



Committee: PHED
Staff: Pamela Dunn, Senior Legislative Analyst
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Purpose: To receive testimony – no vote expected
Keywords: #SRA, #Rewrite

SUBJECT

SRA 20-02, Subdivision Ordinance – Revisions, Clarifications, and Corrections

EXPECTED ATTENDEES

N/A

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

Council President Hucker is sponsoring SRA 20-02 at the request of the Planning Board.

SUMMARY OF KEY DISCUSSION POINTS

SRA 20-02 would clarify language, correct mistakes, and add necessary missing provisions. While the vast majority of the proposed changes are minor, several substantive changes are also proposed.

The attached SRA contains technical (mostly formatting) corrections to the SRA made after its introduction, but no substantive changes.

This report contains:

SRA 20-02 (with technical corrections)
Planning Board transmittal letter
Planning staff memorandum

Pages

© 1-45
© 46-47
© 48-55

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Subdivision Regulation Amendment No.: 20-02
Concerning: Subdivision Ordinance –
Revisions, Clarifications, and
Corrections
Draft No. & Date: 2 – 12/10/20
Introduced: December 8, 2020
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Subdivision Regulations to:

- delete the definition of Adequate Public Facilities Ordinance (APFO), Licensed Land Surveyor, Subdivision Staging Policy, and Septic Tiers;
- amend the definition of Administrative Civil Penalty, Board, Building Restriction Line, Citation, Civil Fine, Enforcement Agent, Engineer, Preliminary Plan, Pre-Preliminary Plan, Centerline of Road;
- add a definition for *Building Envelope, County Growth and Infrastructure Policy, Director Action, Growth Tiers, Land Surveyor, and Utilities*;
- amend provisions concerning:
 - filing and approval procedures for preliminary plan submission
 - the lot design of flag lots, frontage on a public or private road, alleys or pedestrian paths for residential lots,
 - the exemption to certain requirements for *Utility and Communication Structures*;
 - the taxing provisions for all public reservations;
 - the extensions for all public reservations;
 - the access easements for alleys;
 - establishing utility easements in a subdivision;
 - adequate public facilities;
 - a residential cluster subdivision;
 - the approval of an administrative subdivision, a minor subdivision or a plat;
 - granting a waiver from any requirement of Chapter 50;
- add a provision for places of worship and institutional uses, that a landscaping and lighting plan be submitted for review and approval concurrently with the preliminary plan; and
- generally amend the provisions governing Chapter 50

By amending

Montgomery County Code	
Chapter 50.	“Subdivision of Land”
Division 50.2.	“INTERPRETATION AND DEFINED TERMS”
Section 50.2.2.	“Definitions”
Division 50.3.	“GENERAL REQUIREMENTS”
Section 50.3.2.	“Record Plat Required”
Section 50.3.3.	“Exemptions to the Requirements of this Chapter”
Section 50.3.6.	“Submission Procedures for Subdivision Plans”
Division 50.4.	“PRELIMINARY PLAN”
Section 50.4.1.	“Filing and Specifications”
Section 4.2.	“Approval Procedure”
Section 4.3.	“Technical Review”
Division 50.5.	“PRE-PRELIMINARY SUBMISSIONS”
Section 50.5.2.	“Approval Procedure”
Division 50.6.	“ADMINISTRATIVE SUBDIVISION PLAN”
Section 50.6.1.	“Applicability”
Section 50.6.2.	“Filing Requirements”
Section 50.6.3.	“Approval Procedures”
Division 50.7.	“MINOR SUBDIVISION”
Section 50.7.1.	“Applicability”
Section 50.7.2.	“Procedure for Platting Minor Subdivisions”
Division 50.8.	“PLATS – GENERALLY”
Section 50.8.1.	“Filing and Specifications”
Section 50.8.2.	“Approval Procedure”
Section 50.8.3.	“Recording Procedure”
Division 50.9.	“WAIVERS FROM THIS CHAPTER”
Section 50.9.5.	“Procedure for Granting Waivers”
Division 50.10.	“ADMINISTRATIVE PROCEDURES”
Section 50.10.2.	“Bonding and Surety”
Section 50.10.6.	“Enforcement of Chapter”

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. Division 50.2 is amended as follows:**

2 **DIVISION 50.2. INTERPRETATION AND DEFINED TERMS**

3 * * *

4 **Section 2.2. Definitions**

5 All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have
6 the same meanings as the definitions in those Chapters, unless otherwise defined
7 here. In this Chapter, the following words and phrases have the meanings
8 indicated.

9 **A.**

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

13 *Administrative Civil Penalty*: A monetary penalty imposed by the Board after
14 considering the factors in this Chapter for violating a Planning Board [action]
15 Action or Director Action.

16 *Administrative Subdivision Plan*: A preliminary plan [for a proposed subdivision
17 prepared and] submitted for the Director’s approval before the preparation of a
18 plat.

19 * * *

20 *Board*: The Montgomery County Planning Board of the Maryland-National Capital
21 Park and Planning Commission.

22 * * *

23 Building Envelope: The portion of a lot, enclosed by the front, rear, and side
24 setback lines and any additional building restriction lines, in which a structure may
25 be placed.

26 Building Restriction Line: A line designating an area in which development or
27 building is prohibited under this Chapter [by the Board under Section 50.4.3.K of
28 these regulations].

29 * * *

30 Citation: A document noting a violation of a Planning Board [action] Action or
31 Director Action, seeking to impose a civil fine or corrective action.

32 Civil Fine: A requirement to pay a predetermined sum of money specified in an
33 administrative citation for violating a Planning Board [action] Action or Director
34 Action.

35 * * *

36 County Growth and Infrastructure Policy: The resolution or law approved by the
37 District Council to determine the adequacy of public facilities and services.

38 * * *

39 Director Action: A written decision on a preliminary plan, site plan, or other plan,
40 including all associated terms, conditions, requirements, and other obligations or
41 limits, made by the Director under State law and Chapters 50 and 59, including any
42 regulations approved under State or County law. For the purposes of an
43 enforcement action, a Director Action excludes a decision made by the Director
44 under Chapter 22A.

45 * * *

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

48 *Engineer:* A professional engineer [registered] licensed in Maryland.

49 * * *

50 *Growth Tiers:* Tiers adopted by Montgomery County under Subtitle 5 of the Land
51 Use Article.

52 * * *

53 [*Licensed*] *Land Surveyor:* A land surveyor who is licensed in the State to
54 “practice land surveying” as defined in the Maryland Business Occupations and
55 Professions Code Ann. Section 15-101 [(1995 Repl. Vol.)], as amended.

56 * * *

57 *Preliminary Plan:* A drawing for a proposed subdivision [prepared and] submitted
58 for [Board] approval before the preparation of a plat.

59 *Pre-Preliminary Plan:* A drawing for a proposed subdivision [prepared and]
60 submitted for binding or non-binding advice before the submission of a
61 [Preliminary Plan] preliminary plan.

62 * * *

63 *Road, Centerline of:* A line established as a centerline of a road right-of-way by
64 any State, County, or other official agency or governing body with jurisdiction and
65 shown on an officially adopted plan or recorded plat. In the absence of an official
66 centerline, the Board or Director must establish the centerline with consultation
67 from the applicable agency with jurisdiction over the road.

68 * * *

69 *Stop Work Order:* An administrative order issued by an enforcement agent that
70 requires a person to discontinue any further development, construction, or other
71 land disturbance activity authorized by a Planning Board Action or a Director
72 Action until a violation has been corrected.

73 * * *

74 [*Subdivision Staging Policy:* The resolution or guidelines adopted by the District
75 Council to determine the adequacy of public facilities and services.]

76 * * *

77 Utilities: Water, sewage, gas, electric, energy, telecommunications, telephone,
78 broadband, cable facilities, and similar facilities that serve the public.

79 * * *

80 **Sec. 2. Division 50.3 is amended as follows:**

81 **DIVISION 50.3. GENERAL REQUIREMENTS**

82 * * *

83 **Section 3.2. Record Plat Required**

84 * * *

85 B. [Construction of a new principal] A building permit may only [occur] be
86 issued for a building located on a lot or parcel shown on a plat recorded in
87 the County Land Records or on a [property that is] parcel exempt from
88 recording requirements under [Section 3.3.B.] Subsection 3.3.B.

89 * * *

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

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

94 1. *Court action.* Partition of land by will or through action of a court of
95 competent jurisdiction unless or until development of the land is
96 proposed.

97 * * *

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

99 1. *Agricultural land used for residential dwellings.* An unplatted parcel
100 of agricultural land at least 25 acres in size used for a primary
101 dwelling unit if density and development rights are available and the
102 parcel is eligible to obtain any required sewage disposal permits.

103 * * *

104 9. *Utility and Communication Structures.* The construction of
105 telecommunications towers, antennas, solar arrays, relay stations, or
106 similar facilities, including their associated accessory structures,
107 which are not intended for the shelter, support, or enclosure of
108 persons, unless otherwise required by the Board or further
109 development of the land requires a subdivision plan.

110 * * *

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

112 * * *

113 E. *Area within pending master plan.* The Board may defer action on a proposed
114 subdivision plan application, if all or any part of the plan is located in the
115 boundaries of a pending master plan or master plan amendment. For

116 purposes of this Section, a pending master plan or master plan amendment is
117 the public hearing draft master plan or master plan amendment.

- 118 1. The subdivider may resubmit a proposed subdivision plan deferred
119 under this Section to the Board either:
 - 120 a. after the final disposition by the District Council of the pending
121 master plan or master plan amendment; or
 - 122 b. no later than 12 months from the date the Board approves the
123 public hearing draft master plan or master plan amendment,
124 unless there is a determination by the Board that the subdivision
125 plan application presents a substantial conflict with the
126 proposed public hearing draft master plan or master plan
127 amendment, in which case the Board may defer a subdivision
128 plan application for a maximum of 18 months from the date the
129 Board approves the public hearing draft master plan or master
130 plan amendment, but in no event beyond the period in
131 Subsection 3.6.E.1.a.

132 * * *

133 **Sec. 3. Division 50.4 is amended as follows:**

134 **DIVISION 50.4. PRELIMINARY PLAN**

135 * * *

136 **Section 4.1. Filing and Specifications**

137 * * *

- 138 B. *The drawing.* The subdivider must submit a preliminary plan drawing in a
139 form required by regulations of the Board. Details and information must
140 include:

141 * * *

142 3. certificate of an engineer or [licensed] land surveyor to affirm the
143 accuracy of boundary lines, topographic data, and other engineering
144 or survey data, and to certify that the subdivision plans and supporting
145 documents were prepared in a manner that satisfies all submission
146 requirements and applicable agency standards, policies, and
147 procedures;

148 * * *

149 C. *Supporting information.*

150 * * *

151 4. *Concept road grade and profile.* For a public road, an engineer or a
152 [licensed] land surveyor must prepare conceptual road grade and
153 profile plans under the design criteria [of the Road Design and
154 Construction Code] approved by the Department of Transportation
155 and indicate the percentage of tangent grades, lengths of crest and sag,
156 vertical curves and elevations, and elevations of all intersecting roads.
157 The plan must indicate the direction of water flow. Where the
158 topography makes the determination of the adequacy of the road
159 grades difficult, the Director may require additional supporting
160 information.

161 * * *

162 6. Sight distance evaluation for all [proposed] driveways that will serve
163 new development and [proposed] road intersections prepared under
164 the criteria of the applicable State or County transportation agency.

165 * * *

166 11. *Draft Traffic Mitigation Agreement.* A preliminary plan application
167 for property located in a Transportation Management District (TMD),
168 designated under Chapter 42A, Article II, must contain a draft Traffic

169 Mitigation Agreement (TMAg) or similar plan designated under
170 Chapter 42A prepared by the applicant that meets the requirements of
171 that Article.

172 * * *

173 E. *Hearing date.* The Board must schedule a public hearing to begin within 120
174 days after the date the Director accepts an application. The Director may
175 postpone the public hearing by up to 30 days once without Board approval.
176 The Director or applicant may request one or more extensions beyond the
177 original 30 days with Board approval. The Board must notice the public
178 hearing and indicate the new hearing date on the Board’s agenda. An
179 application that was filed before [{effective date of legislation}] February
180 13, 2017 is not subject to this subsection.

181 * * *

182 **Section 4.2. Approval [Procedure] Procedures**

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

- 187 1. WSSC, for water and sewer service;
- 188 2. the Department of Transportation, for roads, streets, intersection
189 locations, site access, sight distances, traffic calming, paths,
190 pedestrian and bicycle facilities (including bike share), parking, transit
191 facilities, transportation demand management elements, and storm
192 drainage within County-maintained rights-of-way and easements with
193 all reviews consistent with the objective to achieve Vision Zero goals;

194 * * *

195 9. Montgomery County Public Schools, for school site planning or an
196 application for residential development;

197 * * *

198 B. *Review and recommendation.*

199 * * *

200 2. *Approvals from public agencies.* The following agency approvals are
201 required before the Board approves the preliminary plan:

202 * * *

203 c. *Stormwater management.* The Department of Permitting
204 Services must approve a stormwater management concept plan
205 and floodplain delineation, if required under Chapter 19;

206 * * *

207 F. *Amendments.*

208 1. [A major] Any amendment to an approved preliminary plan must
209 follow the [same] procedures, meet the [same] criteria, and satisfy the
210 [same] requirements of this Division.

211 2. Amendments are classified as [the original preliminary plan] either
212 major or minor.

213 a. A major amendment includes any requests to change density
214 that results in greater adequate public facility impact; or make
215 major changes to lot configuration or location, or right-of-way
216 width or alignment; or make a change to any condition of
217 approval, except a change to [validity period phasing as
218 permitted in Section 4.2.F.2.] plan validity period or APF
219 validity period.

220 [2. A minor amendment to an approved preliminary plan must follow the
221 same procedures, meet the same criteria, and satisfy the same

222 requirements as the original preliminary plan, except as modified
223 under Section 4.2.F.2.b.]

224 [a]b. A minor amendment to an approved preliminary plan includes
225 any change that does not change density in a manner that results
226 in greater adequate public facility impact; make major changes
227 to lot configuration or location, or right-of-way width or
228 alignment; or alter the intent, objectives, or requirements of the
229 Board in approving the preliminary plan. A change to plan
230 validity period or APF validity period is a minor amendment.

231 [b. The Board may approve a minor preliminary plan amendment
232 without a public hearing if the Director publishes a report and
233 recommendation on the amendment a minimum of 10 days
234 before the Board meeting. The Director may also]

235 c. The Director may approve a minor amendment to change
236 validity period phasing as permitted in Section 4.2.H.1.b.

237 G. *Plan Validity.*

238 1. *Initiation date.* The plan validity period for preliminary plans starts on
239 the later of:

240 a. 30 days from the date of mailing indicated on the written
241 resolution; or

242 b. [if an administrative appeal is timely noted by any party
243 authorized to file an appeal,] the date upon which the court
244 having final jurisdiction acts, including the running of any
245 further applicable appeal periods, if an administrative appeal is
246 timely noted by any party authorized to file an appeal.

247 If a corrected resolution is issued, the initiation date remains 30 days
248 from the date of mailing indicated on the original resolution.

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2. *Duration.*

a. *Single-phase project.*

- i. A preliminary plan approved after March 31, 2009 and before April 1, 2017 remains valid for [60 months] 5 years after its initiation date.
- ii. A preliminary plan approved after March 31, 2017 remains valid for [36 months] 3 years after its initiation date.

b. *Multi-phase project.*

* * *

- iii. The time allocated to any phase must be [60 months] 5 years or less after the initiation date for that particular phase for any preliminary plan approved after March 31, 2009, but before April 1, 2017, and [36 months] 3 years after the initiation date for that particular phase for any preliminary plan approved after March 31, 2017.
- iv. The cumulative validity period of all phases must be shorter than or equal to the [APFO] APF validity period which begins on the initiation date of the first preliminary plan approval, including any extension granted under Section 4.3.J.7.

* * *

H. *Extension of plan validity period.*

* * *

2. *Effect of failure to submit a timely extension request.*

* * *

275 b. Where a preliminary plan has been allowed to expire due to the
276 applicant’s failure to file a timely request for extension, the
277 Board may reinstate the preliminary plan and establish a new
278 validity period if practical difficulty or undue hardship is
279 demonstrated by the applicant. The Board may require the
280 applicant to get a new [APFO] APF review and approval by the
281 Board as a prerequisite or condition of its action to extend an
282 expired plan.

283 * * *

284 5. *Planning Board [action] Action.*

285 * * *

286 c. The Board may only grant an extension to a preliminary plan
287 within the plan’s [APFO] APF validity period, unless a further
288 extension is allowed by law.

289 * * *

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

291 * * *

292 3. If a preliminary plan or a phase of the plan is not timely validated, any
293 [APFO] APF determination made by the Board associated with the
294 void portion of the preliminary plan is also void. In such event, the
295 applicant loses any further rights to claim any vehicle trips associated
296 with the expired [APFO] APF approval. The filing of a new
297 preliminary plan application does not provide the basis for reclaiming
298 vehicle trips lost by the termination of the [APFO] APF approval.

299 * * *

300 K. *Vacating an approved subdivision.*

- 301 1. An applicant may request that the approval of a subdivision plan, for
302 which no subsequent plats have been recorded, be vacated.
- 303 2. A request to vacate an approved subdivision plan must include proof
304 of ownership and notarized signatures of all property owners or other
305 persons who are authorized by the property owner.
- 306 3. The Director must approve the request to vacate the approved
307 subdivision plan if the Director finds that the request is not contrary to
308 the public interest.

309 * * *

310 **Section 4.3. Technical Review**

311 In making the findings under Section 4.2.D, the Board must consider the following
312 aspects of the application.

313 * * *

314 C. *Lot design.*

315 1. *General requirements.*

316 * * *

317 b. Flag ~~[[Lots]] lots.~~ The Board must not approve flag lots, except
318 where unusual topography, environmental conditions, or the
319 position of the tract in relation to surrounding properties and
320 rights-of-way permit no other feasible way to subdivide and the
321 Board determines that appropriate separation between building
322 envelopes can be achieved. In approving a flag lot, the
323 following provisions apply:

324 i. in residential zones, the Board must require building
325 restriction lines as needed to provide separation of at
326 least 80 feet between the building envelope of the
327 proposed flag lot and the building envelopes of all lots

328 that are adjacent to the rear lot line of the proposed flag
329 lot or that are between the proposed flag lot and the road
330 on which it fronts;

331 ii. the Board may require additional building restriction
332 lines to ensure appropriate separation between building
333 envelopes and to provide appropriate location of the
334 building envelope within the lot; and

335 iii. all building restriction lines must be shown on the plat.

336 [b]c. *Lots to abut on a public or private road.* Except as specified
337 below, every lot must abut on a public or private road. A public
338 road must be dedicated or donated to public use or have
339 acquired the status of a public road under Chapter 49. A private
340 road must be shown on a record plat.

341 [i.]The Board [may] must not approve [a maximum of 2] lots
342 that do not abut a public or private road [if], except where
343 unusual topography, environmental conditions, or the position
344 of the tract in relation to surrounding properties and rights-of-
345 way permit no other feasible way to subdivide, and the Board
346 determines that appropriate separation between building
347 envelopes will be achieved. In approving a lot that does not
348 abut a public or private road, the following provisions apply:

349 i. the Board must not approve more than two lots in a
350 subdivision that do not abut a public or private road;

351 ii. the lots will be served by a private driveway that serves
352 no other lots without frontage[.];

353 iii. in residential zones, the Board must require building
354 restriction lines as needed to provide separation of at

355 least 80 feet between the building envelope of the
356 proposed lot without frontage and the building envelopes
357 of all lots that are adjacent to the rear lot line of the
358 proposed lot without frontage or that are between the
359 proposed lot without frontage and the road from which it
360 is accessed;

361 iv. the Board may require additional building restriction
362 lines to ensure appropriate separation between building
363 envelopes and to provide appropriate location of the
364 building envelope within the lot;

365 v. all building restriction lines must be shown on the plat;
366 and

367 ii]vi. [[The]] the access to lots with no road frontage must be
368 adequate to serve the lots for emergency vehicles and for
369 installation of public utilities. In addition, the lots must
370 be accessible for other public services and not
371 detrimental to future development of adjacent lands.

372 [c]d. *Side lines.* Side lines of interior lots must to the extent possible
373 be aligned perpendicular to the road line or radial to a curved road
374 line.

375 [d]e. *Through lots.* The Board must not approve through lots, except
376 where unusual topography, orientation, or the size of the subdivision
377 permit no other feasible way to subdivide.

378 [e]f. *Alley or pedestrian paths for residential lots.* If a mid-block alley
379 or pedestrian right-of-way is provided in a residential subdivision for
380 detached houses, the subdivider must increase the lot widths adjoining

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

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

385 * * *

386 5. *Reservation.*

387 a. *Procedure.* When the Board determines that a tract being
388 subdivided includes land that is necessary for public use but
389 will not immediately be acquired by donation, dedication,
390 purchase, or condemnation when the plat is recorded, the Board
391 must determine the need to reserve the land. The Board may
392 require a reservation for a period of time [less than] up to 3
393 years for road rights-of-way, public school and building sites,
394 parks, playgrounds, recreational areas, or other public purposes.

395 * * *

396 iii. *Taxes.* The Board must advise taxing and assessing
397 bodies of all public reservations, and such public
398 reservations must be exempt from all [State,] County[,]
399 and local taxes during the reservation period.

400 * * *

401 vi. *Extension.* After the initial reservation period, the Board
402 may extend the reservation period upon request of the
403 property owner if the Board determines that the reserved
404 land continues to be necessary for public use. Any
405 extension must not exceed 3 years.

406 * * *

407 E. *Roads.*

408 * * *

409 2. *Design standards.*

410 * * *

411 e. *Non-through roads.* The Board must not approve any road that
412 does not connect to another road at its beginning and end,
413 unless a determination is made that:

414 * * *

415 iii. the road, excluding alleys, is properly terminated in a cul-
416 de-sac or other turnaround; and

417 * * *

418 f. *Intersection.*

419 * * *

420 ii. [Proposed] The distance between proposed road
421 intersections, excluding alleys and driveways, must be
422 spaced as shown in the table below, as measured from the
423 centerline of the intersections. When the Board finds that
424 a greater or lesser [spacing] distance is appropriate, the
425 Board may specify a greater or lesser [spacing] distance
426 than otherwise required after considering the
427 recommendation of the transportation agency responsible
428 for maintaining the road.

429 * * *

430 3. *Additional requirements for public roads.*

431 * * *

432 b. *Existing public roads.* In a preliminary plan [or administrative
433 subdivision plan] application containing lots fronting on an
434 existing State, County, or municipally maintained road, the

435 subdivider must provide any additional required right-of-way
436 dedication and reasonable improvement to the road in front of
437 the subdivision, including sidewalks and bicycle facilities, as
438 required by Master Plan, the Road Design and Construction
439 Code or by a municipality, whichever applies.

440 * * *

441 4. *Additional standards for private roads.*

442 * * *

443 d. *Road ~~[[Classifications]]~~ classifications.* When the Department
444 of Transportation determines that the proposed road is not
445 needed to maintain area circulation, provide continuous
446 corridors to serve the general public and quasi-public needs
447 such as communication, utility, and future potential
448 transportation or other systemic needs that serve the public on a
449 long-term basis, and is not needed to be part of the network
450 modeled for area capacity, consideration will be given to
451 making the following roads private:

452 * * *

453 [ix. A private alley will not require an access easement if the
454 alley only serves one building or if the alley is a
455 secondary access to one-family residential dwellings.]

456 * * *

457 5. *Additional roadway provisions.*

458 * * *

459 d. *Road grade approval.* No final grading, sidewalk or pavement
460 construction, or installation of utilities must be permitted in the
461 bed of any proposed public or private road in any preliminary

462 plan [or administrative subdivision plan] until the grade has
463 been approved under this Chapter.

464 e. *Pedestrian paths.* When a pedestrian path is included in a
465 preliminary plan [or administrative subdivision plan], the
466 subdivider must grade and construct the path according to the
467 plan approved by the Board, Department of Permitting
468 Services, or applicable municipality.

469 * * *

470 F. *Water supply and sewage disposal facilities.*

471 * * *

472 3. [*Septic*] Growth tiers.

473 * * *

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

477 [e. The Board may approve a minor subdivision that would be
478 served by one or more septic systems on land located in the
479 Tier IV area.

480 f. The Board may approve a major subdivision that would be
481 served by one or more septic systems on land in the Tier IV
482 area.]

483 [g]e. The official map displaying the Growth Tier areas as allowed
484 under the Maryland Sustainable Growth and Agricultural
485 Preservation Act of 2012 is located on the Planning Department
486 website. The Council may amend the official map either by:

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

488 ii. an amendment under Section 10.7.

489 The latest version of the map may be accessed from the
490 Planning Department website at
491 www.montgomeryplanning.org.

492 G. *Markers and monuments.*

- 493 1. The subdivider must have metal property line markers, approximately
494 1/2-5/8 inch in diameter and 18 inches in length, or other generally
495 accepted survey markers, placed in the ground at all lot corners,
496 intersections of roads, intersections of roads and alleys with record
497 plat boundary lines, and at all points on road, alley and boundary lines
498 where there is a change in direction or curvature, unless such point
499 coincides with the location of a reference monument. All markers
500 must be properly set in the ground before the roads and alleys are
501 accepted for public maintenance. For projects that do not include
502 public roads, the owner and [licensed] land surveyor must certify to
503 the Department of Permitting Services that all property corner
504 markers have been set by a [licensed] land surveyor.
- 505 2. The [licensed] land surveyor hired by the owner must place markers
506 and monuments in the ground after road grading and paving in the
507 subdivision and grading and landscaping of adjacent lots are
508 completed. The markers and monuments must be located as specified
509 on the plat. The [licensed] land surveyor must certify to the
510 Department of Permitting Services, or other appropriate governmental
511 agency or the municipality that all survey monuments and markers are
512 in place before the County or municipality accepts any road or alley
513 established by the plat for maintenance. The amenity bonds must not
514 be released by M-NCPPC until the [licensed] land surveyor certifies

515 to the Department of Permitting Services that all survey monuments
516 are in place.

517 * * *

518 I. [Public utilities. Pipelines, electric power and energy lines, and
519 telecommunications lines must be provided] Utilities. The developer must
520 ensure the installation of utilities [by the developer] in all subdivisions.

521 1. *Installation.*

522 a. Within the property being subdivided, the developer must
523 install any new [pipelines, electric power and energy lines, and
524 telecommunications lines] utilities underground.

525 * * *

526 2. *Completion.* The Board [may] must not approve a final plat until the
527 developer demonstrates that the applicable utility companies or public
528 agencies are able to provide utility [service] services to the
529 subdivision and installation by the developer has been assured under
530 Section 10.2.

531 3. *Easements.*

532 [a.] The subdivider must establish utility easements[, which must be
533 shown on the record plat,] to allow for installation of all utility
534 [lines] facilities servicing the proposed subdivision and the
535 future extension thereof to any property adjoining the
536 subdivision[, which] that:

537 [i]a. provide the minimum area needed to maintain each of the
538 [lines] facilities as determined by the Board [with] in
539 consultation [from] with the utility [provider; and]
540 providers;

541 [ii]b. are adjacent to, or accessible from, a road right-of-way[.];

- 542 c. are available to all utilities; and
- 543 d. are shown on the record plat.

544 [With County DPS permission] With Department of Permitting Services
545 approval, utilities may be placed within conduit in public road rights-of-way.
546 Utilities placed within private road rights-of-way by a developer must [also]
547 be in conduit.

548 [b. When a private road is allowed, the Board must also require the
549 developer to provide to the County an additional public
550 infrastructure area at least 4 feet wide, adjacent to private roads
551 or in other appropriate locations that create contiguous service
552 corridors within the development that connect to and are
553 accessible from a public right-of-way to provide for future:

- 554 i. relocation of existing utilities permitted to remain in a
555 road right-of-way; and
- 556 ii. installation of new communication facilities.

557 When a structure is proposed under a private road and the
558 public infrastructure area is located in the road right-of-way, the
559 developer must construct conduits within the infrastructure area
560 to the County's specification.]

561 J. *Adequate Public Facilities [Ordinance] ([APFO]APF).*

562 * * *

563 5. *Validity period.*

564 a. Initiation date. The adequate public facility validity period
565 starts on the later of:

- 566 i. 30 days from the date of mailing indicated on the written
567 resolution; or

- 568 ii. if an administrative appeal is timely noted by any party
569 authorized to file an appeal, the date upon which the
570 court having final jurisdiction acts, including the running
571 of any further applicable appeal periods.
- 572 b. If a corrected resolution is issued, the initiation date remains the
573 date of mailing indicated on the original resolution.
- 574 [a]c. A determination of adequate public facilities made under this
575 Chapter is timely and remains valid:
- 576 i. for 12 years after the [preliminary plan is approved]
577 initiation date for any plan approved after July 24,
578 1989[,] but before October 19, 1999;
- 579 ii. for no less than 5 and no more than 12 years after the
580 [preliminary plan is approved] initiation date, as
581 determined by the Board when it approved the plan, for
582 any plan approved after October 18, 1999[,] but before
583 August 1, 2007;
- 584 iii. for no less than 7 and no more than 12 years after the
585 [preliminary plan is approved] initiation date, as
586 determined by the Board when it approved the plan, for
587 any plan approved after March 31, 2009[,] but before
588 April 1, 2017; [[and]]
- 589 iv. for no less than 5 and no more than 10 years after the
590 [preliminary plan is approved] initiation date, as
591 determined by the Board when it approved the plan, for
592 any plan approved after July 31, 2007[,] and before April
593 1, 2009, or after March 31, 2017[.];and

594 v. for no less than 5 and no more than 10 years after the
595 application is approved, as determined by the Board
596 when it approved the application, for any adequate public
597 facilities determination made in association with a site
598 plan under Chapter 59 or building permit under Chapter 8
599 approved after July 31, 2007 and before April 1, 2009, or
600 after March 31, 2017.

601 [b]d. If an applicant requests a longer validity period than the
602 minimum specified in Subsection 4.3.J.5.a, the applicant must
603 submit a development schedule or phasing plan for completion
604 of the project to the Board for its approval.

605 * * *

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

607 * * *

608 b. The Board must grant an application to extend the validity
609 period established under this paragraph for an additional 5 years
610 if:

611 * * *

612 ii. at any time during the [24 months] 2 years before the
613 application for extension being filed, the vacancy rate for
614 class A office buildings in the Central Business District
615 in which the project is located reaches 10 percent for
616 direct and sublet space combined, as measured by a
617 commercial Multiple Listings Service benchmark; or

618 * * *

619 7. *Extensions.*

620 a. *Application.* Only the Board may extend the validity period for
621 a determination of adequate public facilities; however, a request
622 to amend any validity period phasing schedule may be
623 approved by the Director if the length of the total validity
624 period is not extended.

625 * * *

626 iii. For each extension of an adequate public facilities
627 determination:

628 * * *

629 [(e) a new adequate public facilities determination for
630 school adequacy is required for the remaining
631 unbuilt units under the school test in effect at the
632 time of Board review.]]

633 b. The Board may approve an amendment to the new development
634 schedule approved under [paragraph] Section 4.3.J.7.a.ii if the
635 applicant shows that financing has been secured for either:

636 * * *

637 e. Applications with significant infrastructure investment. The
638 Board may extend [a] an initial determination of adequate
639 public facilities once for up to 12 more years beyond the
640 otherwise applicable validity period if the Board finds that:

641 i. the preliminary plan or APF approval for the
642 development required a significant commitment of funds
643 by the applicant, amounting to at least \$3 million, as
644 adjusted annually from February 2017 by the consumer
645 price index, to comply with specified infrastructure
646 conditions;

647 * * *

648 h. No combination of extensions of APF validity approved under
649 Section 4.3.J.7 may exceed a total of 12 years from the date of
650 the original APF expiration.

651 K. *Environment.*

652 * * *

653 2. *Restriction of subdivision for environmental protection.*

654 * * *

655 b. *Restrictions.*

656 i. *General.* In addition to any requirement imposed under
657 Chapter 22A, the proposed preliminary plan [or
658 administrative subdivision plan] may be restricted under
659 this Section by:

660 * * *

661 L. *Residential cluster subdivision.*

662 * * *

663 2. *Conditions for use.* The use of the cluster method of development is
664 subject to Board approval and the following conditions and
665 requirements:

666 * * *

667 c. the open space and green areas proposed by the applicant in the
668 cluster development must comply with the general purpose of
669 cluster development, and the application must include a plan
670 detailing the post-development maintenance responsibilities and
671 use of those areas; [and]

672 d. the Board must count the land dedicated to public use for
673 school and park sites in the tract area for the purpose of

674 calculating density, and allow the use of the resulting density
675 development of the remaining land when this can be
676 accomplished in compliance with the purposes of this
677 Section[.]; and
678 e. future subdivision of land within the approved cluster
679 subdivision that would result in the creation of additional lots is
680 not permitted after the property is platted.

681 * * *

682 N. [[Landscape and Lighting Plans]] *Landscape and lighting plans.*
683 1. For places of worship and institutional uses, a landscaping and
684 lighting plan, which must also include the parking lot layout, must be
685 submitted for review and approval concurrently with the preliminary
686 plan.

687 * * *

688 **Sec. 4. Division 50.5 is amended as follows:**

689 **DIVISION 50.5. PRE-PRELIMINARY SUBMISSIONS**

690 * * *

691 **Section 5.2. Approval Procedure**

692 * * *

693 C. *Action on a pre-preliminary submission.*
694 At the applicant's discretion, action on a pre-preliminary plan may be either
695 advisory if only reviewed by the Development Review Committee or
696 binding if reviewed by the Board.

697 * * *

698 **Sec. 5. Division 50.6 is amended as follows:**

699 **DIVISION 50.6. ADMINISTRATIVE SUBDIVISION PLAN**

700 * * *

701 **Section 6.1. Applicability**

702 The subdivider may file an administrative subdivision plan application [instead of
703 a preliminary plan] under the following circumstances. [The Director must review
704 the necessary technical requirements of the administrative subdivision plan under
705 Section 4.3.] Administrative subdivision plans may only be used to create lots, as
706 expressly described below.

707 A. *Existing places of worship and institutional uses.* [The Board may approve
708 a] A lot may be created for existing facilities such as[:] places of worship,
709 private schools, country clubs, private institutions, and similar uses located
710 on unplatted parcels, if:

711 * * *

712 3. [requirements for meeting] forest conservation[,] plan approval and
713 stormwater management[,] and environmental protection
714 requirements, if applicable, are satisfied before approval of the plat;

715 * * *

716 6. [the property is the subject of an approved conditional use and] all
717 conditions of [the] any conditional use approval, to which the property
718 may be subject, remain in full force.

719 B. *Subdivision for creation of certain residential lots located in the*
720 *Agricultural Reserve zone.* Up to 5 lots for detached houses [are permitted]
721 may be created under these procedures in the AR zone if:

722 * * *

723 6. forest conservation plan approval and stormwater management and
724 environmental protection requirements, if applicable, are satisfied
725 before approval of the plat.

726 C. *Subdivision for creation of certain residential lots.* Up to 3 lots for detached
727 houses [are permitted] may be created in any residential or rural residential
728 zone under these procedures if:

729 * * *

730 5. forest conservation[,] plan approval, stormwater management, and
731 environmental protection requirements, if applicable, are satisfied
732 before approval of the plat.

733 D. *Consolidation of an existing [lots] lot with another lot or [parts] part of*
734 *[lots] a lot in a nonresidential zone.* In a nonresidential zone, a lot may be
735 created by combining existing adjoining lots, or a lot and a part of a
736 previously platted lot, if:

737 * * *

738 4. forest conservation plan, stormwater management, and environmental
739 protection requirements, if applicable, are satisfied before approval of
740 the plat; and

741 5. when located in a special protection area, [and] all applicable special
742 protection area requirements and guidelines are satisfied before the
743 Board approves the plat.

744 For the purposes of this section, a part of a lot that qualifies for the
745 exemption stated in Subsection 3.3.B.2 may be used in lieu of a whole lot.

746 E. *Subdivision application for property to be used as Signature Business*
747 *Headquarters under Section 3.5.8.D of the Zoning Ordinance.* A lot or lots
748 created for a Signature Business Headquarters may be approved, if:

749 * * *

750 3. forest conservation[,] plan approval, stormwater management, and
751 environmental protection requirements, if applicable, are satisfied
752 before approval of the plat; and

753 4. when located in a special protection area, all special protection area
754 requirements are satisfied before approval of the plat [, if the subject
755 property is located in a special protection area].

756 **Section 6.2. Filing Requirements**

757 A. *Filing.* The Applicant must file the administrative subdivision plan and
758 applicable supporting information under Subsection 4.1.C, together with an
759 application form and fee to satisfy Subsection 4.1.A.

760 * * *

761 **Section 6.3. Approval Procedures**

762 * * *

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

764 1. Director Action. An administrative subdivision plan may be approved
765 by the Director without a public hearing if no objection to the
766 application is received within 30 days after the application notice is
767 sent. After receiving the recommendations of the Development
768 Review Committee and other reviewing agencies, and considering
769 correspondence from other interested parties, the Director must
770 approve or disapprove the administrative subdivision plan in writing.
771 [In the alternative, the Director may require that the plan be acted on
772 by the Board. When applicable, the Director must schedule Board
773 action on its next available agenda. If approved, the plan will remain
774 valid under Section 4.2.G, by which time a plat must be recorded.]

775 2. Planning Board Action. If an objection is received within 30 days
776 after the application notice is sent, and the Director considers the
777 objection relevant, a public hearing and action by the Board is
778 required. The Director may also require that the plan be acted on by

779 the Board when no objection is received. When applicable, the
780 Director must schedule a Board hearing on its next available agenda.

781 3. All necessary improvements to support the development must be
782 completed or assured under Section 10.2.

783 [3]4. The Director must take action on an administrative subdivision plan or
784 schedule a public hearing within 90 days after the date an application
785 is accepted. The Director may postpone the public hearing once, by up
786 to 30 days, without Board approval. The Director or applicant may
787 request an extension beyond the original 30 days with Board approval.
788 Any extension of the public hearing must be noticed on the hearing
789 agenda with the new public hearing date indicated.

790 5. In making the findings required in Subsection 6.3.C, the Director or
791 Board must consider the technical requirements under Section 4.3. In
792 performing this review, the Director is authorized to perform any
793 relevant action that is permissible to the Board under Section 4.3,
794 except for the following:

795 a. Section 4.3.C.1.b, with respect to flag lots;

796 b. Section 4.3.C.1.c, with respect to lots without frontage on a
797 public or private road; and

798 c. Section 4.3.D.5, with respect to reservation of land for public
799 use.

800 C. Required Findings. To approve an administrative subdivision plan, the
801 Director or Board must make the following findings:

802 1. the layout of the subdivision, including size, width, shape, orientation
803 and density of lots, and location and design of roads is appropriate for
804 the subdivision given its location and the type of development or use
805 contemplated and the applicable requirements of Chapter 59;

- 806 2. the administrative subdivision plan substantially conforms to the
807 master plan;
- 808 3. public facilities will be adequate to support and service the area of the
809 subdivision;
- 810 4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
- 811 5. all stormwater management, water quality plan, and floodplain
812 requirements of Chapter 19 are satisfied;
- 813 6. any burial site of which the applicant has actual notice or constructive
814 notice or that is included in the Montgomery County Cemetery
815 Inventory and located within the subdivision boundary is approved
816 under Subsection 4.3.M; and
- 817 7. any other applicable provision specific to the property and necessary
818 for approval of the subdivision is satisfied.

819 D. *Plan [[Certification]] certification.*
820 Every administrative subdivision plan approved by the Board or the Director
821 must be certified by the Director to confirm that the plan reflects the
822 approval. Any modification of the plan conditioned by the approval must be
823 included in the plan before receiving the approval stamp. The approved plan
824 must be filed in the records of the Board.

825 E. *Amendments.*
826 Any amendment to an approved administrative subdivision plan must follow
827 the procedures, meet the criteria, and satisfy the requirements of this
828 Division.

829 F. *Plan [[Validity]] validity.*
830 1. *Initiation date.* The plan validity period for administrative subdivision
831 plans starts on the later of:

- 832 a. 30 days from the date of mailing indicated on the Director’s
833 written approval or the Board’s resolution; or
834 b. the date upon which the court having final jurisdiction acts,
835 including the running of any further applicable appeal periods,
836 if an administrative appeal is timely noted by any party
837 authorized to file an appeal.

838 If a corrected resolution is issued, the initiation date remains the date
839 of mailing indicated on the original resolution.

840 2. *Duration.*

841 a. An approved administrative subdivision plan remains valid for
842 3 years after its initiation date.

843 b. An administrative subdivision plan is validated when the
844 applicant has secured all government approvals necessary to
845 record a plat, and a plat for all property shown on the plan has
846 been recorded in the County Land Records.

847 c. Any extension of the validity period must follow the procedures
848 of Subsection 4.2.H.

849 d. For any action taken by the Director or Board to amend a
850 previously approved administrative subdivision plan, the
851 Director or Board will determine, on a case-by-case basis,
852 whether the validity period should be extended and, if so, for
853 what duration. In making the determination, the Director or
854 Board must consider the nature and scope of the requested
855 amendment.

856 e. Failure to timely validate or extend the validity period of an
857 administrative subdivision plan is governed by Subsection 4.2.I.

858 G. *Revocation or ~~[[Vacation of an Administrative Subdivision Plan]] vacation~~*
859 *of an administrative subdivision plan.*

860 1. Revocation of an administrative subdivision plan must satisfy
861 Subsection 4.2.J.

862 2. Vacation of an administrative subdivision plan must satisfy
863 Subsection 4.2.K.

864 H. *Appeal of an administrative subdivision plan.*

865 * * *

866 **Sec. 6. Division 50.7 is amended as follows:**

867 **DIVISION 50.7. MINOR SUBDIVISION**

868 **Section 7.1. Applicability**

869 The submission of a preliminary plan [or administrative subdivision plan] under
870 Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

871 * * *

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

873 * * *

874 3. all applicable requirements or agreements under the Adequate Public
875 Facilities [Ordinance] provisions in Subsection 4.3.J and the
876 [Subdivision Staging] County Growth and Infrastructure Policy are
877 satisfied before recording the plat;

878 * * *

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

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

885 * * *

886 c. [all] any required right-of-way dedication is provided.

887 2. by consolidating [an existing platted lot or] a part of a lot that contains
888 a legally constructed detached house or an existing platted lot[,] with a
889 piece of land created as a result of a deed, if:

890 * * *

891 E. *Ownership Plat.* An ownership plat may be recorded to delineate separate
892 ownership units within a lot approved for any use except for single-unit
893 living as follows:

894 * * *

895 3. Private roads [may] must not be delineated as a separate ownership
896 unit on an ownership plat.

897 * * *

898 F. *Plat of correction.* A plat of correction may be used for any of the following:

899 * * *

900 2. to revise easements to reflect a Planning Board [action] Action, or as
901 necessitated by a State or County agency or public utility;

902 * * *

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

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

907 A. *Additional considerations.*

908 * * *

909 3. Any applicable requirements of Chapter 22A must be satisfied before
910 approval of the plat by the Board.

911 * * *

912 **Sec. 7. Division 50.8 is amended as follows:**

913 **DIVISION 50.8. PLATS – GENERALLY**

914 * * *

915 **Section 8.1. Filing and Specifications**

916 * * *

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

921 1. *Title block.* The title block must appear in the lower right corner of the
922 sheet and must include the following information:

923 * * *

924 e. name of firm of [licensed] land surveyor who prepared the plat
925 and date of completion; and

926 * * *

927 3. *Surveyor certificate.* Certificate by the [licensed] land surveyor in a
928 form required by the Board, certifying to the accuracy of the plat and
929 to areas included on the plat and dedicated to public use. The
930 certificate must also include conveyance information with recording
931 references of the lands contained in the plat.

932 4. *Owner's Certificate.* Certificate by the owner and all parties of
933 interest, in a form required by the Board, adopting the plat; granting
934 slope, utility, conservation, or any other easements; and establishing
935 building restriction lines that are required to be drawn or noted on the
936 plat per the conditions of the approved [Preliminary Plan or
937 Administrative Subdivision Plan] preliminary plan and dedicating to
938 public use roads, alleys, rights-of-way, and any other areas approved

939 for dedication to public use by the Board. The owner must certify that
940 a [licensed] land surveyor will be engaged to set all property corner
941 markers under Subsection 4.3.G.

942 * * *

943 E. *Other supporting information.* The following supporting information is also
944 required with the plat application.

945 1. *Documents and plans.* The following documents and plans must be
946 submitted:

947 * * *

948 c. copies of approved[, preliminary or] final forest conservation
949 plan[, as appropriate,] or exemption letter; and

950 * * *

951 2. *Preliminary plans using transferable development rights (TDRs).* For
952 a subdivision designated in sewer category 3 conditioned upon
953 approval of a preliminary plan that uses TDRs, a new plat using less
954 than the requisite number of TDRs [may] must not be approved until
955 the sewer category has been reconfirmed by the Council.

956 * * *

957 4. *Plat for a cluster subdivision.*

958 * * *

959 b. Plats may be submitted in phases; however, density on any one
960 plat [may] must not exceed 115 percent of the allowed density
961 of the area included on the plat.

962 * * *

963 **Section 8.2. Approval Procedure**

964 * * *

965 C. *Plat to comply with approved preliminary plan and site plan where*
966 *required.*
967 1. With the exception of a minor subdivision, as defined in this Chapter,
968 no plat may be approved unless it complies with an approved
969 preliminary plan [or an administrative subdivision plan:]; however,
970 the Board may allow for minor modifications from [these plans] the
971 plan which, in its opinion, do not alter the intent of the previous
972 approval.

973 * * *

974 G. *Planning Board may [hold hearing] hear testimony on any plat.* The Board
975 may, upon its own motion, [hold a hearing] hear testimony before acting
976 upon any plat, in accordance with [notice required by] the Board’s Rules of
977 Procedure.

978 * * *

979 I. *Signing.* A plat must be signed by applicable County agencies with review
980 authority before Planning Board [action] Action on the plat, unless the
981 Board specifically permits the signature to be added as a condition of its
982 approval. The plat must be signed by the authorized officers of the Board
983 after the Board acts to approve the plat or, in cases of conditional approval,
984 when the conditions are satisfied.

985 * * *

986 **Section 8.3. Recording Procedure**

987 A. *Processing of plats.*

988 * * *

989 2. The official seal of the [licensed] land surveyor who prepared the plat
990 must be impressed upon the original approved plat and reproductions.

991 * * *

992 **Sec. 8. Division 50.9 is amended as follows:**

993 **DIVISION 50.9. WAIVERS FROM THIS CHAPTER**

994 * * *

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

996 A. *Referral for recommendations.* The Director must send a copy of each
997 waiver request to the applicable Development Review Committee agencies
998 for investigation, report, and written recommendation before acting on the
999 request. For waivers requested as part of a preliminary plan[, administrative
1000 preliminary plan,] or [pre-application submission] pre-preliminary plan,
1001 those agencies must submit any report and recommendation on the waiver in
1002 the timeframes required for those plans. For separate waiver requests, final
1003 recommendation must be provided to the Director within 30 days after
1004 receiving the request, or the recommendation must be treated as favorable.

1005 * * *

1006 **Sec. 9. Division 50.10 is amended as follows:**

1007 **DIVISION 50.10. ADMINISTRATIVE PROCEDURES**

1008 * * *

1009 **Section 10.2. Bonding and Surety**

1010 A. *Guarantee of completion of improvements before recording final plat.*
1011 1. Before plat recordation, the subdivider must demonstrate to the Board
1012 or [applicable public agency must certify] the Director that the
1013 subdivider has obtained the necessary permits and bonds or provided
1014 other surety that ensures completion of all required public and private
1015 improvements on the land covered by the plat being recorded.

1016 * * *

1017 **Section 10.6. Enforcement of Chapter**

1018 * * *

1019 B. *Administrative citation.*

1020 1. The Director may deliver an administrative citation to a person whom
1021 the Director believes committed a violation of a Planning Board
1022 [action] Action, Director Action, or this Chapter. The Director must
1023 attest to the truth of the facts and allegations in the administrative
1024 citation. An administrative citation issued under this Subsection must
1025 be served on the alleged violator personally, on the alleged violator’s
1026 agent at the site of the alleged violation, or by certified mail to the
1027 alleged violator’s last known address.

1028 * * *

1029 C. *Notice of ~~[[Hearing]]~~ hearing.*

1030 1. Director may issue a notice of hearing to a person whom the Director
1031 believes committed a violation of a Planning Board Action, Director
1032 Action, or this Chapter. The notice of hearing must be served on the
1033 alleged violator personally, on the alleged violator’s agent at the site
1034 of the alleged violation, or by certified mail to the alleged violator’s
1035 last known address.

1036 * * *

1037 D. *Civil fine and penalty.*

1038 1. A citation may require the recipient to pay a civil fine for a violation
1039 of a Planning Board [action] Action or Director Action.
1040 2. The fine for each violation of a Planning Board [action] Action or
1041 Director Action is the maximum allowed by the Land Use Article
1042 §23-505 of the Maryland Code for each day that the violation
1043 continues.

1044 * * *

1045 5. In setting the amount of the administrative civil penalty, the Board or
1046 its designee must consider:

1047 * * *

1048 b. the degree of deviation from the approved Planning Board
1049 [action] Action or Director Action;

1050 * * *

1051 F. *Hearing.*

1052 * * *

1053 3. The Board may assign a hearing officer, including a Hearing
1054 Examiner from the Office of Zoning and Administrative Hearings, to
1055 conduct a public hearing and submit a report and recommendation on
1056 any alleged violation of this Chapter or a Planning Board [action]
1057 Action or Director Action. The hearing officer must submit the
1058 required report and recommendation to the Board not later than 30
1059 days after the hearing record closes. The hearing officer may extend
1060 the time to file the report by notifying all parties.

1061 * * *

1062 K. *Exclusive authority.* The Board or its designee has exclusive authority to
1063 enforce violations of a Planning Board [action] Action or Director Action
1064 and any violations of this Chapter. The authority granted in this Chapter
1065 supersedes any other authority to enforce a Planning Board [action] Action
1066 or Director Action granted to any other County or State agency.

1067 * * *

1068



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

November 4, 2020

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board recommendation on Transmittal to County Council for Introduction and Review of a Subdivision Regulations Amendment for Modifications, Corrections, and Clarifications, Amending Chapter 50 – the Subdivision Regulations, Affecting the Transfer and Subdivision of Land Within the Montgomery County Portion of the Maryland-Washington Regional District.

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission unanimously voted to transmit the draft Subdivision Regulations Amendment to Chapter 50 – the Subdivision Regulations to the County Council at its regular meeting on October 22, 2020. A previous major update to Chapter 50 adopted by the County Council went into effect in February 2017. The currently proposed draft is intended to correct and clarify language in the 2017 version, as well as make some more substantive changes related to various provisions of the Chapter.

In reviewing the draft SRA, the Planning Board considered the recommendations of staff as well as comments provided from interested parties. Staff made substantial outreach efforts to other agencies, the community, and local legal firms and engaged any party who wished to provide input.

The focus of the SRA is to clarify language, correct mistakes, and add necessary missing provisions. While the vast majority of the proposed changes are minor, several substantive changes are also proposed.

The significant changes include:


- New provisions for the approval of flag lots and lots without frontage.
- New exemption from platting requirements for utility and telecommunication structures.
- New provisions for vacating an approved subdivision plan.
- New provision for extension of reservation of land for public use.
- New provision to specify an initiation date for the adequate public facilities validity period, similar to the existing initiation date provisions for plan validity.
- New requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request.
- New limitation on Planning Board approved APF extensions to a total of 12 years.
- New provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval.

Two additional changes were also introduced during the Planning Board session. The Planning Board voted to include these two additional changes in the draft SRA, as transmitted to the County Council. The two additional changes are as follows:

1. The definition of "Building Restriction Line" at line 27 of the SRA was amended by adding the words "under this Chapter" as shown here - *Building Restriction Line*: A line designating an area in which development or building is prohibited under this Chapter [by the Board under Section 50.4.3.K of these regulations].
2. Section 11, Filed Preliminary Plans, was added at line 1006 of the SRA to allow an applicant of a preliminary plan application that was certified as complete before the effective date of the SRA to have the application reviewed under the regulations that were in effect at the time of the filing, as shown here - **Sec. 11. Filed Preliminary Plans.** Any preliminary plan application filed and certified as complete before the effective date of this amendment may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the forgoing is the recommendation adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, October 22, 2020.



Casey Anderson
Chair



Proposed Omnibus Subdivision Regulations Amendment

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Completed: 10/9/20

Description

This report provides an overview of the proposed omnibus Subdivision Regulations Amendment that staff recommends be introduced by the County Council. This report is designed to give the Board and general public an overview of changes and provide an opportunity for discussion.

Summary

A comprehensive revision of Chapter 50, the Subdivision Regulations went into effect in February 2017. In the three years since the new chapter has been in effect, it has become clear that an additional amendment is necessary to further clarify language, correct mistakes, and add necessary missing provisions. While the vast majority of the proposed changes are minor, several substantive changes are also proposed, as noted below.

- New provisions for the approval of flag lots and lots without frontage
- New exemption from platting requirements for utility and telecommunication structures
- New provisions for vacating an approved subdivision plan
- New provision for extension of reservation of land for public use
- New provision to specify an initiation date for the adequate public facilities validity period, similar to the existing initiation date provisions for plan validity
- New requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request
- New limitation on Planning Board approved APF extensions to a total of 12 years
- New provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval

The minor changes include clarifications to existing text, changes to improve grammar and provide consistency in capitalization, updated citations for external laws and regulations, and consistency in section numbering.

Discussion of Major Changes

Provisions for Flag Lots and Lots Without Frontage

Flag lots are lots with a narrow strip that connects the main part of the lot to a public or private street right of way. Flag lots can be useful in designing a subdivision by allowing more efficient use of the land, but they can change the perceived character of an existing subdivision when they are created after the land has been initially subdivided. These same concerns also apply to lots without frontage. However, lots without frontage are less prevalent than flag lots, because they are limited to no more than two per subdivision by the current language of Chapter 50.

In order to limit the negative effects of flag lots and lots without frontage, new provisions are proposed that limit the creation of these types of lots.

Section 50.4.3.C.1 Lot Design – General Requirements

b. *Flag Lots.* The Board must not approve flag lots, except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide and the Board determines that appropriate separation between building envelopes can be achieved. In approving a flag lot, the following provisions apply:

i. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot or that are between the proposed flag lot and the road on which it fronts;

ii. the Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot; and

iii. all building restriction lines must be shown on the plat.

[b.] c. *Lots to abut on a public or private road.* Except as specified below, every lot must abut on a public or private road. A public road must be dedicated or donated to public use or have acquired the status of a public road under Chapter 49. A private road must be shown on a record plat.

[i.] The Board [may] must not approve [a maximum of 2] lots that do not abut a public or private road [if], except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide, and the Board determines that appropriate separation between building envelopes will be achieved. In approving a lot that does not abut a public or private road, the following provisions apply:

i. the Board must not approve more than two lots in a subdivision that do not abut a public or private road;

ii. the lots will be served by a private driveway that serves no other lots without frontage[.];

iii. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed lot without frontage and the building envelopes of all lots that are adjacent to the rear lot line of the proposed lot without frontage or that are between the proposed lot without frontage and the road from which it is accessed;

- iv. the Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot;
- v. all building restriction lines must be shown on the plat; and
- vi. The access to lots with no road frontage must be adequate to serve the lots for emergency vehicles and for installation of public utilities. In addition, the lots must be accessible for other public services and not detrimental to future development of adjacent lands.

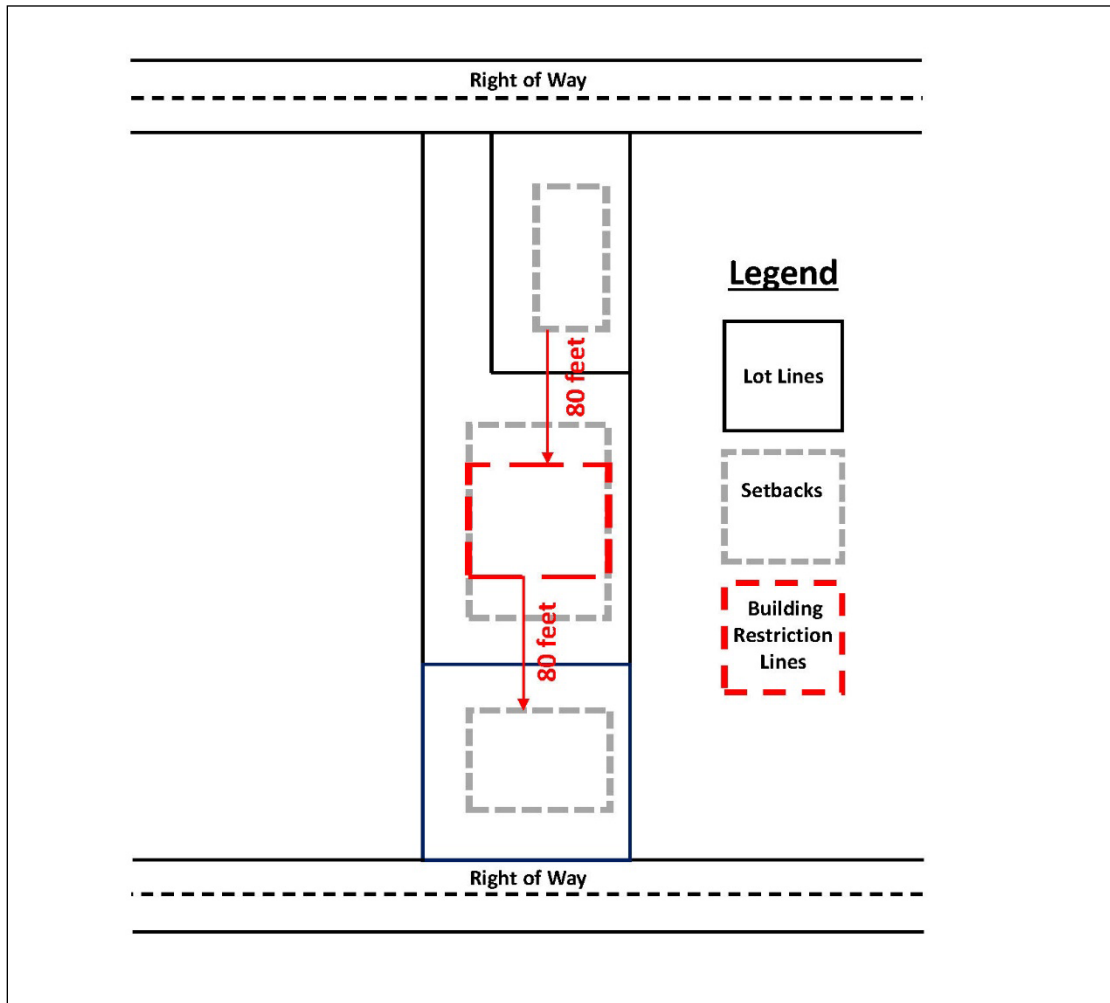


Figure 1 – flag lot with building restriction lines

The proposed provisions require the Planning Board to find that flag lots or lots without frontage are necessary because of unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way that permit no other feasible way to subdivide the property. The Planning Board must also find that adequate separation will exist between the building envelope of the proposed flag lot or lot without frontage and building envelopes on surrounding existing or proposed lots. To provide adequate separation, the proposed provisions require a separation of at least 80 feet between the building envelope on the flag or no-frontage lot and the building envelopes of lots abutting to the front or rear. The Planning Board may also place additional building restriction lines to create greater separation and to control the side-to-side placement of a house on the lot. A definition of building envelope has been added to the definition list in support of this section.

Exemption from platting requirements for utility and telecommunication structures

Generally, Chapter 50 requires that a plat be recorded before issuance of a building permit. However, Section 50.3.3.B lists circumstances in which this requirement does not apply. Utility and telecommunication towers are proposed to be added to the list to clarify that these projects are exempt from platting requirements because they are not buildings.

Section 50.3.3.B Exemptions to Platting Requirements

9. *Utility and Communication Structures.* The construction of telecommunication towers, antennas, solar arrays, relay stations, or similar facilities, including their associated accessory structures, which are not intended for the shelter, support, or enclosure of persons, unless otherwise required by the Board or further development of the land requires a subdivision plan.

Provisions for vacating an approved subdivision plan

New provisions are proposed that create a procedure that allows an applicant to vacate a previously approved subdivision plan. This will allow an applicant to pursue a different course of action on the subject property, including potentially no development, without being subject to the conditions of approval of the approved subdivision plan. Vacation of an approved plan is an available option only if no plats have been recorded.

Section 50.4.2 Approval Procedures

K. *Vacating an approved subdivision.*

1. An applicant may request that the approval of a subdivision plan, for which no subsequent plats have been recorded, be vacated.
2. A request to vacate an approved subdivision plan must include proof of ownership and notarized signatures of all property owners or other persons who are authorized by the property owner.
3. The Director must approve the request to vacate the approved subdivision plan if the Director finds that the request is not contrary to the public interest.

Provision for extension of reservation of land for public use

Section 50.4.3.D.5 provides the Planning Board the authority to reserve land within a subdivision for future public use. Reservation may be used when the land in question is not been dedicated or otherwise acquired at the time of subdivision but is expected to be acquired by a public agency within the next three years following approval of the subdivision. The proposed new language allows the Planning Board to extend a reservation period for up to three years upon the request of the property owner.

Section 50.4.3.D.5.a Reservation – Procedure

vi. *Extension.* After the initial reservation period, the Board may extend the reservation period upon request of the property owner if the Board determines that the reserved land continues to be necessary for public use. Any extension must not exceed 3 years.

Provision to specify an initiation date for the adequate public facilities validity period

When a subdivision plan is approved, it typically has a plan validity period and an adequate public facilities review (APF) validity period. The standard length of these periods has varied over the years – it is currently set at three years for plan validity and five years for APF validity. Plan validity is the period of time during which a plat must be recorded and APF validity is the period of time in which building permits must be issued.

Section 50.4.2.G specifies that the plan validity period starts on the initiation date, which is, if no appeal has been filed, 30 days from the mailing date of the resolution. If an appeal has been filed, then the validity period is tolled until the final decision from the Court. Chapter 50 does not currently specify an initiation date for the APF validity period, which means that the APF validity period starts 30 days before the plan validity period starts and does not have a tolling period for appeals. In order to synchronize these two validity periods and ensure that the APF validity period does not expire due to an appeal, new provisions are proposed in Section 50.4.3J.5 that specify an initiation date for the APF validity period.

Section 50.4.3.J Adequate Public Facilities

5. *Validity period.*

a. *Initiation date.* The adequate public facility validity period starts on the later of:

i. 30 days from the date of mailing indicated on the written resolution; or

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

b. if a corrected resolution is issued, the initiation date remains the date of mailing indicated on the original resolution.

Requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request

Section 50.4.3.J.7 specifies procedures for extending the validity period of an adequate public facilities review. With the recently proposed County Growth Policy, the Planning Board added a requirement that a new determination of school adequacy must be conducted for any unbuilt dwelling units during review of an APF validity extension request. That same new requirement is proposed here for consistency.

Section 50.4.3.J Adequate Public Facilities

7. *Extensions.*

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

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

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

iii. For each extension of an adequate public facilities determination:

(a) the applicant must not propose any additional development above the amount approved in the original determination;

(b) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;

(c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest; and

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot.

(e) a new adequate public facilities determination for school adequacy is required for the remaining unbuilt units under the school test in effect at the time of Board review.

Limitation on Planning Board approved APF extensions to a total of 12 years

Section 50.4.3.J.7 provides for extensions of the APF validity period, which may vary in length from two and half years to 12 years, depending on a variety of factors. Under the current regulations, a subdivision may be granted extensions in succession, with no limitation on the total length of the extension period. If the maximum length of currently allowable extensions is applied to an APF validity period, it could remain valid for up to 36 years. The additional extensions granted by the County Council would extend the validity period even more, currently up to an additional 10 years.

APF validity periods of this length for projects that are not proceeding in earnest tie up development capacity that might better be used by other projects. Therefore, a new provision is proposed that would limit the total length of any new APF validity extensions to a maximum of 12 years. This is in addition to any special validity period extensions granted by the County Council, such as the five two-year extensions that were enacted in response to adverse economic conditions.

Section 50.4.3.J.7 Adequate Public Facilities – Extensions

h. No combination of extensions of APF validity approved under Section 4.3.J.7 may exceed a total of 12 years from the date of the original APF expiration.

Provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval

With the adoption of the current version of Chapter 50 in 2017, a new type of subdivision plan, called an administrative subdivision plan, came into effect. Administrative subdivision plans are similar to preliminary plans, in that they can be used to subdivide property into a number of lots. However, they are typically acted on by the Planning Director instead of the Planning Board, have a 90-day review period instead of 120 days, have simplified procedures, and generally take less time to reach a decision than preliminary plans.

The current provisions for administrative subdivision plans do not include specific requirements for necessary findings for approval, plan certification, plan validity, revocation of an approved plan, and vacation of an approved plan. Due to this omission, administrative subdivision plans have been approved under the provisions and findings for preliminary plans. While this is legally sufficient, because administrative subdivision plans are a type of preliminary plan, creating separate approval procedures and findings provides greater clarity for applicants, staff, and the Planning Board. The approval procedures and findings are largely the same as those for preliminary plans, with small modifications to reflect the context of administrative subdivision plans.

Section 50.6.3 Approval Procedures

C. Required Findings. To approve an administrative subdivision plan, the Director or Board must make the following findings:

1. the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;
2. the administrative subdivision plan substantially conforms to the master plan;
3. public facilities will be adequate to support and service the area of the subdivision;
4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
5. all stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied;
6. any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M; and
7. any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.

D. Plan Certification

Every administrative subdivision plan approved by the Board or the Director must be certified by the Director to confirm that the plan reflects the approval. Any modification of the plan conditioned by the approval must be included in the plan before receiving the approval stamp. The approved plan must be filed in the records of the Board.

E. Amendments.

Any amendment to an approved administrative subdivision plan must follow the procedures, meet the criteria, and satisfy the requirements of this Division.

F. Plan Validity

1. Initiation date. The plan validity period for administrative subdivision plans starts on the later of:
 - a. 30 days from the date of mailing indicated on the Director's written approval or the Board's resolution; or
 - b. the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods, if an administrative appeal is timely noted by any party authorized to file an appeal.

If a corrected resolution is issued, the initiation date remains the date of mailing indicated on the original resolution.

2. Duration.

- a. An approved administrative subdivision plan remains valid for 3 years after its initiation date.

b. An administrative subdivision plan is validated when the applicant has secured all government approvals necessary to record a plat, and a plat for all property shown on the plan has been recorded in the County Land Records.

c. Any extension of the validity period must follow the procedures of Section 4.2.H.

d. For any action taken by the Director or Board to amend a previously approved administrative subdivision plan, the Director or Board will determine, on a case-by-case basis, whether the validity period should be extended and, if so, for what duration. In making the determination, the Director or Board must consider the nature and scope of the requested amendment.

e. Failure to timely validate or extend the validity period of an administrative subdivision plan is governed by the procedures of Section 4.2.I.

G. *Revocation or Vacation of an Administrative Subdivision Plan*

1. Revocation of an administrative subdivision plan must follow the procedures of Section 4.2.J.

2. Vacation of an administrative subdivision plan must follow the procedures of Section 4.2.K.

In addition to the standard procedures and findings needed for approval, new provisions are proposed to specify circumstances under which an administrative subdivision plan must be acted upon by the Planning Board instead of the Director. Under the existing chapter, the Director may decline to take action on an administrative subdivision plan that generates significant controversy, in which case the Planning Board would act on the plan. The proposed provisions specify that the Planning Board, and not the Director, must act on administrative subdivision plans that include flag lots or lots without frontage (because of their inherently controversial nature) or plans that propose reservation of land for public use (because only the Planning Board is authorized to approve reservations).

Section 50.6.3.B Approval Procedures – Action on An Administrative Subdivision Plan

5. In making the findings required in Section 6.3.C, the Director or Board must consider the technical requirements under Section 4.3. In performing this review, the Director is authorized to perform any relevant action that is permissible to the Board under Section 4.3, except for the following:

1. Section 4.3.C.1.b, with respect to flag lots;

2. Section 4.3.C.1.c, with respect to lots without frontage on a public or private road; and

3. Section 4.3.D.5, with respect to reservation of land for public use.

Recommendation

Staff recommends that the Planning Board request the County Council to introduce the proposed Subdivision Regulations Amendment.

Attachments:

Attachment A: Draft SRA for introduction