

Bill No. 28-05  
Concerning: Building Permits -  
Adequate Public Facilities  
Revised: 3-13-06 Draft No. 3  
Introduced: October 11, 2005  
Enacted: March 21, 2006  
Executive: April 3, 2006  
Effective: July 3, 2006  
Sunset Date: None  
Ch. 5, Laws of Mont. Co. 2006

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the Planning Board

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**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

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 8-30 through 8-36 are amended as follows:**

2                   **Article IV. Timely Adequate Public Facilities Determination.**

3           **8-30. Purpose; definitions.**

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

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

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

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

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

24           (2) *Non-residential development* means any development that [is]  
 25           does not [exclusively for] contain only any type of dwelling or  
 26           dwelling unit (including a multiple-family building, mobile home  
 7           or townhouse) [that is] as defined in Section 59-A-2 [of the

28 Zoning Ordinance], and any [extensions, additions] extension,  
 29 addition, or accessory building.

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

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

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

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

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

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

49 [(5)] (7) Timely adequate public facilities determination means an  
 50 adequate public facilities determination by the Planning Board  
 51 that is required [as a prerequisite to the issuance of] before a  
 52 building permit is issued, or is within the time limits prescribed  
 53 by law for the validity of an adequate public facilities  
 4 determination, or both. [It encompasses all standards and

55 requirements of the adequate public facilities ordinance and any  
56 adopted growth policy, including standards for adequacy of  
57 transportation facilities.]

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

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

63 **8-31. Requirement for timely adequate public facilities determination; [special**  
64 **provisions for proposed non-residential development on pre-1982 recorded or**  
65 **approved lots or parcels]; applicability.**

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

- 71 (1) Chapter 50, if required;
- 72 (2) Chapter 59 for project plans or site plans, if required; or
- 73 (3) Section [8-34 of this article] 8-32 for development if the Planning  
74 Board or its designee finds that a new adequate public facilities  
75 determination is required under this Article, Section 50-20, or  
76 other applicable law.

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

80 (b) Applicability. This Article applies to each applicant for a building  
81 permit on a recorded lot for which no valid finding of adequate public

82 facilities has been made, including any recorded lot for which an  
 83 original finding of adequate public facilities has expired.

84 [(b) *Requirements for proposed non-residential development on pre-1982*  
 85 *recorded or approved lots or parcels.* Until July 25, 2001, the  
 86 Department of Environmental Protection may issue a building permit,  
 87 without a timely adequate public facilities determination, for a proposed  
 88 non-residential development on a lot or parcel recorded before January  
 89 1, 1982, or otherwise recorded in conformance with a preliminary plan  
 90 of subdivision approved before January 1, 1982, that is registered under  
 91 Section 8-32, if:

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

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

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

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

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

106 [(c) *Transit related projects.* An applicant may satisfy local area  
 107 transportation review requirements under subsection (b), when road  
 108 improvements are not practical, by absorbing the proportional cost of

109 transit or ridesharing related projects that reasonably may be expected to  
110 mitigate the traffic generated by the proposed development.]

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

128 **[8-32. Registration of certain properties.**

129 (a) *Obligation to register.* Each owner of a non-residential lot or parcel  
130 recorded before January 1, 1982, or otherwise recorded in conformance  
131 with a preliminary plan of subdivision approved before January 1, 1982,  
132 must register with the planning board before January 1, 1990. The  
133 county executive, in consultation with the planning board, must provide  
134 at least 5 months notice to potentially affected property owners of the  
5 requirements of this section and the need to register. The registration

136 deadline may be extended, administratively, as appropriate, to  
137 accommodate transfers of property in the last two quarters of calendar  
138 year 1989, late notice, or similar circumstances.

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

144 (c) *Application.* A registration application must include:

145 (1) the names and addresses of all owners of record of the property;

146 (2) a description of the property by tax account number, lot and  
147 block number, acres/feet and the name of subdivision, as  
148 recorded;

9 (3) the amount of any existing improvement in square feet and  
150 current use or uses in square feet with classification of uses by the  
151 registrant as retail, office, industrial, or other, as appropriate:

152 (4) the names and addresses of any tenants and the square footage  
153 occupied by each tenant;

154 (5) the current number of full and part-time employees of the owner  
155 and each tenant, if any, using the property; and

156 (6) any other information required to administer this section.

157 (d) *Certificate; registry.* Upon submission of a complete application and  
158 payment of a registration fee of \$150, the planning board must provide  
159 each registrant with a certificate as a receipt of registration. The  
160 planning board must maintain a public registry of all registrants.

161 (e) *Effect of failure to register.* Non-residential development on a property  
 162 that is not registered must receive an adequate public facilities  
 163 determination under Section 8-31(a)(3).]

164 **[8-33. Partial exemption from full compliance with local area transportation**  
 165 **review requirements.**

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

169 (1) is subject to a site plan applied for or approved on or before July  
 170 24, 1989;

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

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

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

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

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

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



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

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

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

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

213 (2) An applicant for an exemption under subsection (a)(3) of this  
 214 section may be granted an exemption only for square footage

215 covered by the foundation plans. An application remains subject  
 216 to the provisions of Section 8-25(b).

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

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

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

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

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

232 (iii) the incremental cost of all improvements makes the  
 233 proposed development uneconomical. For purposes of this  
 234 subparagraph only, an incremental cost that exceeds 10%  
 235 of the total construction cost for the development or \$7 per  
 236 square foot (as adjusted for inflation), whichever is less,  
 237 without the transportation improvements, will be presumed  
 238 to make the project uneconomical. However, an applicant  
 239 may show, through clear and convincing evidence, that a  
 240 lesser amount should apply in the particular case.

241 Construction costs include all related structures and

242 parking facilities, as well as site work and post-design  
 243 architectural and engineering supervisory services.  
 244 Estimated construction costs may be calculated with  
 245 reference to industry standards or other appropriate bases  
 246 for estimates, as determined by the Director of the  
 247 Department of Public Works and Transportation. An  
 248 adjustment for inflation under this subparagraph must be  
 249 calculated from the second quarter of 1989 under an  
 250 appropriate construction cost index set by executive  
 251 regulation.

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

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

- 265 (1) registration and ownership information;
- 266 (2) an owner's or tenant's business or facility management plan, if  
 267 any;
- .8 (3) staging plans;

- 269 (4) layout and design;  
 270 (5) lease or financing arrangements;  
 271 (6) occupancy projections;  
 272 (7) construction costs of the applicant;  
 273 (8) market conditions and constraints;  
 274 (9) construction costs and experience of comparable projects; and  
 275 (10) any other relevant factors.

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

284 **[8-34] 8-32. Administrative procedures.**

285 (a) *Initial referral of applications.* [The Director must refer all applications  
 286 that require a new adequate public facilities determination under Section  
 287 8-31(a)(3) or that may require local area transportation traffic review  
 288 under Section 8-31(b) to the Director of the Department of Public  
 289 Works and Transportation and the Planning Board. The procedures of  
 290 subsections (c) through (f) apply to applications considered under either  
 291 Section 8-31(a)(3) or Section 8-31(b).] The Director must refer each  
 292 building permit application to which this Article applies to the designee  
 293 of the Planning Board to conduct an adequate public facilities analysis  
 294 for the Board's review.

295 (b) Review by other agencies. The Director must also refer each application  
 296 to which this Article applies for comments on the adequacy of public  
 297 facilities to:

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

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

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

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

316 (2) Local Area Transportation Review. If the Planning Department  
 317 determines that the property is registered and will add 50 or more  
 318 peak hour trips, the applicant must prepare and submit a traffic  
 319 study to the planning department using the criteria and analytical  
 320 techniques required for local area transportation review.

321 (3) Staff Recommendations. Upon receipt of a complete traffic study,  
 322 the Planning Department must send a copy to the Director of the  
 323 Department of Public Works and Transportation. After reviewing  
 324 the traffic study, the appropriate staff of the Planning Department  
 325 and the Department of Public Works and Transportation should  
 326 consult with the applicant to discuss the traffic conditions posed  
 327 by the proposed development and the need for any transportation  
 328 improvements. The applicant should be notified in writing, within  
 329 45 days after receiving a complete traffic study, of any  
 330 transportation improvements that will be recommended by either  
 331 staff.

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

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

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

344 (1) *Standards and Conditions.* The Planning Board [must] may  
 345 consider an application for timely adequate public facilities  
 346 determination [or a Section 8-31(b) review in accordance with the  
 7 criteria set forth in subsection (f)(1). Planning Board

348 consideration may be made] as part of a site plan review under  
 349 Division 59-D-3 [of the Zoning Ordinance] if site plan review is  
 350 otherwise [applicable] required. The [Planning] Board may  
 351 condition its [recommendation] adequacy finding on the  
 352 execution of appropriate agreements with an applicant to the  
 353 extent permitted for adequate public facilities determinations  
 354 under subdivision or site plan [reviews] approval procedures.

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

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

373 (4) The [Planning] Planning Board may establish procedures to carry  
 374 out its responsibilities under this Section, including procedures to

375 delegate the review of certain applications to a designee of the  
 376 Board.

377 [(e) *Final recommendation of the Director of Public Works and*  
 378 *Transportation.* Within 30 days after receiving a Planning Board  
 379 recommendation under subsection (d), the Director of the Department  
 380 of Public Works and Transportation must submit a final  
 381 recommendation to the Director of Environmental Protection.]

382 [(f)] (d) *Decision by Director.*

383 (1) *Administrative Decision.* After receiving the [recommendations]  
 384 adequacy finding of the Planning Board [and the Director of the  
 385 Department of Public Works and Transportation], the Director  
 386 [must decide on an application and any request for an exemption,  
 387 using the criteria of this Article, the adequate public facilities  
 8 ordinance, any adopted growth policy, and related administrative  
 389 regulations, as appropriate. The Director] may issue, deny, or  
 390 condition any permit, as appropriate, including requiring [the  
 391 execution by] the applicant [of] to execute binding agreements  
 392 with the Planning Board [or the Department of Public Works and  
 393 Transportation].

394 (2) *Appeal.* An applicant or other interested person may appeal the  
 395 decision of the Director [in accordance with] as provided in  
 396 Section 8-23. The Planning Board must receive notice of [all  
 397 decisions] each decision of the Director under this Section and  
 398 any appeal to the Board of Appeals. The Planning Board may  
 399 intervene, request a hearing, and otherwise participate fully in a  
 400 proceeding before the Director, the Board of Appeals, or any  
 J1 court with respect to the adequacy of public facilities.



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

405    ~~[8-35]~~ ~~[[8-33.~~            **Penalties.**

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

409    ~~[8-36.~~ **Regulations.**

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

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

417    ~~8-33, 8-34, 8-35, 8-36.~~ **Reserved.**

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

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

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

426 *Approved:*

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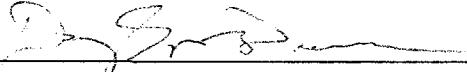
3/21/06

George L. Leventhal, President, County Council

Date

429 *Approved:*

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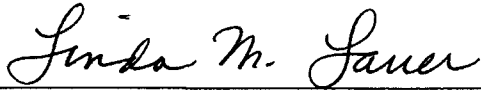
3/23/06

Douglas M. Duncan, County Executive

Date

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

432



4/4/06

Linda M. Lauer, Clerk of the Council

Date