COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

AN ACT to:
(1) revise the standards and process for determining the adequacy of certain public facilities with respect to applications for certain building permits;
(2) shift certain authority to determine the adequacy of certain public facilities from the Director of the Department of Permitting Services to the Planning Board;
(3) repeal certain obsolete temporary provisions regarding the process for determining the adequacy of certain public facilities; and
(4) generally amend the law regarding the issuance of building permits.

By amending
Montgomery County Code
Chapter 8 Buildings
Sections 8-30 through 8-36

Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 8-30 through 8-36 are amended as follows:

Article IV. Timely Adequate Public Facilities Determination.

8-30. Purpose; definitions.

(a) Purpose. The purpose of this Article is to avoid the premature development of land where public facilities, including transportation, are inadequate. It is intended to promote better timing of development with the provision of adequate public facilities.

(b) Definitions. In this Article, the following words and phrases have the meanings stated, unless the context clearly indicates otherwise.

(1) Development means proposed work to construct, enlarge, or alter a building for which a building permit is required. Development does not include an addition to, or renovation or [reconstruction] replacement of, an existing [structure] building if, as measured under guidelines adopted by the Planning Board for calculating numbers of vehicle trips and students [gross floor area does not increase by more than 5,000 square feet].:

(A) occupants of the [[renovated or reconstructed]] building would generate fewer than 30 total peak hour vehicle trips; or, if they would generate more than 30 trips, the total number of trips would not increase by more than 5; and

(B) the number of public school students who will live in the [[renovated or replacement]] building would not increase by more than 5.

(2) Non-residential development means any development that [is] does not [exclusively for] contain only any type of dwelling or dwelling unit (including a multiple-family building, mobile home or townhouse) [that is] as defined in Section 59-A-2 [of the
Zoning Ordinance, and any [extensions, additions] extension, addition, or accessory building.

[3] Owner means any owner of record of property as shown on the tax rolls on July 1, 1989, and includes any successors in interest prior to January 1, 1990.]

[4] Tenant means a lessee under a written lease with an owner or its agent that was executed on or before July 24, 1989 and who occupies the leased space for the conduct of its normal business operations on that date. It does not include assignees or successors in interest after July 24, 1989.]

(3) Existing building means a building that was standing and substantially occupied [[at all times]] during the 12 months before an application for a building permit for renovation or reconstruction is filed.

(4) Renovation means an interior or exterior alteration that does not affect a building’s footprint.

(5) Replacement means demolition or partial demolition of an existing building and rebuilding that building. A replacement building may exceed the footprint of the previous building.

(6) Recorded lot means any parcel, lot, or other tract of land recorded as developable property among the County land records.

[5] (7) Timely adequate public facilities determination means an adequate public facilities determination by the Planning Board that is required [as a prerequisite to the issuance of] before a building permit is issued, or is within the time limits prescribed by law for the validity of an adequate public facilities determination, or both. [It encompasses all standards and
requirements of the adequate public facilities ordinance and any
adopted growth policy, including standards for adequacy of
transportation facilities.]

[(6) Traffic mitigation agreement means an agreement executed in
accordance with Section 42A-9A of this Code.]

[(7) Transportation Director means the Director of the County
Department of Public Works and Transportation, or the Director's
designee.]

8-31. Requirement for timely adequate public facilities determination; [special
provisions for proposed non-residential development on pre-1982 recorded or
approved lots or parcels]; applicability.

(a) [Except as] As provided in subsection (b), the Director may issue a
building permit only if the Planning Board has made a timely
determination [has been made] that public facilities will be adequate to
serve the proposed development encompassed by the permit application
under:

(1) Chapter 50, if required;

(2) Chapter 59 for project plans or site plans, if required; or

(3) Section [8-34 of this article] 8-32 for development if the Planning
Board or its designee finds that a new adequate public facilities
determination is required under this Article, Section 50-20, or
other applicable law.

The [proposed] work performed after the permit is issued must conform
to the uses and amount of development for which the adequacy of
public facilities was [determined] reviewed.

(b) Applicability. This Article applies to each applicant for a building
permit on a recorded lot for which no valid finding of adequate public
facilities has been made, including any recorded lot for which an
original finding of adequate public facilities has expired.

[(b) Requirements for proposed non-residential development on pre-1982
recorded or approved lots or parcels. Until July 25, 2001, the
Department of Environmental Protection may issue a building permit,
without a timely adequate public facilities determination, for a proposed
non-residential development on a lot or parcel recorded before January
1, 1982, or otherwise recorded in conformance with a preliminary plan
of subdivision approved before January 1, 1982, that is registered under
Section 8-32, if:

(1) the proposed non-residential development does not add 50 or
more peak hour trips, in the aggregate; or

(2) the proposed non-residential development adds 50 or more peak
hour trips, in the aggregate, but:

(A) will not produce excessive congestion, as determined
under the adopted growth policy and related guidelines for
local area transportation review; or

(B) received a partial exemption from local area transportation
review requirements under Section 8-33.

A non-residential development under this paragraph that is
located in a policy area with no net remaining transportation
ceiling capacity under the annual growth policy must also be
subject to a traffic mitigation agreement executed with the
Department of Public Works and Transportation.]

[(c) Transit related projects. An applicant may satisfy local area
transportation review requirements under subsection (b), when road
improvements are not practical, by absorbing the proportional cost of
transit or ridesharing related projects that reasonably may be expected to mitigate the traffic generated by the proposed development.]

[(d) Transportation improvement cost credit. The Director of the Department of Public Works and Transportation may grant a construction cost credit in a public improvement agreement to an applicant required to provide transportation improvements to satisfy local area transportation review under subsection (b) for previously constructed public highway capacity that is unused by the original subdivision at the time of the building permit application for the proposed non-residential development. The credit must be based on the original improvement cost and must not exceed the cost at the time of construction for the unused capacity provided by the added improvements. The Planning Board must have required the original improvement to meet an adequate public facilities requirement at the time of preliminary plan of subdivision approval, as shown by the Planning Board opinion, related memoranda, or similar written documentation. The Director must not give a credit for roads inside the subdivision, roads required to provide necessary access, sidewalks, or similar improvements.]

[8-32. Registration of certain properties.]

(a) Obligation to register. Each owner of a non-residential lot or parcel recorded before January 1, 1982, or otherwise recorded in conformance with a preliminary plan of subdivision approved before January 1, 1982, must register with the planning board before January 1, 1990. The county executive, in consultation with the planning board, must provide at least 5 months notice to potentially affected property owners of the requirements of this section and the need to register. The registration
deadline may be extended, administratively, as appropriate, to accommodate transfers of property in the last two quarters of calendar year 1989, late notice, or similar circumstances.

(b) Notice. Notice must be provided to the owner of record of the property as shown on the tax rolls and, at a minimum, be provided in a manner authorized under Section 8-402 of the Tax Property Article of the Annotated Code. Notice may be provided separately or in conjunction with tax bills or statements mailed by the department of finance.

(c) Application. A registration application must include:

(1) the names and addresses of all owners of record of the property;
(2) a description of the property by tax account number, lot and block number, acres/feet and the name of subdivision, as recorded;
(3) the amount of any existing improvement in square feet and current use or uses in square feet with classification of uses by the registrant as retail, office, industrial, or other, as appropriate;
(4) the names and addresses of any tenants and the square footage occupied by each tenant;
(5) the current number of full and part-time employees of the owner and each tenant, if any, using the property; and
(6) any other information required to administer this section.

(d) Certificate; registry. Upon submission of a complete application and payment of a registration fee of $150, the planning board must provide each registrant with a certificate as a receipt of registration. The planning board must maintain a public registry of all registrants.
(e) **Effect of failure to register.** Non-residential development on a property that is not registered must receive an adequate public facilities determination under Section 8-31(a)(3).

**[8-33. Partial exemption from full compliance with local area transportation review requirements.]**

(a) An applicant may request a partial exemption from full compliance with the requirements of Section 8-31(b)(2)(i) if the proposed non-residential development:

(1) is subject to a site plan applied for or approved on or before July 24, 1989;

(2) received project plan approval on or before July 24, 1989;

(3) is the subject of a complete building permit application for foundation work only, filed on or before July 24, 1989, as determined by the Director, provided that the development is not subject to site plan or project plan approval;

(4) received an approved Washington Suburban Sanitary Commission House Connection and Plumbing Application on or before July 24, 1989;

(5) is an expansion, reconstruction or renovation of an existing non-residential development:

(i) located on the same lot or parcel as the existing development, whether or not attached;

(ii) intended to accommodate specific and defined employment and operational needs of an owner or tenant identified by registration under Section 8-32 if such owner or tenant maintains its level of occupancy in all existing buildings and will be the principal occupant of the

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proposed development. Occupancy is measured by the gross square footage used by employees of the owner or tenant in the conduct of its business. The owner or tenant must occupy at least 70% of the new building or buildings to be occupied, in the aggregate, excluding common areas for use by the public or use by occupants, at the time of initial occupancy; and

(iii) that does not involve a change in any use identified in the registration under Section 8-32; or

(6) is an expansion solely intended to accommodate specific and defined employment needs of an owner or tenant on land that is developed in combination with non-residential development of such owner or tenant that is located on an adjoining lot or parcel recorded in conformance with a preliminary plan of subdivision approved after January 1, 1982. The adjoining lots or parcels must be in common ownership on or before July 24, 1989. The expansion must not involve a change in any use identified in the registration under Section 8-32 or the leasing of space to other entities at the time of initial occupancy.

(b) (1) An applicant for an exemption under subsection (a)(1) or (a)(2) of this section may be granted an exemption only for square footage that is approved for construction by the planning board at the time that the project plan, proposed site plan or site plan is approved. The proposed development remains subject to all conditions of its regulatory approvals.

(2) An applicant for an exemption under subsection (a)(3) of this section may be granted an exemption only for square footage
covered by the foundation plans. An application remains subject to the provisions of Section 8-25(b).

(3) An applicant for an exemption under subsection (a)(4) may be granted an exemption only for square footage approved by WSSC as shown on the applicant's on-site sewer and water plan, or other appropriate WSSC documentation.

(c) (1) An exemption must be granted to an applicant eligible under subsection (a) if the applicant constructs or contributes to the funding of those traffic improvements necessary to compensate for the traffic congestion caused by the proposed development to the extent that the improvements are feasible.

(2) Necessary transportation improvements should be considered feasible under paragraph (1) unless:

(i) the improvement is inconsistent with the relevant master plan or plans;

(ii) engineering or safety reasons make the improvement impractical or not prudent to construct; or

(iii) the incremental cost of all improvements makes the proposed development uneconomical. For purposes of this subparagraph only, an incremental cost that exceeds 10% of the total construction cost for the development or $7 per square foot (as adjusted for inflation), whichever is less, without the transportation improvements, will be presumed to make the project uneconomical. However, an applicant may show, through clear and convincing evidence, that a lesser amount should apply in the particular case. Construction costs include all related structures and
parking facilities, as well as site work and post-design architectural and engineering supervisory services. Estimated construction costs may be calculated with reference to industry standards or other appropriate bases for estimates, as determined by the Director of the Department of Public Works and Transportation. An adjustment for inflation under this subparagraph must be calculated from the second quarter of 1989 under an appropriate construction cost index set by executive regulation.

(3) Subject to availability of funds, the County may participate in the cost of an improvement to the extent that road capacity of the improvement exceeds that needed by the proposed development. In addition, the County may participate in the cost of an improvement if the Director of the Department of Public Works and Transportation determines that the improvement is needed for safety reasons or is otherwise in the public interest. A public improvement agreement may include requirements for the escrow of funds to assure coordination of financing with the timing of construction.

(d) In considering a request for an exemption, the Director of the Department of Public Works and Transportation, Planning Board, and the Director should evaluate, as appropriate:

(1) registration and ownership information;

(2) an owner's or tenant's business or facility management plan, if any:

(3) staging plans;
layout and design;
(5) lease or financing arrangements;
(6) occupancy projections;
(7) construction costs of the applicant;
(8) market conditions and constraints;
(9) construction costs and experience of comparable projects; and
(10) any other relevant factors.

In determining whether an owner or a tenant is the same entity identified by registration, related subsidiaries, affiliates, holding companies, or the equivalent, at the time of registration for owners or on July 24, 1989 for tenants, must be treated as if they are the same entity. A successor in interest to the owner or tenant by acquisition, merger, or other transfer of a controlling interest, must be treated as if it is the same entity if it maintains the corporate name and identity of the owner or tenant in the same business at the same location.]

8-34. Administrative procedures.

(a) Initial referral of applications. [The Director must refer all applications that require a new adequate public facilities determination under Section 8-31(a)(3) or that may require local area transportation traffic review under Section 8-31(b) to the Director of the Department of Public Works and Transportation and the Planning Board. The procedures of subsections (c) through (f) apply to applications considered under either Section 8-31(a)(3) or Section 8-31(b).] The Director must refer each building permit application to which this Article applies to the designee of the Planning Board to conduct an adequate public facilities analysis for the Board’s review.
Review by other agencies. The Director must also refer each application to which this Article applies for comments on the adequacy of public facilities to:

(1) the Department of Public Works and Transportation;
(2) the Superintendent of the Montgomery County Public School System;
(3) the County Fire and Rescue Service; and
(4) the Department of Police.

Each of those agencies and departments must submit any comments on the application to the Planning Board within 30 days after receiving the application from the Director.

[b] Special procedures for review under Sec. 8-31(b).

(1) Initial Evaluation. The Planning Department of the Planning Board must evaluate all applications that may require local area transportation review under Section 8-31(b) to determine if the proposed development will add at least 50 peak hour trips and if the property is registered. If the Planning Department determines that the proposed development will not add 50 or more peak hour trips, the Planning Department must advise the Director in writing with a copy sent to the Director of the Department of Public Works and Transportation.

(2) Local Area Transportation Review. If the Planning Department determines that the property is registered and will add 50 or more peak hour trips, the applicant must prepare and submit a traffic study to the planning department using the criteria and analytical techniques required for local area transportation review.
(3) Staff Recommendations. Upon receipt of a complete traffic study, the Planning Department must send a copy to the Director of the Department of Public Works and Transportation. After reviewing the traffic study, the appropriate staff of the Planning Department and the Department of Public Works and Transportation should consult with the applicant to discuss the traffic conditions posed by the proposed development and the need for any transportation improvements. The applicant should be notified in writing, within 45 days after receiving a complete traffic study, of any transportation improvements that will be recommended by either staff.

(4) Request for Partial Exemption. Within 15 days after receiving notice that either staff will recommend transportation improvements, the applicant may request an exemption in writing, with appropriate justification, to the Planning Board and Director of the Department of Public Works and Transportation.

[(c) Preliminary recommendation of Director of the Department of Public Works and Transportation. The Director of the Department of Public Works and Transportation must submit the Director's preliminary recommendations on the application, including any request for an exemption, to the Planning Board, before the Planning Board's review under subsection (d).]

[(d)] (c) Review and finding by Planning Board.

(1) Standards and Conditions. The Planning Board [must] may consider an application for timely adequate public facilities determination [or a Section 8-31(b) review in accordance with the criteria set forth in subsection (f)(1). Planning Board
consideration may be made] as part of a site plan review under Division 59-D-3 [of the Zoning Ordinance] if site plan review is otherwise [applicable] required. The [Planning] Board may condition its [recommendation] adequacy finding on the execution of appropriate agreements with an applicant to the extent permitted for adequate public facilities determinations under subdivision or site plan [reviews] approval procedures.

(2) **Hearing Requirement.** An applicant for a building permit or other interested person must be given the opportunity for a hearing before the Board acts under this Section. [However, a] The Planning Board [decision does not constitute] finding is final agency action for purposes of judicial review.

(3) **Planning Board [Recommendation] Finding.** When the Planning Board receives all necessary information from the applicant and [the preliminary recommendation of the Director of the Department of Public Works and Transportation] reviews any comments received from other public agencies and any other person, the [Planning] Board must [make written recommendations on the application to the Director within the time required by law for preliminary plan of subdivision decisions. The Planning Board must transmit to the Director of the Department of Public Works and Transportation a copy of the Board's recommendation to the Director] find, consistent with the adopted Growth Policy, whether all applicable public facilities will be adequate to support the proposed development.

(4) The [Planning] Planning Board may establish procedures to carry out its responsibilities under this Section, including procedures to
delegate the review of certain applications to a designee of the
Board.

[(e) \textit{Final recommendation of the Director of Public Works and}
\textit{Transportation}. Within 30 days after receiving a Planning Board
recommendation under subsection (d), the Director of the Department
of Public Works and Transportation must submit a final
recommendation to the Director of Environmental Protection.]

[(f)] (d) \textit{Decision by Director.}

(1) \textit{Administrative Decision.} After receiving the [recommendations]

\textit{adequacy finding} of the Planning Board [and the Director of the
Department of Public Works and Transportation], the Director
[must decide on an application and any request for an exemption,

using the criteria of this Article, the adequate public facilities
ordinance, any adopted growth policy, and related administrative
regulations, as appropriate. The Director] may issue, deny, or

condition any permit, as appropriate, including requiring [the
execution by] the applicant [of] to \textit{execute binding agreements}

with the Planning Board [or the Department of Public Works and
Transportation].

(2) \textit{Appeal.} An applicant or other interested person may appeal the
decision of the Director [in accordance with] as provided in
Section 8-23. The Planning Board must receive notice of [all
decisions] each decision of the Director under this Section and
any appeal to the Board of Appeals. The Planning Board may
intervene, request a hearing, and otherwise participate fully in a
proceeding before the Director, the Board of Appeals, or any
court \textit{with respect to the adequacy of public facilities}. 

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[(g)] (e) **Time limit.** An adequate public facilities determination made under this Section remains valid for **not less than 5 or more than 12 years**. [[as provided]] using the standards in Section 50-20.

[8-35] [[8-33. **Penalties.**]]

The knowing submission of a false registration application or a false application for an exemption under this article is a violation of this Chapter for purposes of Section 8-22.]]

[8-36. **Regulations.**]

(a) The County Executive may adopt regulations to administer this article under method (2) including provisions governing the estimation of construction costs under Section 8-33.

(b) Prior to the granting of a transportation improvement construction cost credit under Section 8-31(d), the County Executive must adopt regulations that establish the procedures and methodology used for calculating the credit.]

**8-33, 8-34, 8-35, 8-36. Reserved.**

**Sec. 2. Transition.** Any replacement building for which a site plan application was accepted by the Planning Board before this Act became law need not comply with the requirements of Section 8-31, as amended by Section 1 of this Act, for a timely adequate public facilities determination if:

(a) the building was not required to obtain that determination before this Act took effect; and

(b) the replacement building would be less than 1,000 square feet larger than the building it would replace.
Approved:

George L. Leventhal, President, County Council

Date

3/21/06

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date

4/4/06