

Ordinance No. 15-67  
Subdivision Regulation Amend. No. 05-03  
Concerning: Adequate Public Facilities  
- Validity Period  
Revised: 3-17-06 Draft No. 3  
Introduced: October 11, 2005  
Public Hearing: December 6, 2005  
Adopted: March 21, 2006  
Effective: April 10, 2006

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

---

By: Council President at the request of the Planning Board

---

**AN AMENDMENT** to the Subdivision Regulations to:

- (1) clarify the validity period of a finding of adequate public facilities by the Planning Board, and the process and standards to extend a finding of adequacy;
- (2) repeal certain temporary provisions regarding findings of adequate public facilities; and
- (3) update obsolete language and make corrective and stylistic changes.

By amending the following sections of the Montgomery County Code, Chapter 50:

Section 50-20, Limitations on issuance of building permits

Section 50-35, Preliminary subdivision plans – Approval procedure

<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>

## OPINION

Subdivision Regulation Amendment (SRA) No. 05-03 was introduced on October 11, 2005, to clarify the validity period of a finding of adequate public facilities by the Planning Board, and the process and standards to extend a finding of adequacy; repeal certain temporary provisions regarding findings of adequate public facilities; and update obsolete language and make corrective and stylistic changes.

The Montgomery County Planning Board in its report to the Council recommended that the SRA be approved with modifications.

The County Council held a public hearing on December 6, 2005, to receive testimony concerning the proposed SRA. The SRA was referred to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation.

The Committee held a worksession on March 13, 2006, to review the amendment. The Committee unanimously recommended enactment of the amendment with further amendments.

The District Council reviewed Subdivision Regulation Amendment No. 05-03 at a meeting held on March 21, 2006, and supported the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 05-03 will be approved as revised.

## 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:*

**Sec. 1. Sections 50-20 and 50-35 are amended as follows:**

**50-20. [Limitations] Limits on issuance of building permits.**

(a) ~~[[A]]~~ The Department of Permitting Services must not approve a  
 building permit ~~[[must not be approved]]~~ for the construction of a  
 dwelling or other structure, except ~~[structures or dwellings]~~ a dwelling  
or structure on a farm strictly for agricultural use, unless ~~[such]~~ the  
dwelling or structure ~~[is to]~~ would be located on a lot or parcel of land  
 which is shown on a plat recorded in the County plat books ~~[of the~~  
~~county]~~, and which has access as prescribed in ~~[Sec.]~~ Section 50-  
 29(a)(2). ~~]; provided, that such]~~ However, the Department may issue  
a building permit ~~[[may be issued]]~~ for ~~[the following]~~:

- (1) A parcel covered by an exception specified in Section 50-9 ~~[of~~  
~~this chapter]~~;
- (2) A parcel covered by a valid site plan approved ~~[no more than~~  
~~four years prior to]~~ after October 8, ~~[1985]~~ 1981, under  
 Division 59-D-3, on which construction had begun ~~[as of that~~  
~~date]~~ by October 8, 1985, or on the medical center; or
- (3) A parcel covered by a special exception approved under  
 Division 59-G-1, which was being implemented as of October  
 8, 1985.

(b) A building permit ~~[may]~~ must not be approved for the construction of  
 a dwelling or other structure, except ~~[those]~~ a dwelling or structure  
 strictly for agricultural use, which is located on more than one ~~[(1)]~~  
 lot, which crosses a lot line, which is located on the unplatted  
 remainder of a resubdivided lot, or which is located on an outlot,  
 except ~~[as follows]~~ a building permit:

- (1) [A building permit was] applied for on or before February 1, 1985[.];
- (2) [A building permit] approved after February 1, 1985, for development that crosses a lot line where a wall is located on, but not over, the lot line and there are projections for the roof, eaves, and foundation footings which project not more than 2 feet across the vertical plane of the lot line; and projections for sills, leaders, belt courses and similar ornamental features which project not more than 6 inches across the vertical plane of the lot line[.];
- (3) [A building permit may be approved] for an aboveground or [an] underground public facility or amenity that crosses the vertical plane of any lot line, as projected below grade, if shown on a CBD Zone Project Plan for optional method development, approved in accordance with the procedures of Division 59-D-2 [of the Montgomery County Code]; or if shown on a Development Plan approved in accordance with the procedures of Division 59-D-1 [of the Montgomery County Code.];
- (4) [A building permit may be approved] for an underground parking facility that crosses the vertical plane of any lot line, as projected below grade, [[and]] or extends into a public right-of-way if that extension is approved by the appropriate public agency[.];
- (5) [A building permit may be approved] for the reconstruction of a one-family dwelling that is located on [part(s)] [[all or]] part of a previously platted [lot(s)] lot, recorded by deed [prior to] before June 1, 1958, [in the event that] if the dwelling is

54 destroyed or seriously damaged by fire, flood or other natural  
55 disaster[.] or;

- 56 (6) [A building permit may be approved] for an addition to an  
57 existing one-family dwelling, a porch, deck, fence or accessory  
58 structures associated with an existing one-family dwelling  
59 located on [part(s)] [[all or]] part of a previously platted [lot(s)]  
60 lot, recorded by deed [prior to] before June 1, 1958.

- 61 (c) (1) Words and phrases used in this subsection have the meanings  
62 indicated in Section 8-30.

- 63 (2) Except as provided in [paragraph (4) of] this subsection and  
64 Article IV of Chapter 8, the Department of Permitting Services  
65 may issue a building permit [[may be issued]] only if the  
66 Planning Board has made a timely determination of the  
7 [existence of adequate] adequacy of public facilities to serve the  
68 proposed development [[has been made]] under this Chapter.  
69 [[This subsection does not apply to]] However, the Department  
70 may issue a building permit for any proposed development that  
71 is:

- 72 (A) exclusively residential on a lot or parcel recorded before  
73 July 25, 1989, or otherwise recorded in conformance  
74 with a preliminary plan of subdivision approved before  
75 that date; or  
76 (B) otherwise exempt from the requirement for determining  
77 adequacy of public facilities before a preliminary plan of  
78 subdivision is approved.

- 79 (3) A determination of adequate public facilities made under this  
80 Chapter is timely and remains valid:

81 [(i)] (A) For [twelve (12)] 12 years [from] after the date of  
 82 preliminary plan approval for [plans] any plan approved  
 83 on or after July 25, 1989, but before October 19, 1999[.];  
 84 [However, an adequate public facilities determination for  
 85 an exclusively residential subdivision remains valid after  
 86 twelve (12) years if fifty (50) percent of the entire  
 87 subdivision has received building permits and the  
 88 developer submits a letter of intent to develop the  
 89 remainder by a specified date;]

90 [(ii) Until July 25, 2001, for a preliminary plan of subdivision  
 91 that allows nonresidential development which was  
 92 approved on or after January 1, 1982, but before July 25,  
 93 1989;] and

94 [(iii)] (B) For no less than 5 and no more than 12 years, as  
 95 determined by the Planning Board at the time of  
 96 subdivision, for [projects] any plan approved on or after  
 97 October 19, 1999.

98 (4) The Planning Board may extend a determination of adequate  
 99 public facilities for an exclusively residential subdivision  
 100 beyond the otherwise applicable validity period if the  
 101 Department has issued building permits for at least 50 percent  
 102 of the entire subdivision [[has received building permits]]  
 103 before the application for extension is filed. The Board may  
 104 approve one or more extensions if the aggregate length of all  
 105 extensions for the development do not exceed:

106 (A) 2½ years for a subdivision with an original validity  
 107 period of 5 years; or

(B) 6 years for a subdivision with an original validity period  
longer than 5 years.

[(iv)] (5) The Planning Board may extend a determination of adequate  
 public facilities for a preliminary plan of subdivision [that  
 allows] for nonresidential development [may be extended by  
the Planning Board] beyond the otherwise applicable validity  
[periods in (i), (ii) and (iii)] period if:

(A) [At] at least [forth percent (40%)] 40% of the approved  
 development has been built, is under construction, or  
 building permits have been issued, such that the  
 cumulative amount of development will meet or exceed  
 [the percentage requirement of this paragraph] 40%;

(B) [All] all of the infrastructure required by the conditions  
 of the original preliminary plan approval has been  
 constructed, or payments for its construction have been  
 made; and

(C) [The] the development is an "active" project, [as  
 demonstrated by] meaning that either occupancy permits  
have been issued or a final building permit inspection has  
been passed for at least 10 percent of the project [having  
 been completed] within the [last four] 4 years before an  
 extension request is [made] filed, or occupancy permits  
have been issued for at least 5 percent of the project  
 [having been completed] within the [last] 4 years before  
 an extension request is [made,] filed if 60 percent of the  
 project has been built or is under construction. If  
occupancy permits are not typically issued for the type of

development for which an extension is requested, a part  
of the development can be treated as complete when its  
final inspection has been approved. The Board may treat  
a building as complete even if occupancy permits have  
been issued for only part the building.

[(v)] (6) For any development [projects consisting] that consists of  
more than one preliminary plan, the requirements in [(iv) (A)  
through (C) above] paragraph (5) apply to the combined  
project. A project consists of more than one preliminary plan if  
the properties covered by the preliminary plans of subdivision  
are contiguous and:

- (A) were owned or controlled by the same applicant at the  
time of subdivision, and approved contemporaneously, or
- (B) were owned or controlled by different applicants at the  
time of subdivision, but covered by a single approved  
comprehensive design plan [approved by the Planning  
Board].

[(vi)] (7) Submittal and review requirements for extensions of  
[[adequacy]] adequate public facilities determinations.

- (A) A new development schedule or phasing plan for  
completion of the project must be submitted to the  
Planning Board for approval;
- (B) [No] no additional development beyond the amount  
approved in the determination of adequate public  
facilities for the preliminary plan of subdivision may be  
proposed or approved;



(C) [No] no additional public improvements or other conditions beyond those required for the original preliminary plan may be required by the Planning Board; and

[(D) If the preliminary plan is for a development project located in an area that is subject to a moratorium under the Annual Growth Policy, a traffic mitigation program must be in place, or the project must otherwise be subject to existing traffic mitigation requirements of the Code.]

[(E)] (D) [An] an application for an extension must be filed with the Planning Board before [the expiration of] the validity period for which the extension is requested has expired.

4 [(vii)] (8) The length of [the] any extension of the validity period, or  
 175 all extensions taken together if more than one extension is  
 176 allowed, under [(iv) above] paragraph (5) must be based on the  
 177 approved new development schedule under [(vi) (A) above]  
 178 paragraph 7(A), but must not exceed 2 ½ years for [projects up  
 179 to] any development with less than 150,000 square feet, or 6  
 180 years for [projects] any development with 150,000 square feet  
 181 or greater. The extension expires if the development is not  
 182 proceeding in accordance with the phasing plan[, ] unless the  
 183 Board has approved a revision to the schedule or phasing plan  
 184 [is approved by the Planning Board].

185 (9) The Planning Board may approve one or more additional  
 186 extensions of a determination of adequate public facilities, up to

the time period allowed under paragraph (8), beyond any extension allowed under paragraph (5), if:

- (A) no more than 30% remains to be built of either the entire approved development or the share of the development to be built by that applicant; or
- (B) the applicant will commit to reduce the amount of unbuilt development by at least 10%, and the validity period for the amount to be reduced will expire as scheduled.

(10) The Planning Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period if the Board finds that:

- (A) the preliminary subdivision plan for the development required a significant commitment of funds by the applicant, amounting to at least \$2,500,000, to comply with specified infrastructure conditions;
- (B) the applicant has met or exceeded the required infrastructure conditions during the original validity period; and
- (C) the applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable master or sector plan.

[(viii)] [(9)] (11) [An] The Board may approve an amendment to the new development schedule approved under [subsection (vi) (A)] paragraph 7(A) [may be approved by the Planning Board] if [documentation is provided to show] the applicant shows that financing has been secured for either:

[(1)] (A) completion of at lease one new building in the next stage of the amended development schedule; or

[(2)] (B) completion of infrastructure required to serve the next stage of the amended development schedule.

**[(4) Paragraph (2) of this subsection does not apply to:**

(i) Proposed development that is exclusively residential on a lot or parcel recorded before July 25, 1989, or otherwise recorded in conformance with a preliminary plan of subdivision approved before that date;

(ii) Proposed development that is otherwise exempted from the requirement for adequate public facilities for preliminary plan of subdivision approval under this chapter or other law; and

(iii) Proposed nonresidential development on a lot or parcel recorded before January 1, 1982, or otherwise in conformance with a preliminary plan of subdivision approved before January 1, 1982, if it is registered and otherwise satisfies the requirements of article IV of chapter 8. On or after July 25, 2001, a new adequate public facilities determination is required.]

**[[ (10) ]]** (12) The validity period of a finding of adequate public facilities is not automatically extended under any circumstance, including when an applicant has completed all conditions imposed by the Planning Board at the time of preliminary plan approval to meet adequate public facilities requirements.

239           ~~[(5)]~~ ~~[[ (11) ]]~~ (13) If a new adequate public facilities determination is  
 240                               required under this subsection, the procedures [set forth] in  
 241                               Section ~~[[8-34]]~~ 8-32 apply.

242   **50-35.       Preliminary subdivision plans - Approval procedure.**

243                               \*       \*       \*

244           (h)   Duration of Validity Period and Actions Required to Validate the  
 245                               Plan.

246           (1)   Initiation Date. For preliminary plans the initiation date for  
 247                               commencing the period during which time a plan must be  
 248                               validated~~[[,]]~~ is the later of:

249           ~~[[a.]]~~ (A)   30 days from the date of mailing of the written  
 250                               opinion, as such date is printed on the opinion; or

251           ~~[[b.]]~~ (B)   ~~[[in the event]]~~ if an administrative appeal is  
 252                               timely noted by any party authorized to take an appeal,  
 253                               the date upon which the court having final jurisdiction  
 254                               acts, including the running of any further applicable  
 255                               appeal periods.

256           (2)   Duration of Validity Period.

257           ~~[[a.]]~~ (A)   An approved preliminary plan for a single phase  
 258                               project remains valid for 36 months from its Initiation  
 259                               Date. ~~[[Prior to the expiration of]]~~ Before the validity  
 260                               period expires, the applicant must have secured all  
 261                               governmental approvals necessary as condition precedent  
 262                               for plat recordation and a final record plat for all property  
 263                               delineated on the approved preliminary plan ~~[[has]]~~ must  
 264                               have been recorded among the ~~[[Montgomery]]~~ County  
 265                               Land Records.

266                    [[b.]] (B)     An approved preliminary plan for a multi-phase  
 267                    project remains valid for the period of time established in  
 268                    the phasing schedule approved by the Planning Board.  
 269                    Each phase must be assigned a validity period, the  
 270                    duration of which must be proposed by the applicant as  
 271                    part of an application for preliminary plan approval or an  
 272                    application for preliminary plan revision or amendment,  
 273                    reviewed by staff, and approved on a case-by-case basis  
 274                    by the Planning Board, after [[giving consideration to]]  
 275                    considering such factors as the size, type, and location of  
 276                    the project. The time allocated to a phase must not  
 277                    exceed 36 months from the initiation date associated with  
 278                    that particular phase. The cumulative validity period of  
 9                    all phases may not exceed the APFO validity period  
 280                    which runs from the date of the initial preliminary plan  
 281                    approval including any extensions granted [[pursuant to]]  
 282                    under Section 50-20(c)[[ (3)(iv) ]] (5). Validation of a  
 283                    preliminary plan for a phase occurs upon the recordation  
 284                    of a final record plat for all property delineated in that  
 285                    particular phase of the approved preliminary plan.

286                    [[c.]] (C)     The applicant must propose a phasing schedule  
 287                    before the Planning Board acts on the preliminary plan or  
 288                    site plan, if applicable.

289                    (3)     Extension of Validity Period.

290                    [[a.]] (A)     A request to extend the validity period of an  
 291                    approved preliminary plan that does not contain a  
 292                    phasing schedule must be submitted in writing and

received by the Planning Board ~~[[prior to]]~~ before the previously established validity period ~~[[expiration]]~~ expires. The written submission must specify in detail all grounds and reasons purported by the applicant to support the extension request and must include a declaration that states the anticipated date for validating the plan. The applicant ~~[[will]]~~ must certify that the requested extension is the minimum additional time required for validation.

~~[[b.]]~~ (B) The failure to submit a detailed, written request in a timely fashion voids all non-validated portions of the preliminary plan and, where applicable, an approved site plan ~~[[approval]]~~.

~~[[c.]]~~ (C) ~~[[In instances where]]~~ If a preliminary plan has been allowed to expire due to applicant's failure to file a timely request for an extension, the Board on a case-by-case basis in unusual situations may require submission and approval of a new plan, including a new APFO review; or, where practical difficulty or undue hardship is demonstrated by the applicant, may reinstate an expired plan and establish a new validity period for the plan. The Board, when considering a request to extend an otherwise expired plan, may require the applicant to secure a new APFO review and approval by the Board, as a prerequisite or condition of its action to validate and extend the expired plan. Only the Planning Board is authorized to extend the validity period.

320                    [[d.]] (D)    Grounds for Extension of the Validity Period of a  
 321                    Preliminary Plan. The Planning Board may only grant a  
 322                    request to extend the validity period of a preliminary plan  
 323                    if the Board is persuaded that:

324                    i.        delays, subsequent to the plan approval by the  
 325                    government or some other party, essential to the  
 326                    applicant's ability to perform terms or conditions  
 327                    of the plan approval, have materially prevented  
 328                    applicant from validating the plan, provided such  
 329                    delays are not created or facilitated by the  
 330                    applicant; or

331                    ii.       the occurrence of significant, unusual, and  
 332                    unanticipated events, beyond applicant's control  
 3                    and not facilitated or created by applicant, have  
 334                    substantially impaired applicant's ability to  
 335                    validate its plan and that exceptional or undue  
 336                    hardship (as evidenced, in part, by the efforts  
 337                    undertaken by applicant to implement the terms  
 338                    and conditions of the plan approval in order to  
 339                    validate its plan) would result to applicant if the  
 340                    plan were not extended.

341                    The Planning Board, in considering a request for  
 342                    an extension, may condition the grant of an  
 343                    extension on a requirement that the applicant  
 344                    revise its plan to conform with changes to  
 345                    applicable laws or regulations [[that may have  
 6                    occurred]] since [[the time of]] the plan [[approval

347 and]] was approved that are intended to [[have  
348 application]] apply to the project.

349 The Planning Board, in considering a request for  
350 an extension, may deny the request if it [[is  
351 persuaded]] finds that the project, as approved and  
352 conditioned, is no longer viable. In considering  
353 the viability of a project, the Board must consider  
354 such factors as whether the project is capable of  
355 being financed, constructed, and marketed within a  
356 reasonable time frame and demonstrated by the  
357 applicant upon request by the Planning Board or its  
358 staff.

359 The Planning Board must determine whether a  
360 request for an extension should be granted after  
361 public hearings for which notice was duly given.

362 The requirements for noticing and conducting a  
363 public hearing must follow the requirements for  
364 reviewing a preliminary plan.

365 The applicant bears the burden of establishing the  
366 grounds in support of the requested extension.

367 [[There should be no presumption by the]] An  
368 applicant must not presume that the Board will  
369 approve an extension [[will be granted by the  
370 Planning Board]].

371 If voting to approve an extension, the Board may  
372 only grant such minimal time it determines to be  
373 necessary for the applicant to validate its plan. The



Board ~~[[will]]~~ must not grant an extension to a preliminary plan which has the effect of carrying the plan's validity period beyond any established APFO validity period, unless otherwise allowed by law. An applicant may request, and the Board may approve, one or more extensions. Once a phasing schedule is approved by the Planning Board as part of a preliminary plan approval, any revision or alteration to the schedule other than an amendment ~~[[pursuant to]]~~ approved under Section 50-20(c)~~[[3)(vi) will]]~~ (7) must not be ~~[[administered]]~~ treated as a request for extension, but ~~[[must be accomplished]]~~ rather as an amendment or revision to the preliminary plan. Planning Board approval of a revised phasing schedule may have the effect of extending the validity period.

~~[[e.]]~~ (E) Effect of Failure to Timely Validate Plan or Secure an Extension.

- (i) If a preliminary plan is not timely implemented in whole or in part prior to the expiration of the validity period, the remaining portion of such plan not then validated also expires. Similarly, the failure on the part of an applicant to timely validate a phase, in whole or part, voids the balance of the preliminary plan approval for that phase and all subsequent phases not yet validated.

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

(iii) If a preliminary plan or portion thereof is not timely validated, any APFO determination made by the Planning Board associated with the expired portion of the preliminary plan also expires. In such event the applicant loses any further rights to claim any trips associated with the expired APFO approval. The filing of a new preliminary plan would not lay the basis for reclaiming trips lost by the termination of the APFO approval.

(iv) A project plan that is not timely validated may also cause a preliminary plan approval conditionally linked to such project plan approval to simultaneously expire.

(4) Affect of a Preliminary Plan Amendment or Revision on Validity Period. An amendment or revision to an approved preliminary plan ~~[[will]]~~ must affect the established validity period for the preliminary plan as provided ~~[[for]]~~ in Section 59-D-2.6.

\* \* \*

427 (k) *Adequate public facilities.* [A] The Planning Board must not approve  
 428 a preliminary plan of subdivision [must not be approved] unless the  
 429 [Planning] Board [determines] finds that public facilities will be  
 430 adequate to support and service the area of the proposed subdivision.  
 431 Public facilities and services to be examined for adequacy [will]  
 432 include roads and public transportation facilities, sewerage and water  
 433 service, schools, police stations, firehouses, and health clinics.

434 (1) Periodically the [District] County Council [will] must establish  
 435 by resolution, after public hearing, guidelines [for the  
 436 determination of] to determine the adequacy of public facilities  
 437 and services. [An annual] A growth policy periodically  
 438 approved by the County Council may serve this purpose if it  
 439 contains those guidelines. To provide the basis for the  
 440 guidelines, the [Planning] Board and the County Executive  
 441 must provide the following information and recommendations  
 442 to the Council [as follows]:

443 [a.] (A) The [Planning] Board must [prepare an analysis of]  
 444 analyze current growth and the amount of additional  
 445 growth that can be accommodated by future public  
 446 facilities and services. The [Planning] Board must also  
 447 recommend any changes in preliminary plan approval  
 448 criteria it finds appropriate in the light of its experience  
 449 in administering [these regulations] this Chapter.

450 [b.] (B) The [County] Executive must comment on the Board's  
 451 analyses and recommendations [of the Planning Board]  
 452 and [must] recommend criteria [for the determination of]

453                    to determine the adequacy of public facilities [as the  
454                    executive deems appropriate].

455            (2)    [The] Each applicant for a preliminary plan of subdivision  
456                    must, at the request of the [Planning] Board, submit sufficient  
457                    information [and data] on the proposed subdivision to  
458                    demonstrate the expected impact on and use of public facilities  
459                    and services by [possible uses] occupants of [said] the  
460                    subdivision.

461            (3)    The [Planning] Board must submit [the] each proposed  
462                    preliminary plan of subdivision to the [County] Executive in  
463                    addition to the agencies specified in [Section 50-35] subsection  
464                    (a).

465            (4)    The [Planning] Board must consider the recommendations of  
466                    the [County] Executive and other agencies in determining the  
467                    adequacy of public facilities and services in accordance with  
468                    the [guidelines and limitations established by the County  
469                    Council in its annual] growth policy [or established by  
470                    resolution of the District Council after public hearing] or other  
471                    applicable guidelines.

472            [(5)    Until such time as the annual growth policy or resolution of the  
473                    District Council provides guidelines and limitations for the  
474                    determination of the adequacy of public facilities and services,  
475                    public facilities may be determined to be adequate to service a  
476                    tract of land or an affected area when the following conditions  
477                    are found to exist:

478                    a.        The tract or area will be adequately served by roads and  
479                    public transportation facilities. The area or tract to be

subdivided shall be deemed adequately served by roads and public transportation facilities if, after taking into account traffic generated by all approved subdivisions and the subject subdivision, the following conditions will be satisfied:

- (i) For the geographic area in which the proposed subdivision is located, an acceptable average peak-hour level of service will result from:
  1. Existing publicly maintained all-weather roads;
  2. Additional roads programmed in the current adopted capital improvements program of the County or the Maryland consolidated transportation program, for which one hundred (100) percent of the expenditures for construction are estimated to occur in the first four (4) years of the program; and
  3. Available or programmed public bus, rail, or other public or private form of mass transportation.
- (ii) For intersections or links significantly affected by traffic from the subject subdivision, an acceptable peak hour level of service will result from:
  1. Existing publicly maintained all-weather roads;
  2. Additional roads identified on the approved road program published by the County Executive; and
  3. Available or programmed public bus, rail, or other form of mass transportation.
- (iii) For the purposes of subsection (ii) above, the County Executive shall publish periodically an approved road

507 program which shall list all roads programmed in the  
508 current adopted capital improvements program and the  
509 Maryland consolidated transportation program for which:

- 510 1. In the case of the capital improvements program,  
511 one hundred (100) percent of the funds have been  
512 appropriated for construction costs; and  
513 2. The County Executive has determined that construction  
514 will begin within two (2) years of the effective date of the  
515 approved road program.

- 516 (iv) For the purposes of subsections (i) and (iii) above, roads  
517 required under Section 302 of the Charter to be  
518 authorized by law are not considered programmed until  
519 they are finally approved in accordance with Section 20-  
520 1 of this Code.

- 521 (v) Any parcel zoned for light industrial use (I-1) which has  
522 been in reservation for public use pursuant to action of  
523 the Montgomery County Planning Board at any time  
524 since June 1, 1981, and which has not changed in size or  
525 shape since June 1, 1958, will not be subject to the above  
526 subsection (a) if a preliminary plan was submitted prior  
527 to June 1, 1981.

- 528 b. The tract or area has adequate sewerage and water  
529 service.

- 530 (i) For a subdivision dependent upon public sewerage and  
531 water systems:

- 532 1. Said area or tract to be subdivided shall be deemed to  
533 have adequate sewerage and water service if located

within an area in which water and sewer service is presently available, under construction, or designated by the County Council for extension of water and sewer service within the first 2 years of a current approved 10-year water and sewerage plan.

2. If the area or tract to be subdivided is not situated within an area designated for service within the first 2 years of a current approved 10-year water and sewerage plan, but is within the last 8 years of such plan, it is deemed to have adequate water and sewerage service if the applicant provides community sewerage and/or water systems as set forth in Subtitle 5 of Title 9 of Article Health-Environmental of the Annotated Code of Maryland provided the installation of such facilities has been approved by the State Department of Health and Mental Hygiene, the Washington Suburban Sanitary Commission, the Health and Human Services Department, and the Montgomery County Council.

- (ii) For a subdivision dependent upon the use of septic systems: Said area or tract to be subdivided shall be deemed to have adequate sewerage service if development with the use of septic systems is in accordance with Section 50-27, or regulations published by the Maryland State Department of Health and Mental Hygiene pursuant to Article Health-Environmental, Annotated Code of Maryland, whichever imposes the greater or more stringent requirement.

- (iii) In its determination of the adequacy of sewerage or water service, the Planning Board shall consider the recommendation of the Washington Suburban Sanitary Commission, the capacity of trunk lines and sewerage treatment facilities and any other information presented.
- c. The tract or area is so situated as not to involve danger or injury to health, safety or general welfare. Such danger or injury may be deemed not to exist:
- (i) When physical facilities, such as police stations, firehouses and health clinics, in the service area for the preliminary subdivision plan are currently adequate or are scheduled in an adopted capital improvements program in accordance with the applicable area master plan or general plan to provide adequate and timely service to the subdivision; and
- (ii) If adequate public utility services will be available to serve the proposed subdivision; and
- (iii) When, in the case of schools, the capacity and service areas are found to be adequate according to a methodology set forth in a resolution adopted by the District Council after public hearing; provided, however, that until such resolution by the District Council takes effect, the Planning Board shall determine the adequacy of school facilities after considering the recommendations of the Superintendent of Schools.



d. Existing or proposed street access within the tract or area is adequate. Street access may be deemed adequate if the streets:

- (i) Are adequate to serve or accommodate emergency vehicles,
- (ii) Will permit the installation of public utilities and other public services,
- (iii) Are not detrimental and would not result in the inability to develop adjacent lands in conformity with sound planning practices, and
- (iv) Will not cause existing street patterns to be fragmented.]

[(6)] (5) For a proposed subdivision located in a Transportation Management District designated under Chapter 42A, Article II, if the Planning Board [determines] finds, under criteria and standards adopted by the County Council, that additional transportation facilities or traffic alleviation measures are necessary to ensure that public transportation facilities will be adequate to serve the proposed subdivision, the subdivision plan [may] must [not] be [approved unless approval is] subject to the execution of a traffic mitigation agreement.

[(7)] (6) [Exemptions. Places] This subsection does not apply to any place of worship, [and residences] residence for religious staff, parish [halls, and additions to schools] hall, or addition to a school associated with [places] a place of worship[, are not subject to the provisions of section 50-35(k), "Adequate Public Facilities."].

