of Chapter 50 does not affect the status of any preliminary plan or
3023 record plat approved by the Planning Board before the effective date of this
3024 amendment. Any violation of a Planning Board action, or the regulations
3025 governing the applicable approval, may be enforced under Section 10.6 of this
3026 amendment.

3027

3028 *Approved:*

3029

3030

3031 Isiah Leggett, County Executive Date

3032 *This is a correct copy of Council action.*

3033

Linda M. Lauer, Clerk of the Council Date

MEMORANDUM

September 9, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Senior Legislative Analyst
SUBJECT: Addendum – Subdivision Regulation Amendment 16-01,
Subdivision Regulations Rewrite, Worksession #4

1) An addition to Minor Subdivision provisions

The memorandum for the September 12 PHED meeting on SRA 16-01 neglected an additional change recommended by the Planning Department. The SRA includes provisions for minor subdivisions. One of the circumstances where the Planning Department believes that a preliminary plan is unnecessary before platting is when an existing house exists on a parcel in the smaller-lot, residential zones. The proposed revision retains the policy for favoring record plats to clearly describe property as buildable lots.¹ In the absence of this provision, a building permit would be denied to reconstruct the existing house outside of its existing footprint or as a larger new house². These limitations do not apply to recorded lots.

Under the subdivision code, the owner of a parcel described by deed is still required to file a preliminary plan and a plat. The following provision, which could be added after line 2388, would ease that burden:

¹ The zoning code includes the following provision:

Unless adjoining lots have merged by virtue of ownership and zoning requirements, DPS may issue a building permit for a detached house on any Residential or Rural Residential zoned lot or parcel identified either on a plat recorded before October 30, 2014 or a deed recorded before June 1, 1958, without regard to the street frontage and lot size requirements of its zoning, except as provided in Section 7.7.1.D.3.b

² The proposed language of SRA 16-01 permits reconstruction of existing dwellings without platting, as provided in Section 7.7.1.A.1 of the Zoning Ordinance:

A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased, except as provided for in Section 7.7.1.C for structures in Commercial/Residential, Employment, or Industrial zones, or Section 7.7.1.D.5 for structures in Residential Detached zones.

This section limits such reconstruction to the same footprint, floor area and height as the existing structure. Once platted under the proposed minor subdivision, that limitation would be removed.

- I. Unplatted Parcels With Existing Houses. In the R-90 and R-60 zones, an unplatted parcel containing an existing house may be converted into a lot under the minor subdivision procedure if:
1. any required road dedication along the frontage of the proposed lot is shown on the record plat;
 2. there is adequate sewerage and water service to the property; and
 3. the principal use of the property is single-unit living and any new construction on the lot is limited to a detached house.

2) Effective dates

The Committee should discuss the effective date of all of the legislation that it recommends to the Council. The effective date of SRA 16-01 should be coordinated with the effect date of ZTA 16-12, Bill 34-16, and Bill 35-16.