



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

MCPB
Item #7
2/17/11

DATE: February 7, 2011
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Area 1 *RK*
Cathy Conlon, Supervisor, DARC *CC*
FROM: Greg Russ, Functional Planning & Policy *GR*
REVIEW TYPE: Subdivision Regulation Amendment
PURPOSE: Generally amend the Subdivision Regulations to extend the standard validity period for a determination of adequate public facilities for certain developments and to extend the standard preliminary plan validity period.

SUBDIVISION REGULATION AMENDMENT: 11-01

INTRODUCED BY: Council President Ervin, Councilmember Floreen,
Council Vice President Berliner, and Councilmembers
Leventhal and Navarro

INTRODUCED DATE: January 18, 2011

PLANNING BOARD REVIEW: February 17, 2011

COUNCIL PUBLIC HEARING: March 1, 2011; 1:30pm

STAFF RECOMMENDATION Staff recommends approval as introduced of SRA 11-01 to extend the validity period for Adequate Public Facilities (APF) and Preliminary Plans. SRA 11-01 would continue the previously adopted extension of the standard minimum validity period for a determination of adequate public facilities under the subdivision regulations from 5 to 7 years and the standard minimum validity period of a preliminary subdivision plan from 3 to 5 years. SRA 09-01 (Ordinance 16-35—see Attachment 2), adopted by the County Council on March 31, 2009, provided these same extensions with a sunset two years after the effective date of the legislation, which would end on April 1, 2011. The subject SRA extends the previously adopted legislation for two more years.

The subject SRA also grants an additional 2-year automatic extension of all previously granted preliminary plan and APF approvals that remain valid as of April 1, 2011. SRA 09-01 also provided these same extensions.

Staff is in favor of the proposed limited time-frame extension of the minimum validity periods for preliminary plans and determinations of adequate public facilities, and of the additional automatic 2-year extensions for currently valid plans. As with the extensions adopted by the County Council in 2009, this would

be an important measure for assisting developers and builders during the current economic recovery period. Given the difficulty of obtaining financing coupled with the market slowdown, developers with approved plans would otherwise have to apply for extensions for which they might not be found eligible (economic feasibility is not considered a valid reason) or they might have to build or pay for costly infrastructure or pay for a new traffic study to obtain an APF extension. The SRA allows developers and builders to avoid these extra steps and costs as the economy and lending market recover.

BACKGROUND/ANALYSIS

Requirements (absent the extensions previously approved under Ordinance No. 16-35)

In Montgomery County, proposed development is tested for the adequacy of public facilities that will serve that development. Typically, the testing occurs at the time of the Planning Board's review of a preliminary plan of subdivision. Chapter 50 of the Montgomery County Code addresses the testing for adequate public facilities, as does the Growth Policy resolution adopted by the County Council every two years.

When the Planning Board finds that public facilities are adequate to support a subdivision, the finding has a limited validity period. Prior to July 25, 1989, there were no time limits on a finding of adequate public facilities. From July 25, 1989 until October 19, 1999, the time limit was 12 years. Beginning October 19, 1999, the time limits were changed to no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision. Beginning August 1, 2007, the time limits were changed to no less than 5 and no more than 10 years, as determined by the Planning Board at the time of subdivision.

Section 20 of Chapter 50 contains the language setting the time limits of a finding for adequate public facilities by the Planning Board. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the validity period for a finding of adequate public facilities. All building permits for a development must be issued within these time limits, or a new test for adequate public facilities must be done.

Chapter 50 also establishes time limits for the validity of the Planning Board's approval of a preliminary plan of subdivision. Prior to the temporary extension granted under Ordinance No. 16-35, an approved preliminary plan for a single phase project remained valid for 3 years from its Initiation Date, which is 30 days from the date of mailing of the Planning Board's written opinion. Before the validity period expired, a final record plat for all property delineated on the approved preliminary plan must have been recorded among the County Land Records. An approved preliminary plan for a multi-phase project remained valid for the period of time established in a phasing schedule approved by the

Planning Board. The validity period for each phase could not exceed 3 years from the Initiation Date of the preliminary plan. Validation of a preliminary plan for a phase occurs upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

Section 35 of Chapter 50 contains the language setting the time limits for the preliminary plan validity period. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the preliminary plan validity.

As introduced in SRA 11-01 (consistent with the language as adopted in Ordinance No. 16-35), the proposed legislation would extend the standard validity period for a determination of adequate public facilities under the subdivision regulations from a minimum of 5 years and maximum of 10, to 7 and 12 years, respectively. The standard validity period of a preliminary subdivision plan would be extended from 3 to 5 years. Finally, the validity periods for all currently approved and valid preliminary subdivision plans and APF determinations would be automatically extended by 2 years. Staff supports these proposed measures during the current economic recovery period.

CC/GR

Attachments

1. Proposed SRA No. 11-01
2. Ordinance No. 16-35

ATTACHMENT 1

Ordinance No. _____
Subdivision Regulation Amend. No. 11-01
Concerning: Adequate Public Facilities –
Preliminary Subdivision Plans –
Validity Period
Revised: 01/07/11 Draft No. 2
Introduced: January 18, 2011
Public Hearing: _____
Adopted: _____
Effective: _____

**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 Ervin, Councilmember Floreen, Council Vice President Berliner, and
Councilmembers Leventhal and Navarro

AN AMENDMENT to:

- (1) extend the validity period for a determination of adequate public facilities for certain developments;
- (2) extend the validity period for certain preliminary subdivision plans; and
- (3) otherwise revise the validity period for certain developments.

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Sections 50-20 and 50-35

Boldface	<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>

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. Section 50-20 and Section 50-35 are amended as follows:

50-20. Limits on issuance of building permits.

* * *

(c) * * *

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

(i) for 12 years after the preliminary plan is approved for any plan approved on or after July 25, 1989, but before October 19, 1999;

(ii) for no less than 5 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after October 19, 1999, but before August 1, 2007;

(iii) for no less than 7 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after April 1, 2009, but before April 1, [2011] 2013; and

(iv) for no less than 5 and no more than 10 years after the preliminary plan is approved, as determined by the Board at the time of approval, for any plan

23 approved on or after August 1, 2007, and before
24 April 1, 2009, or on or after April 1, [2011] 2013.

25 * * *

26 (4) The Planning Board may extend a determination of adequate
27 public facilities for an exclusively residential subdivision
28 beyond the otherwise applicable validity period if the
29 Department has issued building permits for at least 50 percent
30 of the entire subdivision before the application for extension is
31 filed. The Board may approve one or more extensions if the
32 aggregate length of all extensions for the development do not
33 exceed:

34 (A) for a preliminary plan approved before April 1, 2009, or
35 on or after April 1, [2011] 2013:

36 (i) 2½ years for a subdivision with an original validity
37 period of 5 years; or

38 (ii) 6 years for a subdivision with an original validity
39 period longer than 5 years; and

40 (B) for a preliminary plan approved on or after April 1, 2009,
41 and before April 1, [2011] 2013:

42 (i) 2½ years for a subdivision with an original validity
43 period of 7 years; or

44 (ii) 6 years for a subdivision with an original validity
45 period longer than 7 years.

46 * * *

47 **50-35. Preliminary subdivision plans-Approval procedure.**

48 * * *

49 (h) *Duration of Validity Period and Actions Required to Validate the Plan.*

50 * * *

51 (2) *Duration of Validity Period.*

52 (A) An approved preliminary plan for a single phase project
53 remains valid for 60 months after its Initiation Date for any
54 preliminary plan approved on or after April 1, 2009, but
55 before April 1, [2011] 2013, and for 36 months after its
56 Initiation Date for any preliminary plan approved on or
57 after April 1, [2011] 2013. Before the validity period
58 expires, the applicant must have secured all government
59 approvals necessary to record a plat, and a final record plat
60 for all property delineated on the approved preliminary
61 plan must have been recorded in the County land records.

62 (B) An approved preliminary plan for a multi-phase project
63 remains valid for the period of time allowed in the phasing
64 schedule approved by the Planning Board. [Each phase
65 must be assigned] The Planning Board must assign each
66 phase a validity period on a case-by-case basis, the
67 duration of which [must be proposed by] the applicant
68 must propose as part of an application for preliminary plan
69 approval, [or for preliminary plan] revision, or amendment,
70 [and approved on a case-by-case basis by the Planning
71 Board,] after considering such factors as the size, type, and
72 location of the project. The time allocated to any phase
73 must not exceed 60 months after the initiation date for that
74 particular phase for any preliminary plan approved on or

75 after April 1, 2009, but before April 1, [2011] 2013, and
 76 36 months after the initiation date for that particular phase
 77 for any preliminary plan approved on or after April 1,
 78 [2011] 2013. The cumulative validity period of all phases
 79 must not exceed the APFO validity period which [runs
 80 from] begins on the date of the initial preliminary plan
 81 approval, including any extension granted under Section
 82 50-20(c)(5). A preliminary plan for a phase is validated
 83 when a final record plat for all property delineated in that
 84 phase of the approved preliminary plan is recorded in the
 85 County land records.

86 * * *

87 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2011.

88 **Sec. 3. Automatic Extensions.**

89 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the
 90 validity period of any determination of adequate public facilities that
 91 was valid on March 31, 2009, or for which a timely application for an
 92 extension of the validity period was pending on March 31, 2009, is
 93 automatically extended for 4 years after the date when the validity
 94 period would otherwise have expired. This 4-year extension includes
 95 any extension granted automatically by Ordinance 16-35 and must be
 96 treated for all purposes as part of the validity period that was extended.

97 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
 98 validity period of any preliminary subdivision plan that was valid on
 99 March 31, 2009, or for which a timely application for an extension of
 100 the validity period was pending on March 31, 2009, including any

101 separate phase of a multi-phase plan, is automatically extended for 4
102 years after the date when the validity period would otherwise have
103 expired. This 4-year extension includes any extension granted
104 automatically by Ordinance 16-35 and must be treated for all purposes
105 as part of the validity period that was extended.

106 (c) Notwithstanding any provision of Section 50-20(c) to the contrary, the
107 validity period of any determination of adequate public facilities that
108 was valid on March 31, 2011, or for which a timely application for an
109 extension of the validity period was pending on March 31, 2011, is
110 automatically extended for 2 years after the date when the validity
111 period would otherwise have expired. This 2-year extension must be
112 treated for all purposes as part of the validity period that was extended.

113 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
114 validity period of any preliminary subdivision plan that was valid on
115 March 31, 2011, or for which a timely application for an extension of
116 the validity period was pending on March 31, 2011, including any
117 separate phase of a multi-phase plan, is automatically extended for 2
118 years after the date when the validity period would otherwise have
119 expired. This 2-year extension must be treated for all purposes as part
120 of the validity period that was extended.

121 *Approved:*

122

123 _____
Isiah Leggett, County Executive Date

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

125

126 _____
Linda M. Lauer, Clerk of the Council Date

CORRECTED COPY

Ordinance No. 16-35
 Subdivision Regulation Amend. No. 09-01
 Concerning: Adequate Public Facilities-
Preliminary subdivision plans -
 Validity Period
 Revised: 3-25-09 Draft No. 4
 Introduced: February 10, 2009
 Public Hearing: March 17, 2009
 Adopted: March 31, 2009
 Effective: April 1, 2009

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 County Executive

AN AMENDMENT to:

- (1) extend the validity period for a determination of adequate public facilities for certain developments;
- (2) extend the validity period for certain preliminary subdivision plans; and
- ~~[(2)]~~ (3) otherwise revise the validity period for certain developments.

By amending

Montgomery County Code
 Chapter 50, Subdivision of Land
~~[[Section]]~~ Sections 50-20 and 50-35

Boldface	<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>

10 ~~[(B)]~~ (ii) ~~[[For]]~~ for no less than ~~[5]~~ ~~[[Z]]~~ 5 and no more
11 than 12 years after the preliminary plan is
12 approved, as determined by the Planning Board at
13 the time of approval, for any plan approved on or
14 after October 19, 1999, but before August 1, 2007;
15 ~~[[and]]~~

16 (iii) for no less than 7 and no more than 12 years after
17 the preliminary plan is approved, as determined by
18 the Planning Board at the time of approval, for any
19 plan approved on or after April 1, 2009, but before
20 April 1, 2011; and

21 ~~[(C)]~~ (iv) ~~[[For]]~~ for no less than ~~[5]~~ ~~[[Z]]~~ 5 and no
22 more than 10 years after the preliminary plan is
23 approved, as determined by the Board at the time
24 of approval, for any plan approved on or after
25 August 1, 2007, and before April 1, 2009, or on or
26 after April 1, 2011. ~~[[If an applicant requests a~~
27 validity period that is longer than ~~[5]~~ 7 years, the
28 applicant must submit a development schedule or
29 phasing plan for completion of the project to the
30 Board for its approval. At a minimum, the
31 proposed development schedule or phasing plan
32 must show the minimum percentage of the project
33 that the applicant expects to complete in the first
34 ~~[5]~~ 7 years after the preliminary plan is approved.

35 To allow a validity period longer than [5] 7 years,
36 the Board must find that the extended validity
37 period would promote the public interest. The
38 Board may condition a validity period longer than
39 [5] 7 years on adherence to the proposed
40 development schedule or phasing plan, and may
41 impose other transportation improvement or
42 mitigation conditions if those conditions are
43 needed to assure adequate levels of transportation
44 service during the validity period.]]

45 (B) If an applicant requests a validity period that is longer
46 than the minimum specified in this paragraph, the
47 applicant must submit a development schedule or phasing
48 plan for completion of the project to the Board for its
49 approval. At a minimum, the proposed development
50 schedule or phasing plan must show the minimum
51 percentage of the project that the applicant expects to
52 complete in the first 5 or 7 years, as appropriate, after the
53 preliminary plan is approved. To allow a validity period
54 longer than the minimum specified in this paragraph, the
55 Board must find that the extended validity period would
56 promote the public interest. The Board may condition a
57 validity period longer than the minimum specified in this
58 paragraph on adherence to the proposed development
59 schedule or phasing plan, and may impose other
60 transportation improvement or mitigation conditions if

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those conditions are needed to assure adequate levels of transportation service during the validity period.

[[D]] (3A) A determination of adequate public facilities made under this Chapter is timely and remains valid:

* * *

(ii) The Board must grant an application to extend the validity period established under [[D](i) of]] this [[subsection]] paragraph for an additional 5 years if:

* * *

[[For any preliminary plan that was approved between January 1, 2004 and (effective date), the validity period is extended 2 years.]]

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

(A) for a preliminary plan approved before April 1, 2009, or on or after April 1, 2011:

(i) 2½ years for a subdivision with an original validity period of [5] [[7]] 5 years; or

86 ~~[(B)]~~ (ii) 6 years for a subdivision with an original
87 validity period longer than ~~[5]~~ ~~[[7]]~~ 5 years; and

88 ~~(B)~~ for a preliminary plan approved on or after April 1, 2009,
89 and before April 1, 2011:

90 (i) 2½ years for a subdivision with an original validity
91 period of 7 years; or

92 (ii) 6 years for a subdivision with an original validity
93 period longer than 7 years.

94 * * *

95 (7) ~~[[Submittal and approval requirements for]]~~ For each extension
96 of an adequate public facilities determination~~[[.]]~~:

97 (A) ~~[[The]]~~ the applicant must submit a new development
98 schedule or phasing plan for completion of the project to
99 the Board for approval;

100 (B) the applicant must not propose any additional development
101 beyond the amount approved in the original determination
102 ~~[[of adequate public facilities]]~~;

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

106 (D) the applicant must file an application for an extension with
107 the Board before the ~~[[original]]~~ applicable validity period
108 has expired; and

109 (E) the Board may require the applicant to submit a traffic
110 study to help the Board decide if the extension would
111 promote the public interest.

112 * * *

113 **50-35. Preliminary subdivision plans-Approval procedure.**

114 * * *

115 (h) *Duration of Validity Period and Actions Required to Validate the Plan.*

116 * * *

117 (2) *Duration of Validity Period.*

118 (A) An approved preliminary plan for a single phase project
119 remains valid for ~~[[36]]~~ 60 months ~~[[from]]~~ after its
120 Initiation Date for any preliminary plan approved on or
121 after April 1, 2009, but before April 1, 2011, and for 36
122 months after its Initiation Date for any preliminary plan
123 approved on or after April 1, 2011. Before the validity
124 period expires, the applicant must have secured all
125 ~~[[governmental]]~~ government approvals necessary ~~[[as~~
126 condition precedent for plat recordation]] to record a plat,
127 and a final record plat for all property delineated on the
128 approved preliminary plan must have been recorded
129 ~~[[among]]~~ in the County land records.

130 (B) An approved preliminary plan for a multi-phase project
131 remains valid for the period of time ~~[[established]]~~ allowed
132 in the phasing schedule approved by the Planning Board.
133 Each phase must be assigned a validity period, the duration
134 of which must be proposed by the applicant as part of an

135 application for preliminary plan approval or [[an
 136 application]] for preliminary plan revision or amendment,
 137 [[reviewed by staff,]] and approved on a case-by-case basis
 138 by the Planning Board, after considering such factors as
 139 the size, type, and location of the project. The time
 140 allocated to [[a]] any phase must not exceed [[36]] 60
 141 months [[from]] after the initiation date [[associated with]]
 142 for that particular phase for any preliminary plan approved
 143 on or after April 1, 2009, but before April 1, 2011, and 36
 144 months after the initiation date for that particular phase for
 145 any preliminary plan approved on or after April 1, 2011.
 146 The cumulative validity period of all phases [[may]] must
 147 not exceed the APFO validity period which runs from the
 148 date of the initial preliminary plan approval, including any
 149 [[extensions]] extension granted under Section 50-20(c)(5).
 150 [[Validation of a]] A preliminary plan for a phase [[occurs
 151 upon the recordation of]] is validated when a final record
 152 plat for all property delineated in that [[particular]] phase
 153 of the approved preliminary plan is recorded in the County
 154 land records.

155 * * *

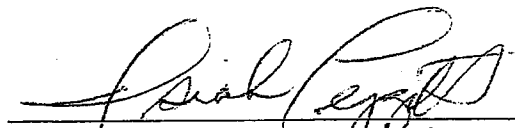
156 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2009.

157 **Sec. 3. Automatic Extensions.**

158 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the
 159 validity period of any determination of adequate public facilities that
 160 was valid on March 31, 2009, or for which a timely application for an

161 extension of the validity period was pending on March 31, 2009, is
 162 automatically extended for 2 years after the date when the validity
 163 period would otherwise have expired. This 2-year extension must be
 164 treated for all purposes as part of the validity period that was extended.
 165 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
 166 validity period of any preliminary subdivision plan that was valid on
 167 March 31, 2009, or for which a timely application for an extension of
 168 the validity period was pending on March 31, 2009, including any
 169 separate phase of a multi-phase plan, is automatically extended for 2
 170 years after the date when the validity period would otherwise have
 171 expired. This 2-year extension must be treated for all purposes as part
 172 of the validity period that was extended.

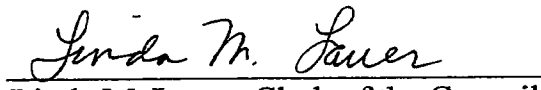
173 *Approved:*

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 176 _____
 Isiah Leggett, County Executive

April 1, 2009

 Date

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

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 180 _____
 Linda M. Lauer, Clerk of the Council

April 1, 2009

 Date