BEFORE THE MONTGOMERY COUNTY
PLANNING BOARD

Re: Administrative Subdivision No. 620190100
7025 Longwood Drive
MCPB No. 19-137 (February 6, 2020)

PETITION TO RECONSIDER

This petition to reconsider is filed in the above-captioned case through undersigned counsel on behalf of my clients, Mark G. and Ursula M. Wolfman; Jan A. J. Bove, Trustee; Jordan B Goldstein and Hillary B. Davidson; and Douglas R. and Barbara P. Rosing (the “Neighbors”). All my clients are homeowners and residents of properties in close proximity to the subdivision at issue in this case, i.e., 7025 Longwood Drive, Bethesda, Maryland 20817. All appeared in person or through counsel in writing or at the Board hearing on the subdivision application (the “Application”), on December 19, 2019. This petition is being filed with the Planning Director pursuant to Board Procedural Rule 4.12.1. to request that the Board reconsider Resolution MCPB No. 19-137, issued on February 6, 2020 (the “Resolution.”).

1 For future reference purposes, the above listing of the names of my clients reflects correction of minor typographical errors in prior written communications to the Board.

2 Under Rule 4.12.1, the petition was due 10 days after its mailing on February 6th, but February 16th being a Sunday, the filing deadline is extended to the next Business Day, i.e., February 18th. Board Rule 5.1.
The Resolution should be reconsidered because it is based on legal error that became apparent only during the hearing, as more explicitly confirmed by the Resolution. Petitioners' opposition case was premised on the expectation that the Board, though it had removed the resubdivision criteria from the Ordinance and had brought decisions on resubdivision requests within the larger framework of general subdivision approval, had nevertheless not abandoned evaluating resubdivisions (though no longer identified by that name) by the resubdivision process and criteria that, prior to the Subdivision Ordinance Rewrite, were in the Ordinance and employed by the Board in every application for resubdivision (except for lot/use categories excluded).

STATEMENT OF FACTS

Petitioners in this case relied on a process and a set of criteria that the Resolution makes unmistakably clear the Board now deems abandoned and irrelevant to a proper decision on the Application. As set forth in the Resolution (at 6), the Board’s response to Petitioners at the hearing was that “the old law is not applicable to this Application. There is no grandfathering provision, nor is there resubdivision criteria in the current and applicable law.” Petitioners’ hearing presentation was in principal part based on the belief that the Board should regard this case as controlled by its decisions in closely similar cases on nearby lots along Longwood Drive under the “old law.” But the Resolution unequivocally states that it “need not look back at old cases that were decided under laws that are no longer in effect.” Id.

Given the Board’s essentially complete rejection at the hearing of the legal foundation of Petitioners’ opposition case, I thereafter commenced an investigation of whether I had mistakenly understood what was intended by the Board when it decided to remove the subdivision criteria from the Ordinance. To that end, I determined that this decision was made at the first worksession held by the Board on the Ordinance Rewrite Project, held on March 19, 2015, and never further
discussed thereafter, either by the Board or in the various legislative work sessions held at the Council or Council Committee level prior to enactment of the Subdivision Ordinance Rewrite. Nor was I able to unearth any evidence of public comment expressing concern about the change in the course of the Rewrite process following the Board's March 19, 2015 work session.

In further investigation of this matter, I obtained from the Board the official transcript of that part of the March 19, 2015 work session wherein the Board made the decision to eliminate the resubdivision criteria from the Rewrite. I closely reviewed the transcript, noting that Commissioner Amy Presley, along with Chair Anderson, were the most active participants in the discussion. I then prevailed upon former Commissioner Presley to review the transcript and advise me of her understanding of the Board's intentions with respect to future treatment of resubdivisions in the new Ordinance. I also forwarded to her a copy of the Resolution and asked her whether the Resolution's discussion of the elimination of the resubdivision criteria from the Ordinance squared with her understanding of what the Board had done at the 2015 work session. Given her response, I requested that she execute an affidavit in support of this petition to the Board to reconsider its decision, and she agreed to do so. Her affidavit is attached to this petition.

**DISCUSSION**

A petition to reconsider is appropriate when there is an alleged error of fact or law based on "mistake, inadvertence, surprise, fraud or other good cause." Board Rule 4.12.1. In this case, I was more than "surprised" at the hearing to witness the Board's dismissive response to my detailed discussion of the legal framework I viewed as proper for deciding this case, i.e., urging the Board to follow prior Board precedents denying resubdivisions along Longwood Drive—one of them literally a stone's throw away. Indeed, it is difficult to imagine two cases involving different resubdivision requests that could be considered more indistinguishable than this case and
the 1988 Longwood Drive case know as Preliminary Plan 1-88114 – Lot 2, Block 2, 7013 Longwood Drive, which rejected a very similar flag lot resubdivision just two lots away from 7025 Longwood. Further, Petitioners established without contradiction that (a) there have been no allowed resubdivisions in the neighborhood defined in the 1988 case since then, and (b) that the one flag lot mentioned in the Resolution to justify converting 7025 Longwood into two lots, to include a flag lot, Resolution at 6, pre-existed the 1988 resubdivision application, and was not considered part of the neighborhood then, in that it fronted on Greentree Road, whereas the defined neighborhood for resubdivision analysis consisted entirely of lots fronting on Longwood Drive. In short, the legal validity of the Resolution can fairly be said to be dependent upon whether the Board was correct in concluding that the elimination of the resubdivision criteria from the new Ordinance meant that resubdivisions, though no longer known by that name, need not be judged according to those criteria and the analytical framework used to apply them.

On the question of how to judge a request to subdivide an already platted lot under the new Ordinance, former Commissioner Presley's answer is both well-informed and definitive. She first describes how resubdivision requests were analyzed and adjudicated under § 50-29(b)(2) of the old Ordinance during her eight years as a Commissioner from 2008-16, Presley Aff. ¶¶ 4-7; she then reviews the public record available regarding the Board decision to delete the resubdivision criteria from the new Ordinance while the matter was before the Board, id. ¶¶ 8-17. This is followed by her detailed explanation of how the Board arrived at a consensus on this decision at its March 19, 2015 worksession. Id. ¶¶ 18-23. Complementary to the staff's understanding of the Board consensus, i.e., that resubdivisions could be judged under the general subdivision requirements for evaluating subdivisions, id. ¶ 13, she added that
what the Board did was streamline the Ordinance in this subject area by folding the analytic process and considerations relevant to evaluating resubdivisions into the more all-encompassing term “subdivision,” doing so without materially altering how the Board intended to evaluate “resubdivisions” that no longer had that name, but were nonetheless proposals to subdivide existing platted lots, most often in established neighborhoods.

*Id.* ¶20.3

One obvious question arising from such a decision, but one the Board did not immediately address, was how to orderly implement a detailed, analytic process that was to be taken out of the statute but was to be still operative after the Ordinance was enacted. Commissioner Presley’s expectation was that the process would be reduced to writing and made a Board regulation, one that would not be needed until the new Ordinance was adopted and went into effect. But Ordinance enactment took place in 2017, well after Commissioner Presley’s second term on the Board ended.

*Id.* ¶¶ 22-24. Unbeknownst to the departed Commissioner Presley, however, no such regulation was promulgated, before or after enactment of the new Ordinance. She was similarly unaware that the Board, sometime between her departure and its hearing in the Longwood case in December 2019, had decided that the deletion of the resubdivision criteria from the Ordinance meant that there would no longer be any analytic process of defining the neighborhood, no charting of all the lots in the neighborhood against the resubdivision criteria, and no deciding the critical lot compatibility question on the basis of a known, prescribed process that strove to be as objective and predictable as possible. *Id.* ¶27.

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3 Commissioner Presley also points out that, in line with the Rewrite goals generally, the work session discussion was not directed toward enacting major substantive change in the Ordinance, but rather that the revision would just enhance the flexibility and adoptability of the resubdivision criteria to future cases. *Id.* ¶28. She adds, quite tellingly, that if major change was the intended goal, the Board would have publicized this highly sensitive issue in the affected communities, not simply buried it in a Rewrite omission of the standards and process for evaluating what used to be called a resubdivision. *Id.*
Based on the foregoing, it can come as no surprise to the Board that when I asked former Commissioner Presley to review the statements by the Board in the Resolution regarding the fate of the resubdivision criteria and process once used to judge requests to subdivide already platted lots in existing neighborhoods, her reaction was unequivocal: "a complete, unjustified abandonment" of the resubdivision criteria and process. Id. ¶ 26. Petitioners fully agree with her conclusion that "the current Board has misread the purpose and intent of the streamlining decision made in 2015..." and that the consensus reached in 2015 was not one where the Board was "undertaking any significant change in the long-standing analytic process, just enhancing its flexibility and adaptability to varying situations." Id. ¶ 27.

CONCLUSION

For the foregoing reasons, the Board should grant reconsideration of its decision approving the subdivision at 7025 Longwood Drive, Administrative Subdivision No. 620190100. Denial of reconsideration would leave in place a legally erroneous approval, one that improperly repudiates the purpose and effect of prior action taken by this Board to take former § 50-29(b)(2) out of the Rewrite of the Ordinance; one that effectively and improperly relegates decisions on requests to subdivide platted lots in existing neighborhoods to the standardless, subjective judgment of whoever is serving on the Board at the time; and one that simply cannot be defended in light of prior Board resubdivision denials in circumstances that are, for all practical and material purposes, identical in all respects to the instant case.

Respectfully submitted,

David W. Brown
Counsel for Petitioners

February 18, 2020
CERTIFICATE OF SERVICE

IT IS CERTIFIED that this 18th day of February 2020, that a true and correct copy of the Petition to Reconsider has been served on all parties on the attached list provided by the Planning Board, by mailing a copy by first class, postage prepaid to those on the list with an address, and sending a copy via electronic email to those listed with an email address.

[Signature]

David W. Brown
AFFIDAVIT OF AMY PRESLEY

1. I, Amy Presley, am over eighteen years of age, a resident of Montgomery County, Maryland, and am competent to testify as to the matters set forth below, based on personal knowledge.

2. I am making this Affidavit in support of the Petition to Reconsider filed by parties to Administrative Subdivision No. 620190100, 7025 Longwood Drive, approved by the Montgomery County Planning Board ("Board") in Resolution MCPB No. 19-137 (Feb. 6, 2020 (the "Resolution").

3. I served as a member of the Board for eight years, from 2008-2016. Below I describe my general experience in hearing and deciding resubdivision applications at the Board. This is followed by my recollection of the events in 2015 when, in the course of preparing and approving a complete rewrite of the Subdivision Ordinance, the Board decided how it would deal with resubdivision applications under the revised ordinance. I then explain why I regard the Resolution recently adopted in the Longwood matter to be completely contrary to the consensus the Board reached in 2015 when we decided to include the old resubdivision criteria within the revised subdivision ordinance.

Board Resubdivision Process, 2008-2016

4. During my two terms of service on the Board, I heard and decided numerous resubdivision cases, learning first-hand how contentious resubdivision requests could be, particularly when they involved lots in older neighborhoods. This was more painfully evident when a resubdivision request proposed to alter long-standing development patterns in an existing neighborhood. A classic example would be a lot with one detached home where the lot was at least twice the minimum lot size for the zone, and the resubdivision plan envisioned...
razing the existing house and replacing it with two houses, each on one of the two new smaller lots of roughly equal size to be created by resubdividing the existing lot. Frequently, the resubdivision would create a “flag” lot, where the two new houses would, unlike others in the neighborhood, not sit side-by-side facing the street.

5. The resubdivision process used by staff and the Board was grounded in the following provision in the Subdivision Ordinance:

§50-29(b)(2). Lots on a plat for the resubdivision of any lot, tract or other parcel of land that is a part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

6. To implement this provision, the Board relied on staff to define a “neighborhood” within which existing lots would be compared to the proposed resubdivided lots, as to each of the seven criteria set forth in the Ordinance. Then staff would perform the a very detailed analysis, making all of the comparisons necessary under the statute. For example, a chart would be produced showing the street frontage of all lots in the neighborhood, showing where the proposed new lots ranked among the others as to street frontage, and so on. Based on all of these charts, staff would make a recommendation on compatibility of the proposed new lots in the defined neighborhood.

7. Board hearings on resubdivision applications were especially contentious, often involving considerable opposition from neighboring residents when staff recommended approval. Residents would recount anticipated adverse impacts from the planned resubdivision, dispute the significance or accuracy of the comparison charts, or dispute the neighborhood determined by staff to be the appropriate yardstick for lot comparison. But for me, this level of interest among affected residents only underscored the importance of making the
right decision in each case. As a practical matter, most of the disputes turned on
disagreement regarding what the yardstick “neighborhood” should be.

Rewrite of the Subdivision Ordinance, 2015

8. Along with other members of the Board, I was closely involved in the Board-originated
project to rewrite first the Montgomery County Zoning Ordinance and then the
Montgomery County Subdivision Ordinance, Chapters 49 and 50, Montgomery County
Code, respectively. The Board’s work on both of these initiatives was completed during
my term on the Board.

9. The Subdivision Ordinance is foundational legislation establishing the Board’s authority,
and the framework for exercising that authority, to review and approve virtually all major
private development projects in the County. Hence, it was vitally important to me as a
Board member to understand the significance of changes envisioned for the Board’s work
in the rewrite of the Subdivision Ordinance (Rewrite’).

10. As presented to us by staff, the Rewrite was not about substantive change in the law; the
general objectives were to (1) modernize and clarify existing language; (2) improve
organization and ease of reference; (3) codify current interpretations; (4) ensure
consistency with new provisions in the zoning ordinance; and (5) improve the efficiency
of review. Staff Report (March 12, 2015), excerpted as Exhibit 1.

11. The Board held its first Rewrite worksession on March 19, 2015. Among matters we
discussed at this worksession was the following recommendation from staff regarding the
resubdivision criteria in section 50-29(b)(2):

Modified the provisions for resubdivision by limiting the zones in which it
applies to R-40, R-60, R-90, R-200 and RE-1 zones, specifying that the
criteria only apply to single family detached residential uses, and reducing
the review criteria from the existing seven to the three specified in state law:
lot area, alignment and frontage. Staff is requesting that the Planning Board provide guidance on whether the review criteria should be expanded to include frontage, alignment, lot area, lot width, and buildable area, or whether the resubdivision review should be eliminated entirely.

Exhibit 1 at 4.

12. As requested by staff, the Board did provide guidance on resubdivisions in the course of the March 19, 2015 worksession, in which I participated. I have obtained a Board-prepared transcript of that portion of the worksession in which resubdivisions were discussed, Exhibit 2, and used it to refresh my recollection of what exactly was the Board’s guidance to staff on this topic.

13. In a follow-on staff memo on the Rewrite provided to the Board for a further worksession on the Rewrite on June 18, 2015, excerpted as Exhibit 3, staff summarized the Board’s guidance on resubdivisions as follows:

   Removed requirements for a separate resubdivision analysis from the Chapter. After discussion prior to the public hearing, the Planning Board concluded that the general requirements for lot dimensions in Section 50.4.C.3.1.a provide a sufficient basis to judge the suitability of any subdivision, including a resubdivision, and opted to remove requirements for a separate subdivision analysis from the Chapter.

Exhibit 3 at 4.

14. There was, to my best recollection, no further Board discussion about the removal of the resubdivision criteria from the Rewrite, either at the June 18, 2015 worksession or thereafter, while the Rewrite was before the Board.

15. The Board turned its work on the Rewrite over to the County Council for review, via a transmittal letter from Board Chair Anderson dated August 11, 2015. Exhibit 4. On resubdivisions, the letter simply states, without further explanation, that the Rewrite “Removed existing 50-29(b)(2) resubdivision requirements . . .” Exhibit 4 at 2. This and
other wording in the letter was, as is typically the case, not the subject of Board consideration or deliberation.

16. This matter came up during my seventh year as a Commissioner. Prior to that time, I also brought to the resubdivision discussion on March 19, 2015 an awareness from my work on resubdivisions that there would continue to be development pressure in mature, established neighborhoods regarded as especially desirable locations for taking advantage of infill development opportunities wherever resubdivision could produce an additional zone-compliant record lot. The clash between those seeking infill development opportunities and existing residents in the neighborhood concerned about the compatibility of the intended result was not something that would magically disappear; the Board would have to continue to deal with and decide these cases, whatever we said or did about resubdivisions in the Rewrite.

17. Finally, as expressed in the Rewrite’s general objectives, as detailed above, I did not expect there to be any significant departure from the existing substantive standards for resubdivisions in the Rewrite, even as we sought to streamline and improve the decision making process.

The Worksession Consensus to Take the Resubdivision Criteria Out of the Ordinance

18. In its March 19, 2015 worksession on the Rewrite, there was an approximately half-hour discussion between the Board and staff on what to do about resubdivisions. That discussion is fully contained in Exhibit 2. What emerged at the end was a consensus that the goal of a simplified, more flexible resubdivision evaluation process could be achieved, and perhaps best so, by eliminating the resubdivision criteria from the Ordinance. It was emphasized that “resubdivision is a subdivision,” id., Tr. 32, and that the criteria for both subdivision
and resubdivision "are basically just the same." Id. Tr., 24. It was also recognized that evaluation of subdivisions in an infill context necessarily had to differ from evaluation of subdivision of unplatted, undeveloped land. As Chair Anderson put it, where one is resubdiving in a developed area, what is appropriate requires one to "look at what else is around it existing lots . . ." id., Tr. 28, a point echoed by Board Counsel Rubin as follows:

the point of making resubdivision more stringent than just your original subdivision is when people move into a subdivision they have an expectation . . . that they kind of know what's, what their neighborhood is and how it's going to be made up and it's not going to significantly change.

Id., Tr. 23.

19. This dialogue was in connection with the proposal put forth by the Chair to take the resubdivision criteria out of the Ordinance as a separate criteria because resubdivisions could be judged by the criteria remaining in the Ordinance for subdivisions, as the differing words "mean the same thing." Id., Tr. 30. I was not fully convinced of this idea until the follow exchange took place between Chair Anderson and me:

COMMISSIONER PRESLEY: So would you give any more credence to meeting those criteria for resubdivision in a little developed neighborhood than you would personally to a green field development?

MR. CHAIR: Yes, but that's because what's appropriate or in character, whichever adjective you want to use has to be judged differently [in] reference to an existing neighborhood than one that's undeveloped.

Id., Tr. 30-31. After that, I agreed to the idea of dropping the resubdivision criteria from the Ordinance when Chair Anderson agreed with my characterization of what he was proposing for the Board as follows:

So you're not saying get rid of the resubdivision, you're just saying resubdivision is already covered in the general heading subdivision and that we should just acknowledge it there and not have a separate [set of resubdivision criteria].
Id., Tr. 31-32. With his "Yes" response, there was no other objection to this characterization from any Commissioner, and the Chair reported to staff that deleting the separate resubdivision criteria was the Board consensus. Id., Tr. 35.

20. This consensus is reflected in the follow-on staff memo, Exhibit 3, and no member of the Board expressed any concern with its description of what the Board had agreed to. In essence, rephrasing the staff’s words with my understanding, what the Board did was streamline the Ordinance in this subject area by folding the analytic process and considerations relevant to evaluating resubdivisions into the more all-encompassing term "subdivision," doing so without materially altering how the Board intended to evaluate "resubdivisions" that no longer had that name, but were nonetheless proposals to subdivide existing platted lots, most often in established neighborhoods.

21. I did not have a contemporaneous opportunity to examine the wording of the letter the Chair sent to the County Council on August 11, 2015, forwarding the Board’s work on the Rewrite. Exhibit 4. I note that while it is technically correct in reporting our deletion of the resubdivision criteria in the then-existing Ordinance, it does not include the important clarification, as expressed by the staff in Exhibit 3, that resubdivisions would continue to be evaluated in their true context as subdivisions of existing platted lots under our longstanding evaluative criteria, even in the absence of those criteria from the revised Ordinance.

22. The revised Ordinance was not formally adopted by the County Council until sometime in 2017, which was after the end of my second term on the Board. As a result, I had no opportunity to participate in any Board decisions under the revised Ordinance where the resubdivision criteria, though no longer expressly in the Ordinance, needed to be employed,
i.e., in a case where a subdivision was of an existing platted lot. Hence, during the remainder of my second Board term, the Board continued to apply the statute-based resubdivision criteria to resubdivision applications.

23. Had the time come to conduct business under the Rewrite while I was still on the Board, I would have expected to see the analytical process of resubdivision review, as still operative under the consensus reached in 2015, incorporated into a Board regulation, along the lines, for example, of the Board’s Administrative Procedures for Development Review.

The Board Resolution in the Longwood Case

24. Following my departure from the Board and until very recently, I did not have any personal awareness of how the Board has been handling resubdivision cases under the Rewrite of the Ordinance. This changed only very recently, when I was asked by counsel for neighbors who opposed Administrative Subdivision No. 620190100, 7025 Longwood Drive, to review the Resolution, with particular attention to its claim about the effect of the Ordinance change in the Rewrite regarding resubdivisions.

25. I was shocked and dismayed by the passage on Resolution page six that dismisses the neighbors’ reliance on past resubdivison cases decided by the Board concerning nearby properties on the very same street, decided under the resubdivision criteria in the old Ordinance. The Resolution states that “There is no grandfathering provision, nor is there resubdivision criteria in the current and applicable law.” The Resolution goes on to state that the Board “need not look back at old cases that were decided under laws that are no longer in effect.” Id.

26. This reasoning is starkly contrary to what the Board agreed to on March 19, 2015, as I have detailed above. The Resolution contains no description of the yardstick “neighborhood”
for evaluating lot compatibility, as apparently no yardstick “neighborhood” was ever determined by staff. Instead, the Resolution employs the vague term “vicinity” without any attempt by the Board or staff to define what constitutes the “vicinity” of the subject property. Neither does the Resolution, nor evidently the underlying staff report, do the quantitative analysis regularly done in resubdivision applications under former § 50-29(b)(2), for the seven resubdivision criteria. In total disregard of the Board’s intention to have these considerations continue under the Subdivision Ordinance, this analysis is omitted not just on some of those criteria, but on all criteria. The analysis could not be done in any event without defining the missing “neighborhood” of lots to be included in the analysis. The Resolution exhibits a complete, unjustified abandonment of the analytic framework that, although formally removed from the statute, was understood on a consensus basis to have been effectively incorporated into the subdivision analysis to be conducted whenever the object of the subdivision was to subdivide already platted lots in an established neighborhood.

27. Had I still been on the Board when the first post-Rewrite resubdivision-as-subdivision application came before the Board, my first question to staff would have been: “Based on the consensus Board action in 2015, where is the regulation incorporating the analytical framework and criteria for evaluating the application?” I would never have agreed to the demotion of the resubdivision criteria and process to anything less than a written standard, i.e., a detailed prescription of the established review process. I state this because I knew from my many encounters with concerned residents of existing subdivisions that an unfocused application of the general subdivision criteria alone would not result in objective and predictable decisions; approval/disapproval would be almost entirely at the mercy of
the subjective impression of the staff and whoever was on the Board at the time. It is now apparent to me that the staff’s answer to my question would have been that there is no need for a regulation; the resubdivision process and its associated criteria have been abandoned. Such an outcome is not only contrary to the consensus reached in 2015; it is unacceptable in its own right.

28. That the current Board has misread the purpose and intent of the streamlining deletion made in 2015, effective in 2017, is reinforced by the fact that I, and I believe the other Board members who participated in the 2015 decision, understood that we were not undertaking any significant change in the long-standing analytic process, just enhancing its flexibility and adaptability to varying situations. Indeed, if major change was the goal, the Board, at that time very well aware of community sensitivity to resubdivision issues, would have certainly publicized the prospect for such change far and wide for guidance and input before doing so, just as the Board did for even minute changes in the Zoning Ordinance Rewrite over that 2011-14 period.

I, Amy Presley, declare under the penalties of perjury that the foregoing is true and correct.

Executed on 1/18/2023

Amy Presley.
Introduction
A comprehensive revision of Chapter 50, the Subdivision Regulations has been contemplated since the start of the Planning Department’s efforts to revise the zoning ordinance. We knew at that time changes would be needed based on how the zoning ordinance changed. We also recognized that, even in the absence of a zoning ordinance revision, it was time to review and update provisions of the subdivision ordinance that hadn’t been comprehensively looked at for more than 50 years.

The general objectives in rewriting the Subdivision Regulations were:

- Modernize and clarify existing language
- Improve organization and ease of reference
- Codify current interpretations
- Ensure consistency with new provisions of the zoning ordinance
- Improve the efficiency of review

To meet these objectives, the organization and layout of the revised regulations has significantly changed and the language of most provisions has been updated. For the most part, the updated language clarifies but does not change the existing requirements; however, some changes in the requirements have been made.

The revised Chapter 50 reorganizes the existing Article and Section format to one that contains Articles, Divisions and Sections. This document provides an outline of the provisions contained in each new Division, and which sections of the existing ordinance that they came from. It also summarizes the changes made to the provisions in each Division and discusses the most significant.

Article I. In General
This Article contains general provisions and requirements.

Division 50.1. Purpose
- Combined previous purpose list (Sec. 50-2) into a consolidated purpose statement that retains the important elements.

Division 50.2. Defined Terms
- Added new section of rules for interpretation of the Chapter.
• Modified the list of defined terms (Sec. 50-1) by clarifying existing language, removing terms that duplicate the zoning ordinance definitions or that are not specifically used in the Chapter, and adding new terms as needed.

Division 50.3. General Requirements

• Retained previous requirements for applicability (Sec. 50-3), approving authority (Sec. 50-4), and impacts to other ordinances (Sec. 50-5) with only minor language updates.

• Placed emphasis on the fact that subdivisions of land must be recorded by plat prior to land transfer (Sec. 50-8) and issuance of building permits (Sec. 50-20) by moving existing provisions to a new section.

• Modified the language of the existing exceptions to platting requirements (Sec. 50-9) provisions for clarification. The section is now broken into subsections covering the types of land transfers that can be done without a record plat, and uses that can receive building permits without being located on a record lot.

• Moved existing provisions for submission of subdivision plans (Sec. 50-23) to a new section under this Division and modified the existing language for clarification.

• Building permit language moved to Ch. 8 (50-22 and 50-32).

Significant changes made in this Division include:

➢ Prohibiting the issuance of a building permit for a dwelling unit on unplatted parcels of agricultural land that are less than 25 acres in size. 

The current exception applies to "land that is and will remain part of a farm, as defined in this chapter, but that is used concurrently for a related use that requires a building permit." A farm is defined as "a tract of land, with or without associated buildings, that is devoted to agriculture", as it is defined in the chapter. In the agricultural zone (AR), a problem is created by the existing language because it can be interpreted to permit construction of a dwelling on a tract of land less than 25 acres in size which violates the density requirement of the zone.

➢ Permitting construction of one detached dwelling unit on a part of a previously platted lot that has not change in size or shape since June 1, 1958, as anticipated by the new zoning ordinance.

➢ Permitting the reconstruction of any existing detached dwelling under the new zoning ordinance.

Article II. Subdivision Plans

Article II now contains provisions for the different types of subdivision plans, instead of the record plat provisions. This change was made because it reflects the actual order of the process. The types of plans covered in the article are preliminary plans, pre-preliminary submissions, simplified subdivision plans, and minor subdivisions. Simplified subdivision plans are a new plan type.

Division 50.4. Preliminary Plan

• More clearly separated the plan drawing requirements from the requirements for supporting information (Sec. 50-34)

• Modified and updated the provisions for review and approval of preliminary plans, including provisions for plan validity (Sec. 50-35), to clarify and provide better organization.

• Modified the general standard for review of lot dimensions to include consideration of the applicable requirements of Chapter 59 in addition to the recommendations of the applicable master plan.

• Retained the requirement that all lots abut a road, but the road can now be either public or private.

• Continue to permit a maximum of two lots without public or private road frontage on a shared driveway, but added the requirement that the two lots include any existing lots to codify our current interpretation of the existing section.
• Language of the current requirements for providing public sites and open space areas (Secs. 50-30 and 50-31) has been modified for clarity, but not significantly changed except that the language covering objection to required dedication was deleted because it's not needed; the applicant can make their case as part of review, and after decision, can file an appeal.
• Eliminated road design standards that are out of date such as: planning secondary streets to discourage use by nonlocal traffic; local bypasses around shopping centers; parallel streets with lots backing to major thoroughfares; and short culs-de-sac having terminal lots backing to major thoroughfares.
• Added provision that a subdivision with only one non-through road providing access must be limited to a maximum of 75 lots.
• Added minimum standard intersection spacing requirements for all road types, but retained the provision that the Planning Board may specify different spacing than the standard.
• The septic tier language was moved into the Water supply and sewage disposal facilities sections (50-24, 50-27)
• The requirement that public utilities be placed underground (50-40) was modified to apply to all subdivisions rather than basing it on the number of buildings, but language was added that allows the Planning Board to grant an exemption if it finds that underground placement is infeasible.
• Modified requirements for environmental review (Sec. 50-32) to clarify that a Forest Conservation Plan approval is required as part of approval of a preliminary plan.
• Modified the provisions for residential cluster subdivision (50-39) to eliminate language that is out of date and no longer necessary.

Significant changes made in this Division include:

► Added application processing and hearing schedule that conform with the new zoning ordinance requirements for site plan; including the requirement that a hearing date be established within 120 days of the acceptance of the application, with provisions for requesting extensions.
► Added new requirements for the timing of agency plan review so that the 120 day hearing schedule can be met.
► Added new provisions to explicitly state which public agency approvals are needed before the Planning Board may take action on a preliminary plan, and moved the review for conformance with the State's Sustainable Growth and Agricultural Preservation Act of 2012 (Sec. 50-35(e)) to the new technical review section.
► Added a list of specific findings that the Planning Board must make in order to approve a preliminary plan. The findings generally codify the findings made currently in Board resolutions, with additional language added to include a finding about the adequacy of roads.
► Removed sediment control provisions that are now covered by Chapter 19 (Sec. 50-35[j]). These included requirements that a preliminary plan approval be conditioned upon execution of an erosion and sediment control plan approved by the Board after consideration of recommendations from the Montgomery Soil Conservation District, that the permit for clearing and grading issued by the Department of Permitting Services (DPS) be in conformance with this plan, and that the Board could revoke a preliminary plan approval if a developer proceeded to clear and grade a site without a DPS permit.


Issue: The draft retains the existing provision that the Planning Board may find "that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate." The County Council discussed, but rejected a similar provision for the master plan finding that is now required for site plans by the new zoning ordinance. Thus, the Planning Board will not be able to find that a master plan recommendation is no longer appropriate for projects that
require both preliminary and site plan approval. Nonetheless, staff recommends retaining the provision in the subdivision regulations for the projects that only need preliminary plan review. In staff’s opinion, the provision is needed because the development standards that apply to a preliminary plan that doesn’t go to site plan will not be as flexible as those for a site plan.

- Modified the provisions for resubdivision by limiting the zones in which it applies to R-40, R-60, R-90, R-200, and RE-1 zones, specifying that the criteria only apply to single family detached residential uses, and reducing the review criteria from the existing seven to the three specified in state law: lot area, alignment, and frontage. Staff is requesting that the Planning Board provide guidance on whether the review criteria should be expanded to include frontage, alignment, lot area, lot width, and buildable area, or whether the resubdivision review should be eliminated entirely.

- Added new provisions for creating private roads to address what has become a common desire for their use. The provisions include:
  - Private roads created by subdivision must be platted in right of way parcels that are separate from adjoining lots to maintain the Board’s ability to ensure adequate space for road related uses within subdivisions.
  - Private road right of way parcels, like a dedicated public right of way, must be platted to the full width of the right of way recommended for the applicable road classification in Chapter 49; however, the Planning Board may approve a narrower than standard right of way for either type of road under certain circumstances. The existing provisions for road right of way apply exclusively to public roads and require that all roads be dedicated to the width specified by the applicable master plan or to the width specified by Chapter 49 for roads that are not included in the master plan. The only discretion currently granted to the Planning Board is for tertiary roads where the Board has the authority to determine when they may be used, and when they can be narrowed for environmental or compatibility reasons. In staff’s opinion, the Board needs the flexibility to consider in all instances, whether a narrower right of way is desirable and will not be detrimental to the function of the road. The basic criteria for the Board’s determination of right of way adequacy has not changed (Sec. 50-30(c)).
  - Private roads must be built to the applicable structural standard, grade, and typical section based on the functional classification of the road in Chapter 49. This is a change from the existing requirement that private roads only be built to meet the structural standards of a tertiary road. This standard may have been adequate in the past when the use of private roads was limited to RE-2C and RNC residential subdivisions and townhome developments, but now all types of roads are being created as private roads. As such, the roads need to be built to all applicable standards to ensure that they function as needed. The existing requirement that a registered engineer certify to the Department of Permitting Services (DPS) that the private road has been designed, and will be built to adequate standards has been retained, but this will need further discussion. DPS has stated that they don’t have the authority to review private roads in any way, and that they do not currently ask for any certifications for private roads. If we are going to continue to allow private roads, we need to ensure that they are adequate, so this is a major issue that needs to be resolved. However, the requirement needs to be included regardless of who is ultimately tasked with the review.

- The Adequate Public Facilities Ordinance (50-20(c), 50-24(g), 50-35(k)) was clarified to state that ancillary uses associated with religious institutions, such as schools, day care facilities, and clinics, that generate peak hour trips are not exempted from adequate public facilities requirements.
- The extension criteria for mixed use project in the Adequate Public Facilities Ordinance (50-20(c), 50-24(g), 50-35(k)) was modified to be based on the number of vehicle trips generated.
THE MONTGOMERY COUNTY PLANNING BOARD OF
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

RESUBDIVISION OF RESIDENTIAL PROPERTIES

TRANSCRIPT
OF
PROCEEDINGS

COUNTY ADMINISTRATION BUILDING
Silver Spring, Maryland
March 19, 2015
VOLUME 1 of 1

BEFORE:

CASEY ANDERSON, Chairman

MARYE WELLS HARLEY, Vice Chair

NORMAN DREYFUSS, Commissioner

AMY PRESSLEY, Commissioner

NATALI FANI-GONZALEZ, Commissioner

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PROCEEDINGS

(Audio beginning at 5:59:12 p.m.)

UNIDENTIFIED MALE SPEAKER: Okay. The next issue that we'd like to talk about is resubdivision, meaning resubdivision of residential properties. This is one of those areas that Cathy was alluding to when we said that we wanted to the extent that you have some foresight your direction on this issue and this goes to what Commissioner Dreyfuss asked about in the very beginning when we opened he aside about whether our changes could be construed as more liberal or more conservative in terms of what development we allow. This is an issue where it's in flux and there's a tension between the amount of liberalness and conservativeness in this issue and we'd like to hear your direction on this.

This is a residential resubdivision. It is, does anyone have the Staff Report?

UNIDENTIFIED MALE SPEAKER: I think Nia (phonetic sp.) would like to go through the slide and there's a little more thought provoking slides here --

UNIDENTIFIED FEMALE SPEAKER: The first bullet on or first arrow on page 4 of the staff memo is kind of a summary. But we put it on the slide too to flesh it out a little bit more.

UNIDENTIFIED MALE SPEAKER: So the language in the
current regulations in the Existing Chapter 50 says that residential resubdivision applies in any residential zone including townhouse lots or single family residential lots and what’s required is that when the Planning Board approves a subdivision of lots that is a resubdivision of previously platted residential lots. The Planning Board in making that approval has to find that the new lots are of the same character as existing lots and in a certain defined neighborhood of the same character with respect to street frontage, alignment, lot size, lot shape, lot width, buildable area of the lot and suitability for residential use.

In reviewing what changes to make to this section our committee did not reach what I would say really broad consensus on this, which is why we’re looking for your input and direction. We felt that some change was needed because there are problems in the way the current law is being administered now. So we feel that some of the criteria are perhaps too subjective and subject to sort of gaming by the applicants to get the result that they’re looking for. And there have been other issues with this, the Planning Board looked at this issue in 2001 and they made a determination to limit the application of this section to only residential uses in those residential zones. Before that it was interpreted that this requirement would also apply to other
uses in the zone such as an institutional use, for example, hospitals that occur in residential zones.

In 2011 the Planning Board made a determination that that wasn’t appropriate and that this provision would apply only to residential uses.

UNIDENTIFIED SPEAKER: When was this?

UNIDENTIFIED MALE SPEAKER: Yes this was in, I believe, February of 2011. The case that instigated it was a subdivision of a lot near Wheaton, or I guess in Wheaton, that contains a nursing home on it, it was called the Kensington Nursing Home, if any of you remember that case. The proposal was to subdivide from the large lot that contains the nursing home to smaller lots that were proposed to contain one dwelling each, on each lots, so there would be two new dwellings and it came in as a pre-preliminary plan first and the issue was that the remainder lot, the one that would have contained the nursing home, would be, you know, order of magnitude larger than any lot in the existing neighborhood and the Planning Board could have simply waived the requirement with respect to that lot for lot size, but instead what came out of that was this determination by the Board that was applied to all resubdivision cases going forward, that they would only apply to residential uses.

That’s the regime that we’re operating now and that includes, those residential uses include townhouses as
COMMISSIONER PRESSLEY: Are we taking the opportunity to set the criteria for how the neighborhood is chosen?

UNIDENTIFIED MALE SPEAKER: That’s something that we could talk about.

MG. PRESSLEY: I mean because that has always been ambiguous and that’s where you get pushback from people who come in and say well wait a minute, you’re only picking this side of the street and not that side of the street.

UNIDENTIFIED MALE SPEAKER: Right.

COMMISSIONER PRESSLEY: And it’s very loosey goosey.

UNIDENTIFIED MALE SPEAKER: Well we left it somewhat undefined, the reason why, that was an intentional decision on our part to give the Planning Board flexibility that they might desire to define what the neighborhood is, and perhaps legal counsel can augment this. But a recent court case determined that the Planning Board does appropriately have a large amount of discretion in determining what the neighborhood is.

UNIDENTIFIED MALE COMMISSIONER: I guess I’m not quite sure I see the problem that demands a solution. The way I understand it is that --

COMMISSIONER PRESSLEY: I’ll be happy to answer.
UNIDENTIFIED MALE COMMISSIONER:  Huh?

COMMISSIONER PRESSLEY:  I'd be happy to answer you on that.

UNIDENTIFIED MALE COMMISSIONER:  Well the applicant defines the neighborhood, they submit it and you say that's not the neighborhood you've got to add this and then they do this chart of square footages and lot sizes and all that.

COMMISSIONER PRESSLEY:  But you could argue that point back and forth applicant and staff all day long because there's nothing you can point to as you do with the other criteria that says look, it's within this distance --

UNIDENTIFIED MALE COMMISSIONER:  But --

COMMISSIONER PRESSLEY:  -- whether it's equal distant, it's whatever, no terms at all.

UNIDENTIFIED MALE COMMISSIONER:  -- but when the staff comes in and makes a recommendation they analyze the area, they determine whether they agree with the applicant or not and they --

COMMISSIONER PRESSLEY:  But you always argue for consistency for the people, the people want to know --

UNIDENTIFIED MALE COMMISSIONER:  Now let me finish.

COMMISSIONER PRESSLEY:  Okay.

UNIDENTIFIED MALE COMMISSIONER:  So they come in
and they make a recommendation. Sometimes we say well we think it should it include this street because it’s across the street. That happened just the other day. And sometimes we say well you know the reason this lot is a little bigger in this corner is because of topography or because it’s on the corner of the street. So the subjectivity is not just the staff’s subjectivity on what applies, it’s also ours. We look at what they recommend and we say you know we agree with you that shouldn’t, it shouldn’t be subdivided or we don’t agree with you because of some other reason. So by being very specific going to one of those bullets there where it’s only quantifiable criteria it sort of takes away, this isn’t a black and white area, resubdivision. Because often times the whole neighborhood’s done and there’s one or two lots that are a little different than everybody else’s and 20 years later somebody wants to subdivide and sometimes it makes sense and sometimes it doesn’t.

COMMISSIONER PRESSLEY: Well, I wasn’t --

UNIDENTIFIED MALE COMMISSIONER: And I don’t --

COMMISSIONER PRESSLEY: -- looking to take away --

UNIDENTIFIED MALE COMMISSIONER: -- take our subjectivity away.

COMMISSIONER PRESSLEY: -- our, I don’t want to take away the subjectivity at all. All I’m saying is --
COMMISSIONER PRESLEY: Those things are all quantifiable criteria. Everything else is subjective anyway, even if someone uses a measurement we can disagree with the staff if they say this is an appropriate alignment we can say it's really not in this case, as you're saying, or really the lot should be bigger because of the topography. We retain that right.

COMMISSIONER PRESLEY: No, that's not.

COMMISSIONER PRESLEY: Not yet.

COMMISSIONER PRESLEY: No, it doesn't.

COMMISSIONER PRESLEY: Include only.

COMMISSIONER PRESLEY: But that's what
or half a mile, or a quarter mile or three streets.

UNIDENTIFIED MALE COMMISSIONER: Well --

COMMISSIONER PRESSLEY: But there should be some
consistent criteria that's --

UNIDENTIFIED SPEAKER: That's fine --

COMMISSIONER PRESSLEY: -- all I'm saying. What
is a neighborhood?

UNIDENTIFIED MALE COMMISSIONER: But I don't think
our decisions should be guided strictly by consistency.
Because when we looked at a plat and I can't remember the
area of a lot that was twice as big as other lots, it's
because it had a hill in the middle of it and the topography
changed from one place to another and it was originally
preserved as a particular lot size because of the
topography. The applicant came in and said I want to have a
house on the lower part and another house on the upper part
and we said you know even though the lot is twice the size
it's not appropriate because of this other issue. I don't
want to lose that ability to do that, that's all.

COMMISSIONER PRESSLEY: I'm talking about it --

UNIDENTIFIED SPEAKER: It's something like this
where we have (indiscernible).

UNIDENTIFIED SPEAKER: Your microphone.

COMMISSIONER PRESSLEY: You might have several
very large lots that are part of an existing development and
right across the street which starts a new development, you might have lots of little lots.

UNIDENTIFIED SPEAKER: We have that.

COMMISSIONER PRESSLEY: Okay. So the applicant is going to come in and say well I want to put, I want to divide mine into six because look across the street it matches this, and this and this. But the staff, I'm looking for things like you can't just eliminate what's adjacent to you because you want to say that's not in my neighborhood because it's not where I want to go with it.

UNIDENTIFIED FEMALE SPEAKER: Amy, do you have the staff draft of the chapter --

COMMISSIONER PRESSLEY: What page?

UNIDENTIFIED FEMALE SPEAKER: 25.

COMMISSIONER PRESSLEY: 25. Thank you.

UNIDENTIFIED FEMALE SPEAKER: I just want to give you what the language says.

COMMISSIONER PRESSLEY: Thank you.

UNIDENTIFIED FEMALE SPEAKER: I don't think it's as --

COMMISSIONER PRESSLEY: No, I'm not.

UNIDENTIFIED FEMALE SPEAKER: -- clear as you want it to be but I --

COMMISSIONER PRESSLEY: I just wanted something --

UNIDENTIFIED FEMALE SPEAKER: -- want you to see
what it is anyway.

COMMISSIONER PRESSLEY: -- (indiscernible) no
bullet points that it has to be A, B, C but some standard
for analysis.

UNIDENTIFIED FEMALE SPEAKER: So the staff draft
actually says that it needs to be, includes all abutting and
confronting lots and any other lots --

COMMISSIONER PRESSLEY: (Sound.)

UNIDENTIFIED FEMALE SPEAKER: -- needed to
conducted a meaningful analysis and that all the lots must be
within the same zone. We did discuss putting maybe a
distance in there but the problem is --

COMMISSIONER PRESSLEY: Yes, you can't.

UNIDENTIFIED FEMALE SPEAKER: -- is sometimes --

COMMISSIONER PRESSLEY: You can't.

UNIDENTIFIED FEMALE SPEAKER: -- it doesn't fall
within that distance to --

COMMISSIONER PRESSLEY: Yes.

UNIDENTIFIED FEMALE SPEAKER: -- conduct a
meaningful analysis. So that's why we came up with the
language that we have now.

COMMISSIONER PRESSLEY: Okay. What was the
rationale for the same zone? Because if something's really
within the same neighborhood but maybe parts of it do have
like a, a commercial residential flavor or different sized
lot what was --

UNIDENTIFIED FEMALE SPEAKER: Because we just felt you can’t do apples to oranges, I mean different zones have completely different requirements --

COMMISSIONER PRESSLEY: Okay.

UNIDENTIFIED FEMALE SPEAKER: -- size requirements. And that’s the way staff has always interpreted it was within the same zone.

COMMISSIONER PRESSLEY: So you’re saying if I had done a more fine tooth reading of your language --

UNIDENTIFIED FEMALE SPEAKER: No.

UNIDENTIFIED SPEAKER: No.

COMMISSIONER PRESSLEY: -- I would not have had this issue.

UNIDENTIFIED SPEAKER: It’s a lot.

UNIDENTIFIED MALE SPEAKER: It’s a lot to read.

UNIDENTIFIED FEMALE SPEAKER: Only if you want to fall asleep.

COMMISSIONER PRESSLEY: Okay. That’s good, that’s exactly what I meant. Does that seem --

UNIDENTIFIED SPEAKER: Yeah, yeah.

COMMISSIONER PRESSLEY: -- good to you?

UNIDENTIFIED SPEAKER: We don’t have a problem with it (indiscernible).

MR. CHAIR: Okay. Can I suggest what we’re
talking about here is just putting it a public hearing
(indiscernible)?

COMMISSIONER PRESSLEY: Can I just make --

MR. CHAIR: So we don’t have to resolve this --

UNIDENTIFIED SPEAKER: Okay. Thank you.

MR. CHAIR: -- conclusively.

COMMISSIONER PRESSLEY: Can I make --

MR. CHAIR: It’s helpful if you have some ideas, but we don’t have to nail it down.

UNIDENTIFIED SPEAKER: Please.

UNIDENTIFIED MALE SPEAKER: Okay.

UNIDENTIFIED SPEAKER: I would just make a suggestion on this one because I had the most recent case on this and what the courts, really what is important when you’re looking at neighborhood that gives it some objectivity, but not, but still leaves it to be subjective is impact. That’s what people are, that’s what you’re looking for when you talk about meaningful analysis, it’s analysis based on impacts that are similar. It could be impacts by the road, it could be the view shed, it could some other things, but it’s the impact that is, and that’s what the courts kind of agreed with, that it left it to the Board to make that determination and it was an impact analysis. So what the staff does is they look at the impacts for consistent, what the impacts will be to the area
and that's the neighborhood that they define. That's why they're looking at it that way. So perhaps some language of that in that regard, but —

UNIDENTIFIED FEMALE SPEAKER: So I just want to take a step back here and look at, I know we had the discussion about neighborhood, but really focus on what we need your direction on today is the criteria because that is something that the six of us cannot agree on and we need to put something in the draft that we are releasing. And just to --

MR. CHAIR: All right. Here's my thought. You asked for it, you got it.

UNIDENTIFIED FEMALE SPEAKER: Okay.

MR. CHAIR: My understanding of the law is that the cases talked about how this is really about compatibility. So I would suggest framing it in those terms and using the criterion as a luster but not exhaustive sort of criteria for assessing compatibility. So I don't think it's as important that it goes from seven to three or whatever the number is, but I would say the Board needs to find that the lots are compatible with the neighborhood, whatever that is and by reference to the following criteria, limited but not including to consistency of size, frontage, et cetera, et cetera, et cetera.

UNIDENTIFIED SPEAKER: (Indiscernible).
MR. CHAIR: Yes.

UNIDENTIFIED SPEAKER: The current list, right?

MR. CHAIR: I don't care if it's a current list or not, I just think we shouldn't like put so much weight on this, this should be illustrative and not purport to be, to describe the universe of things that could be considered or that necessarily even the entire list that's enumerated should be considered relevant in every case.

UNIDENTIFIED FEMALE SPEAKER: So here's the thing is the state law if you are going to have resubdivision criteria which you do not need to have, that is one option that a few of us has thrown out, just get rid of resub (phonetic sp.) altogether, right. So that's option 1. Option 2 is if you are to have resub criteria you need to at least have three and you need to treat all those three every single time it needs to be in conformance with all those three. Because in the state law it has alignment, oh where is it --

UNIDENTIFIED SPEAKER: The frontage one.

UNIDENTIFIED FEMALE SPEAKER: -- frontage, alignment and size. Or area, I'm sorry, frontage, alignment and area. Those three must be in your resubdivision criteria.

UNIDENTIFIED MALE SPEAKER: If you have them.

UNIDENTIFIED FEMALE SPEAKER: If you have them.
Then the third option that the six of us have been kicking around is okay you take those three and then you take the other quantifiable determinations that we have right now which are I believe with, do you have the slide?

UNIDENTIFIED SPEAKER: It's on the screen --

UNIDENTIFIED FEMALE SPEAKER: Oh, I can't read it.

UNIDENTIFIED SPEAKER: It's at the end.

UNIDENTIFIED FEMALE SPEAKER: Oh, okay. So yes, lot width and buildable area and, and what else?

UNIDENTIFIED MALE SPEAKER: Frontage, alignment --

UNIDENTIFIED FEMALE SPEAKER: Frontage, alignment, lot area slash size, lot width and buildable area.

UNIDENTIFIED MALE SPEAKER: And not suitability.

UNIDENTIFIED FEMALE SPEAKER: Not suitable, no, right. So those --

UNIDENTIFIED SPEAKER: Not suitability and not --

UNIDENTIFIED FEMALE SPEAKER: -- those five.

UNIDENTIFIED SPEAKER: Right.

UNIDENTIFIED MALE SPEAKER: It would be four quantifiable criteria and we have to keep alignment because it's in the State Code.

UNIDENTIFIED FEMALE SPEAKER: That's right.

UNIDENTIFIED SPEAKER: Right.

UNIDENTIFIED MALE SPEAKER: And I think getting more to the Chairman's point was does the State Code
actually require that a proposed lot within a subdivision
meet those three criteria or is it written general enough
that you can say considering these three —

UNIDENTIFIED FEMALE SPEAKER: No it has to —

UNIDENTIFIED MALE SPEAKER: — and —

UNIDENTIFIED FEMALE SPEAKER: — you have to show
conformity of character to those three, at the very least.

UNIDENTIFIED MALE SPEAKER: So while we considered
your option early on to say generally speaking while
considering these criteria, we think that the proposed lots
conform to, I don’t think, I think the reason we did not
present that to you is because the State Code prevents us
from doing so.

UNIDENTIFIED FEMALE SPEAKER: Right.

COMMISSIONER PRESSLEY: I’m in favor of the four
that you said. That gives us less restriction —

UNIDENTIFIED SPEAKER: (Indiscernible).

COMMISSIONER PRESSLEY: — yes, the three plus
that one, but —

UNIDENTIFIED FEMALE SPEAKER: Well it’s so there’s
none, there’s three or there’s five —

COMMISSIONER PRESSLEY: Oh.

UNIDENTIFIED FEMALE SPEAKER: — are the three
options.

COMMISSIONER PRESSLEY: I thought you said four.
UNIDENTIFIED MALE SPEAKER: There’s four quantifiable criteria —
UNIDENTIFIED FEMALE SPEAKER: Plus alignment.
UNIDENTIFIED MALE SPEAKER: — and then alignment which is not —
COMMISSIONER PRESSLEY: Oh.
UNIDENTIFIED SPEAKER: Oh, okay.
UNIDENTIFIED FEMALE SPEAKER: But either way, when you apply them you’re going to have to apply all of them and what we’re trying to avoid is right now the Board has been waiving a lot of the resub criteria and so that was one of the things we wanted to try and avoid by taking some of these away was the constant need to waive these.
COMMISSIONER PRESSLEY: So what happens when you have none? How does, how do two different property owners, I have a specific question on what you have none. How do two different property owners who want to subdivide, what is their assurance that they are going to have an equal review or a fair review or anything based on a specific criteria other than the luck of the draw of whose looking at it and the Board at the time?
UNIDENTIFIED MALE SPEAKER: Well it’s —
UNIDENTIFIED FEMALE SPEAKER: So refer to page 24, and under lot design general requirements 1, lot dimensions, that’s what you would fall back to if you did not have
resubdivision. Lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of development and use contemplated considering the recommendations of the Master Plan and the applicable requirements of Chapter 59. That’s what you fall back to.

COMMISSIONER PRESSLEY: Fall back to, but how would you explain that because how is this then any less restrictive, either we have to meet this or we don’t.

UNIDENTIFIED FEMALE SPEAKER: That’s, you know, we talked about the implications of going and applying just this, which we apply to unplatted parcels all the time --

COMMISSIONER PRESSLEY: Yes.

UNIDENTIFIED FEMALE SPEAKER: -- and this is a basic premise. So you would say that the lots are located in proximity to other lots and you could make a general finding that we think it fits. The danger, I think would be if you didn’t have a resub and certain criteria you have to have look at is that there might be some court case in the future that requires this entire section to become as regimental as we’ve had to get with the application of the resub criteria and that you might be looking at these criteria just as stringently and as you know, there’s a range in the neighborhood and you have to have to fall within that range, that there might be some court case that
sends us there and then it wouldn't be limited to
residential lots, it would be every lot. Because this
section applies generally to all lots that you create. So
we kind of came to the conclusion that keeping resub and
limiting it to residential zones because we cut down the
number of zones --

UNIDENTIFIED SPEAKER: No.

UNIDENTIFIED FEMALE SPEAKER: -- it applies to and
we said it has to be detached lots, no townhouses and then
we thought and this hasn't gone over well with some of the
attorneys we've talked with, we thought we would limit the
criteria to three so that and that they wouldn't waived.
Basically it is or it isn't. But as you said that's, you
know, it's size. So if you're 5 square feet bigger than
everything else in the range, should you be denied? So we
know there's still going to be waivers that occur and the
bottom line is if you have criteria, we probably are going
to want to grant waivers sometimes of those criteria. So
the negative of maybe only having three is that if you waive
one you're waiving a significant amount of the fining. If
you waive one of five or one of seven today, you still have
substantial conformance with the majority of the criteria
but we have gone --

MR. CHAIR: I don't --

UNIDENTIFIED FEMALE SPEAKER: -- round and round
with this.

MR. CHAIR: -- really understand, I'm not sure I understand this concern about future court case. I don't really get it.

UNIDENTIFIED FEMALE SPEAKER: Well because you still have the issues of neighborhood character, you know, you still have the instances where you're changing a recorded lot surrounded by other lots that were created with it. You know by their nature, those are, you know they're the toughest subdivisions that you look at, infill subdivisions in an existing neighborhood. And I would just have a concern that it would be, you'd still have that kind of opposition sometimes and it would be elevated into a case that would then potentially have to apply some way of analyzing it that wouldn't be as flexible as the language is today, you know --

MR. CHAIR: I don't know, I --

UNIDENTIFIED FEMALE SPEAKER: -- it's very open but, right.

UNIDENTIFIED FEMALE SPEAKER: But it might not happen, you could --

UNIDENTIFIED FEMALE SPEAKER: Yes.

UNIDENTIFIED FEMALE SPEAKER: -- fix it with legislation if it did. It's really hard to say when I know that Rich took some time to look and see who else has
resubdivision criteria and I’ll tell you not many people do, so.

UNIDENTIFIED SPEAKER: (Indiscernible).

MR. CHAIR: I vote for nothing.

UNIDENTIFIED FEMALE SPEAKER: I do too.

MR. CHAIR: That’s my --

COMMISSIONER PRESSLEY: So what was the other legal opinion? Because Carol you started to, I mean not the rationale it was to go with less and or none?

UNIDENTIFIED SPEAKER: (Indiscernible).

COMMISSIONER PRESSLEY: Yes.

UNIDENTIFIED FEMALE SPEAKER: And I’ve actually talked to Christine about this. And I mean I was originally kind of along the line of where the Chair was about the finding just has to be that it’s within character and that you consider these whatever the, however many criteria that you want. However you know, as Christina pointed out the state law says that it does have to, if you’re going to have subdivision it has to conform to some of them. So you can’t really have that broad consider, you can’t have consideration for the other criteria and just have it conform with the three that are required. And so really because I’ve always looked it as the finding that the Board makes is really about character and those other things, the criteria is how you get to that finding.
So you know, I just wanted to point that. I mean what I was beginning to talk about was the difference between neighborhood, your neighborhood delineation, it's a two part test. First, you determine what the appropriate neighborhood is based on impacts then you look at the other criteria. We had this that was part of the argument that we had in that Arkin (phonetic sp.) case. But you know I think that if you kind of eliminate the resub criteria, you're going to get a lot of pushback. Because that's a lot of the established communities like and have, the point of making resubdivision more stringent than just your original subdivision is when people move into a subdivision they have an expectation and that's what the courts have said. And the expectation is that they kind of know what's, what their neighborhood is and how it's going to be made up and it's not going to significantly change.

I mean it does over time because zoning changes and other things, but in your single family neighborhoods, it's people, that's the hot button issue that we got on the Zoning Ordinance and I think it's going to come back in the subdivision regs. So I do think if you take out resubdivision altogether you're going to get a lot of pushback from the community.

MR. CHAIR: But I still, I just don't get why what's in the initial lot design requirements is really
less, I mean it all basically just boils down to sort of
this multifactor balancing for compatibility, right?
Because the criteria, if you want to resubdivide, you would
then have to conform to the general requirements, right?
Which are size, width, shape and orientation, appropriate to
the subdivision type of development or use contemplated,
considering our conditions in the Master Plan, right?

UNIDENTIFIED FEMALE SPEAKER: Yes, I mean I think
that’s the simplest way to go because that’s what the,
you’re basically going with what state, you’re saying we’re
going to go with this, we’re going to keep resub but we’re
really going to do the bare minimum which is required by the
state.

UNIDENTIFIED FEMALE SPEAKER: No, he’s talking
about a different provision. It’s not, that’s the provision
that applies to all subdivisions. There’s a resubdivision
criteria would be separate.

MR. CHAIR: But so what I’m saying is why --

UNIDENTIFIED FEMALE SPEAKER: Yes.

MR. CHAIR: -- isn’t it good enough to just and I
know people will say oh my God the neighborhood, you know,
what you said a minute ago which is well people have an
expectation for the neighborhood, but the point is those
criteria are basically just the same, it’s just a different
words --
UNIDENTIFIED SPEAKER: True.

UNIDENTIFIED FEMALE SPEAKER: That's correct.

MR. CHAIR: -- that basically mean look at the compatibility of the lots with each other and the neighborhood in the Master Plan, so.

UNIDENTIFIED FEMALE SPEAKER: That's correct and the reason why resubdivision actually has such a strict way of looking at it now is because we've had two court cases and that's what Cathy was eluding to was you know, what if we were to have a court case in the future which would then have that impact on the general subdivision language but it's, that's, you know, that's a what if.

MR. CHAIR: Yes, I would say the criteria should be the same for a new subdivision versus resubdivision. Because the existing, the two separate existing standards to me don't really do any additional work. They create the, perhaps the appearance that there's a stricter standard for resubdivision, but in fact it's just a lot of different words that kind of getting at the same thing.

UNIDENTIFIED SPEAKER: So are you saying eliminate the resub --

MR. CHAIR: Yes.

UNIDENTIFIED SPEAKER: -- or are you just making the two of them the same or you're just saying taking out the resub?
MR. CHAIR: Well if you took out resub then you sort of default back to --

UNIDENTIFIED SPEAKER: The subdivision.

MR. CHAIR: Yes.

UNIDENTIFIED SPEAKER: Is that what you’re saying?

MR. CHAIR: Right, a resub is the same as a subdivision because --

COMMISSIONER PRESSLEY: So if it is the same then what value are we getting out of removing it except sending a huge red flag out to a lot of people who aren’t going to understand that?

MR. CHAIR: Well, we’re streamlining the Code, and we are --

COMMISSIONER PRESSLEY: You mean the words on the, I mean --

MR. CHAIR: Yes. We’re making this less complicated and more accessible so people can understand it because --

COMMISSIONER PRESSLEY: But --

MR. CHAIR: -- they don’t have to sort through here and try to understand what’s the difference between subdivision and resubdivision. It’s all in one place. It’s the same criteria and both the public and property owners benefit from not having to try to, try to, you know, discern the subtle differences between one group of words that all
are basically dancing around the same general concept and
another set of words.

COMMISSIONER PRESSLEY: So there's no way that
those words that are for resubdivision are in any different
to intend to accomplish anything different because if that's
the case then it could be called subdivision and
resubdivision it's just all grouped into one place and you
could arguably say you moved all the text into one place,
but you know what I mean, but we'd have to look at those
side by side and say, or you guys would, you know, is there
any word or any criteria for resubdivision that is
specifically that way to intend a different review than
subdivision?

UNIDENTIFIED FEMALE SPEAKER: You know, I think by
its nature binding conformance with other lots which the
resubdivision analysis requires you to do --

COMMISSIONER PRESSLEY: And that's not in
subdivision.

UNIDENTIFIED FEMALE SPEAKER: -- and that's not in
the subdivision --

COMMISSIONER PRESSLEY: Because it may not exist.

UNIDENTIFIED FEMALE SPEAKER: -- prevents the
resubdivision that gets much smaller lots than the existing
lots around it. Because what the --

COMMISSIONER PRESSLEY: And that's what people are
going to argue about.

UNIDENTIFIED FEMALE SPEAKER: -- typical subdivision criteria are about is developing according to the Zone.

MR. CHAIR: I understand that people argue that, I just don’t think that’s supported by the plain meaning of the words in the general requirements for lot dimensions. It says lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of development or use contemplated. So I think that it seems obvious to me that means you should look what else is around it existing lots --

UNIDENTIFIED SPEAKER: Yes.

COMMISSIONER PRESSLEY: But what’s appropriate.

MR. CHAIR: -- which is the same thing.

COMMISSIONER PRESSLEY: So what does appropriate mean? Because in one then when you to resubdivision it actually gives you some guidelines for appropriate. It says size, width, lot, I mean it gives you adjectives and measuring sticks to say what’s appropriate.

MR. CHAIR: And they’re almost the --

COMMISSIONER PRESSLEY: And the word appropriate, oh it’s all, I think it’s appropriate, I think you can, I think that I live on a one acre lot, but you know I think it’s appropriate to have half acres next to me, because
especially if it's like an acre and a few feet, because it's
closer to an acre than not an acre.

MR. CHAIR: Yes, but the finding on subdivision is
of the same character. That's no more or less, it's all
vague subjective --

COMMISSIONER PRESSLEY: Except for the things
about lot shape, width, frontage.

UNIDENTIFIED FEMALE SPEAKER: I actually think in
some ways it might help opponents to a resub and I say that
because right now on the seven criteria which are
quantifiable and they still hate it, they hate what's being
proposed but if it falls within those ranges, then basically
we are going to recommend approval.

Unlike with a Site Plan where it says you can meet
all the development standards, but if you the Board still
don't find that it's compatible with the neighborhood, then
you can turn it down and to me this puts it somewhat back
into that category.

COMMISSIONER PRESSLEY: But that's why I'm having
a problem with it, because I'm not arguing on behalf of the
small communities who already live there or on behalf, I'm
arguing on either side. Because if I want to develop and
I'm just at the mercy of the Board because it's maybe, you
know, this Board might think it's appropriate and then next
year I come with another like type of thing and another
Board doesn’t think it’s appropriate and I’m going to ask myself well what was the criteria by which you judge whether it’s appropriate or not.

MR. CHAIR: Yes, but the problem is the adjective, you don’t like appropriate but why is same character any better?

COMMISSIONER PRESSLEY: Because the resub it has that plus then it has a specific thing, lot width, size, it has all those things that you have to look at.

MR. CHAIR: But so does the initial one. It says lot size, width, shape and orientation. I mean I just think it’s like one is an Italian and the other one is in Spanish but they basically mean, they’re different words that mean the same thing.

COMMISSIONER PRESSLEY: Do you think there’s any more weight in the requirement to be very careful about the appropriateness of those things in a resubdivision than in a subdivision?

(No audible response.)

COMMISSIONER PRESSLEY: So would you give any more credence to meeting those criteria for resubdivision in a little developed neighborhood than you would personally to a green field development?

MR. CHAIR: Yes, but that’s because what’s appropriate or in character, whichever adjective you want to
use has to be judged differently reference to an existing
eighborhood than one that's undeveloped.

COMMISSIONER PRESSLEY: Okay. So how would you
make that distinction in this thing if we group it all
together, because I'm not against --

MR. CHAIR: Well --

COMMISSIONER PRESSLEY: -- if it's efficient, I'm
not against having all the language in one. How would you
group it all into one --

MR. CHAIR: I mean --

COMMISSIONER PRESSLEY: -- subdivision
resubdivision and still get the same weight that you just
acknowledged there is?

MR. CHAIR: I mean my argument is that you don't
need to write it into the statute because what makes the
difference is if we got resubdivision, I'm looking at the
house across the street and say hmm, there's a two-story
house with you know a detached garage and it has certain
buildable area and here's how that property's been
developed. And so I have something to end the lot is this
wide and here's where the driveway is oriented and I can
look at that and I can say you know what not really in
character or not appropriate, whichever adjective you
prefer.

COMMISSIONER PRESSLEY: So you're not saying get
rid of the resubdivision, you're just saying resubdivision
is already covered in the general heading subdivision and
that we should just acknowledge it there and not have a
separate --

MR. CHAIR: Yes.

COMMISSIONER PRESSLEY: So therefore the message
would be if I were a marketing and PR person, the message
would be --

MR. CHAIR: Christine is looking at me like --

COMMISSIONER PRESSLEY: -- it's already covered in
the one topic and we just add the word subdivision and
resubdivision.

MR. CHAIR: Why don't, Ms. Rento, why don't we
don't want to do this.

UNIDENTIFIED FEMALE SPEAKER: Well I wouldn't want
to put the word resubdivision under the general, because
then you're kicking in what you need to do under the state
law, which are those three criteria and they must be in
conformance --

UNIDENTIFIED SPEAKER: Subdivision.

UNIDENTIFIED FEMALE SPEAKER: Yes, subdivision
which is how it's written right now for that under the
general requirements lot dimensions.

UNIDENTIFIED SPEAKER: But resubdivision is a

subdivision.
UNIDENTIFIED FEMALE SPEAKER: Yes.

UNIDENTIFIED SPEAKER: (Indiscernible).

UNIDENTIFIED FEMALE SPEAKER: Yes, that's correct.

COMMISSIONER FANI-GONZALEZ: (Indiscernible) for

the resubdivision which are the requirements are usually
waived by people applying? Is there one that you usually
waive or not?

UNIDENTIFIED FEMALE SPEAKER: All of them,
depending on what's in front of the Board. I mean --

COMMISSIONER FANI-GONZALEZ: So not a specific --

UNIDENTIFIED FEMALE SPEAKER: No, not to my
knowledge.

COMMISSIONER DREYFUSS: Waive them or reach a
different conclusion than the staff?

UNIDENTIFIED FEMALE SPEAKER: You waive them, you
have to.

COMMISSIONER DREYFUSS: You have? Why?

UNIDENTIFIED FEMALE SPEAKER: Because you have to
find, you have to find character with all seven of those
criteria and they must be in the range. So if anything is
outside of the range you need to waive it.

UNIDENTIFIED FEMALE SPEAKER: And I think what
Rose, and what Rose was saying that it can be used not only,
it can be used against what would be an appropriate
resubdivision potentially because the range is anywhere in
the range. So it doesn’t need to be, so you might find, there might be a particular lot in a neighborhood, and there’s only one. Okay. Or if it’s the smallest and you’re only and you’re going to be the second smallest, but it’s really a large lot neighborhood. Unfortunately, I mean in that case an applicant can use that against the Board because say hey it’s in the range, you have to find that it’s appropriate, it’s in conformance, it meets all of the resubdivision criteria, it’s in that range, it might be the, you know, it might be at the bottom, the very bottom of the range of every single one of those criteria but and you look at it and it really is out of character but it could be used against you know, it could be used against the Board to say in an appeal to say hey it’s in the range, you can’t not approve it because it does meet all those criteria and therefore it’s in character.

So it can be used either way and I think what the Chair is suggesting, probably gives more flexibility both ways to the Board and to the staff, you know.

MR. CHAIR: And as I say it’s a public hearing draft so if we put out a draft that is written that way and somebody says oh my God, no way because X, Y and Z --

UNIDENTIFIED SPEAKER: (Indiscernible).

MR. CHAIR: -- the world will end, then we can say all right we’ll consider that.
UNIDENTIFIED FEMALE SPEAKER: Is that the consensus then to move forward?

UNIDENTIFIED SPEAKER: Yes.

UNIDENTIFIED FEMALE SPEAKER: Okay.

(Requested portion of the hearing ended at 6:34:30 p.m.)
DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Montgomery County Planning Board in the matter of:

RESUBDIVISION OF RESIDENTIAL PROPERTIES

By: ___________________________ Date: January 7, 2020

Diane Wilson, Transcriber
Montgomery County Planning Department
The Maryland-National Capital Park and Planning Commission

MCPB
Item No. 9
Date: 6/11/15

Worksession to Discuss the Draft Subdivision Regulations

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Completed: 6/11/15

Description
This report provides an overview of the information to be presented at the worksession on the Draft Rewritten Subdivision Regulations, Montgomery County Code Chapter 50. This worksession is designed to give the Board and general public an overview of major changes and provide an opportunity for discussion.

Summary
A comprehensive revision of Chapter 50, the Subdivision Regulations has been contemplated since the start of the Planning Department’s efforts to revise the zoning ordinance. We knew at that time changes would be needed based on how the zoning ordinance changed. We also recognized that, even in the absence of a zoning ordinance revision, it was time to review and update provisions of the subdivision ordinance that hadn’t been comprehensively looked at for more than 50 years.

The general objectives in rewriting the Subdivision Regulations were:

- Modernize and clarify existing language
- Improve organization and ease of reference
- Codify current interpretations
- Ensure consistency with new provisions of the zoning ordinance
- Improve the efficiency of review

To meet these objectives, the organization and layout of the revised regulations has significantly changed and the language of most provisions has been updated. For the most part, the updated language clarifies the existing requirements but, some changes have been made. The discussion below contains a combined summary of the changes that were presented as a part of the Planning Board’s public hearing, and the new changes that have been made since the hearing in response to comments received. Copies of the comments that were received in writing are included in Attachment A.
Discussion of Changes

Article I. In General
This Article contains general provisions and requirements.

Division 50.1. Purpose

- Combined previous purpose list (Sec. 50-2) into a consolidated purpose statement that retains the important elements.

Division 50.2. Defined Terms

- Added new section of rules for interpretation of the Chapter.
- Modified the list of defined terms (Sec. 50-1) by clarifying existing language, removing terms that duplicate the zoning ordinance definitions or that are not specifically used in the Chapter, and adding new terms as needed.

Division 50.3. General Requirements

- Retained previous requirements for applicability (Sec. 50-3), approving authority (Sec. 50-4), and impacts to other ordinances (Sec. 50-5) with only minor language updates.
- Placed emphasis on the fact that subdivisions of land must be recorded by plat prior to land transfer (Sec. 50-8) and issuance of building permits (Sec. 50-20) by moving existing provisions to a new section.
- Modified the language of the existing exceptions to platting requirements (Sec. 50-9) provisions for clarification. The section is now broken into subsections covering the types of land transfers that can be done without a record plat, and uses that can receive building permits without being located on a record lot.
- Moved existing provisions for submission of subdivision plans (Sec. 50-23) to a new section under this Division and modified the existing language for clarification.
- Building permit language moved to Ch. 8 (50-20 and 50-32).

Significant changes made in this Division include:

- Prohibiting the issuance of a building permit for a dwelling unit on unplatted parcels of agricultural land that are less than 25 acres in size.
  The current exception applies to “land that is and will remain part of a farm, as defined in this chapter, but that is used concurrently for a related use that requires a building permit.” A farm is defined as “a tract of land, with or without associated buildings, that is devoted to agriculture”, as it is defined in the chapter. In the agricultural zone (AR), a problem is created by the existing language because it can be interpreted to permit construction of a dwelling on a tract of land less than 25 acres in size which violates the density requirement of the zone.

- Permitting construction of one detached dwelling unit on a part of a previously platted lot that has not change in size or shape since June 1, 1958, as anticipated by the new zoning ordinance.

- Permitting the reconstruction of any existing detached dwelling under the new zoning ordinance.

Additional changes made in response to comments from the public hearing:

- Added rule clarifying “In Writing” to include electronic communication.
Added, removed, and added clarifying language to defined terms.

- Added exemption to platting for advanced dedication or donation of master planned rights-of-way.

Article II. Subdivision Plans

Article II now contains provisions for the different types of subdivision plans, instead of the record plat provisions. This change was made because it reflects the actual order of the process. The types of plans covered in the article are preliminary plans, pre-preliminary submissions, simplified subdivision plans, and minor subdivisions. Simplified subdivision plans are a new plan type.

Division 50.4. Preliminary Plan

- More clearly separated the plan drawing requirements from the requirements for supporting information (Sec. 50-34)
- Modified and updated the provisions for review and approval of preliminary plans, including provisions for plan validity (Sec. 50-35), to clarify and provide better organization.
- Modified the general standard for review of lot dimensions to include consideration of the applicable requirements of Chapter 59 in addition to the recommendations of the applicable master plan.
- Retained the requirement that all lots abut a road, but the road can now be either public or private.
- Continue to permit a maximum of two lots without public or private road frontage on a shared driveway, but added the requirement that the two lots include any existing lots to codify our current interpretation of the existing section.
- Language of the current requirements for providing public sites and open space areas (Secs. 50-30 and 50-31) has been modified for clarity, but not significantly changed except that the language covering objection to required dedication was deleted because it's not needed; the applicant can make their case as part of review, and after decision, can file an appeal.
- Eliminated road design standards that are out of date such as: planning secondary streets to discourage use by nonlocal traffic; local bypasses around shopping centers; parallel streets with lots backing to major thoroughfares; and short culs-de-sac having terminal lots backing to major thoroughfares.
- Added provision that a subdivision with only one non-through road providing access must be limited to a maximum of 75 lots.
- Added minimum standard intersection spacing requirements for all road types, but retained the provision that the Planning Board may specify different spacing than the standard.
- The septic tier language was moved into the Water supply and sewage disposal facilities sections (50-24, 50-27)
- The requirement that public utilities be placed underground (50-40) was modified to apply to all subdivisions rather than basing it on the number of buildings, but language was added that allows the Planning Board to grant an exemption if it finds that underground placement is infeasible.
- Modified requirements for environmental review (Sec. 50-32) to clarify that a Forest Conservation Plan approval is required as part of approval of a preliminary plan.
• Modified the provisions for residential cluster subdivision (50-39) to eliminate language that is out of date and no longer necessary.

Significant changes made in this Division include:

➢ Added application processing and hearing schedule that conform with the new zoning ordinance requirements for site plan; including the requirement that a hearing date be established within 120 days of the acceptance of the application, with provisions for requesting extensions.

➢ Added new requirements for the timing of agency plan review so that the 120 day hearing schedule can be met.

➢ Added new provisions to explicitly state which public agency approvals are needed before the Planning Board may take action on a preliminary plan, and moved the review for conformance with the State’s Sustainable Growth and Agricultural Preservation Act of 2012 (Sec. 50-35(e)) to the new technical review section.

➢ Added a list of specific findings that the Planning Board must make in order to approve a preliminary plan. The findings generally codify the findings made currently in Board resolutions, with additional language added to include a finding about the adequacy of roads.

➢ Removed sediment control provisions that are now covered by Chapter 19 (Sec. 50-35()). These included requirements that a preliminary plan approval be conditioned upon execution of an erosion and sediment control plan approved by the Board after consideration of recommendations from the Montgomery Soil Conservation District, that the permit for clearing and grading issued by the Department of Permitting Services (DPS) be in conformance with this plan, and that the Board could revoke a preliminary plan approval if a developer proceeded to clear and grade a site without a DPS permit.


Issue: The draft retains the existing provision that the Planning Board may find “that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate.” The County Council discussed, but rejected a similar provision for the master plan finding that is now required for site plans by the new zoning ordinance. Thus, the Planning Board will not be able to find that a master plan recommendation is no longer appropriate for projects that require both preliminary and site plan approval. Nonetheless, staff recommends retaining the provision in the subdivision regulations for the projects that only need preliminary plan review. In staff’s opinion, the provision is needed because the development standards that apply to a preliminary plan that doesn’t go to site plan will not be as flexible as those for a site plan.

➢ Removed requirements for a separate resubdivision analysis from the Chapter.

After discussion prior to the public hearing, the Planning Board concluded that the general requirements for lot dimensions in Section 50.4.3.C.1.a provide a sufficient basis to judge the suitability of any subdivision, including a resubdivision, and opted to remove requirements for a separate resubdivision analysis from the Chapter.

➢ Added new provisions for creating private roads to address what has become a common desire for their use. The provisions include:
  ○ Private roads created by subdivision must be platted in right of way parcels that are separate from adjoining lots to maintain the Board’s ability to ensure adequate space for road related uses within subdivisions.
  ○ Private road right of way parcels, like a dedicated public right of way, must be platted to the full width of the right of way recommended for the applicable road classification in
Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission

Office of the Chair

August 11, 2015

The Honorable George Leventhal, President
Montgomery County Council
Stella B. Werner Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Planning Board Recommendation on Transmittal to County Council for Introduction and Review of a Comprehensive Revision to the Montgomery County Code, Chapter 50 - Subdivision Regulations, affecting the transfer and subdivision of land within the Montgomery County Portion of the Maryland-Washington Regional District.

Dear Mr. Leventhal and Councilmembers:

On Thursday, July 23, 2015, the Montgomery County Planning Board voted to transmit the Comprehensive Revision to Chapter 50, the Subdivision Regulations, to the County Council. The effort to update and revise the Subdivision Regulations has been ongoing for over a year. The Planning Board reviewed the Planning Department staff ("Staff") draft of the Comprehensive Revision initially on Thursday, March 19, 2015 and authorized Staff to release the document for public review. On Thursday, April 30, 2015, the Planning Board held a public hearing at which time both oral and written comments on the Revision were accepted. The Planning Board held the public record open after the scheduled public hearing to receive additional comments. Work sessions were held on Thursday, June 18, 2015, Monday, July 20, 2015 and Thursday, July 23, 2015. The Board is pleased to be sending you this draft Revision; the work done to date represents a significant effort on this very important section of the County Code.

In reviewing the Comprehensive Revision, the Planning Board considered the recommendations of Staff as well as any commentary provided from all interested parties. Staff made substantial outreach efforts to other agencies, the community and local legal firms and engaged any party who wished to provide input or have more intimate discussions on the details of the Revision. The commentary provided from the handful of participants was welcomed and extremely helpful to the process, however, the overall community-wide interest was low.

The focus of the Comprehensive Revision was to modernize and clarify outdated language; improve the document's organization and ease of use; codify current interpretations; and ensure consistency with the recently adopted zoning ordinance. The Revision is not intended to reinvent the basic methodologies by which land has been subdivided. With every
modification, the Planning Board kept in mind the overarching goal of improving the
efficiency in which development applications are reviewed.

While our efforts were not to radically overhaul the Subdivision Regulations, we believe some improvements were needed. The Planning Board has identified some of the most significant changes that may require further discussion with the County Council prior to adoption of the Revision.

The significant changes include:

- Addition of rules for interpretation and new defined terms (§50.2);
- New platting exceptions to permit construction and reconstruction of new detached dwellings as anticipated in the new zoning ordinance (§50.3.3.B.4);
- Modified application processing and hearing schedule timing for preliminary plans to conform with the new zoning ordinance requirements for site plan (§50.4.4.2.B);
- Added specific findings that the Planning Board must make in order to approve a preliminary plan (§50.4.4.2.D);
- Combined review standards that form the basis for Planning Board findings into a new technical review section (§50.4.4.3);
- Retained the Board's ability when making a determination of substantial conformance to a Master or Sector Plan, to find that events have occurred to render the relevant plan recommendation no longer appropriate if a site plan is not required (§50.4.4.3.A.1);
- Removed existing 50-29(b)(2) resubdivision requirements;
- Added new provisions to permit creation of private roads (§§50.4.4.3.C and 50.4.4.3.E), including the ability to create such roads in an easement only so that underground structures like a shared garage may be constructed (§50.4.4.3.E.4);
- Added new provisions for Administrative Subdivision Plans that permit new lots to be created in certain circumstances after approval by the Planning Director (§50.6);
- Added application processing and hearing schedule timing requirements for subdivision record plats (§50.8.8.2);
- Modified the waiver finding by removing the need to find that unusual circumstances and practical difficulties of the plan prevent full compliance with the chapter and replacing it with a finding that application of specific requirements of the chapter are not needed if the intent of the requirements are achieved (§50.9.9.3); and
- Modified provisions for bonding and surety to permit the Planning Board to require them for both public and private improvements, especially improvements to private streets (§50.10.10.2).
The outstanding issues are:

- Reaching consensus on the need for private streets in certain circumstances to facilitate the types of development anticipated by the zoning ordinance, and if that is achieved, establishing standards and procedures for creating, designing, constructing and maintaining private streets; and
- Re-examination of the Adequate Public Facilities Ordinance provisions in Chapter 50 in coordination with discussion on the next Subdivision Staging Policy.

**Private Streets**

It is evident in reviewing recent plan applications that the development community has a keen interest in furthering the use of private roads for public use within the urbanizing areas of the County. As professed by the building industry, private streets are needed to provide necessary flexibility in right-of-way width and road design that cannot be achieved under Chapter 49 to provide more desirable building design and such things as enhanced sidewalk, curb and crosswalk design features that promote pedestrian circulation. They also point out that private streets permit an overseeing management entity to retain control over maintenance of the roads rather than relying on the County to provide for it. The Planning Board has agreed with the design argument in several development projects and has approved private roads in public access easements; however, it has become obvious that provisions are needed in the Subdivision Regulations to address certain private road issues.

First, there is the issue of ensuring that private roads are designed and constructed properly. The existing provisions of Chapter 50 require private roads to be built to the structural standards of a tertiary street, and that the builder must have a registered engineer certify to the Department of Permitting Services (DPS) that the road has been designed to meet these structural standards and that all construction complies with the design. These provisions were written for the limited use of private cul-de-sacs anticipated by the previous zoning ordinance for large lot and rural cluster detached residential zones, and streets serving townhouse and multi-family residential parking lots. There is now much more of a desire to use private roads in the urbanizing areas of the county as part of mixed use development where higher classification roadways are anticipated by the Master Plan and the tertiary road structural standards are not appropriate. To address this, the proposed Revision requires that private roads be designed and constructed to the standards that are appropriate for the classification of the road with builder certification to DPS that this is done. However, DPS has stated that this is a problem because they are not authorized to review private roads under Chapter 49, and in most cases, they do not look at the ones that have been approved or track whether the certification has been provided.

Ideally, if consensus can be reached about the use of private roads in certain circumstances, the Planning Board believes that such roads should be reviewed by DPS and the Department
of Transportation (DOT) who already have the professional engineering staff with the necessary expertise. Otherwise, if the Planning Board maintains authority over private roads, staff with the appropriate qualifications will need to be added to the Planning Department.

A second issue involved in the use of private roads is maintaining access to the public, especially when the roads are an integral part of the road network called for in a Master Plan. Therefore, in the instances where the Planning Board has approved private roads, they have been required to be placed in a public access easement. However, there has been some difficulty in getting DPS to accept these easements on the record plat. Planning Staff has been working with DPS and DOT to develop a standard easement document for this purpose but further discussion is needed.

A final issue involving private roads is how they are platted. The proposed Revision anticipates that private roads will generally be created, like a public road, in a road parcel that is separate from the adjoining lot(s) but not dedicated to the public. However, some recent plan approvals have demonstrated that such parcels are a problem if an underground parking structure crosses beneath the vertical plane of the road parcel. Although current subdivision provisions permit aboveground or underground parking facilities to cross a lot line, DPS has pointed out that this actually violates building code standards that require fire walls within structures, where such structures cross a lot line. To address this issue, developers in the urbanizing areas have proposed, and the Planning Board has approved, private roads created by a public access easement only, and not within a separate and distinct parcel. This option for these limited circumstances has also been added to the proposed Revision.

These issues need further discussion, but the Planning Board believes that the option to create private roads in certain circumstances is needed and, therefore, supports the proposed provisions.

Adequate Public Facilities
Several comments on the proposed Revision concerned the provisions for the determination of Adequate Public Facilities (APF) and the possible need for significant revisions, especially to the rationale by which the Planning Board extends aging APF validity periods to consider the prevailing economic climate that we now recognize as a major influence on the pace of new development. With the exception of adding provisions for extension of APF validity for mixed use projects, the proposed Revision retains the currently codified approach to both granting and extending APF approvals. However, given the age of these provisions and the recent Master Plan discussions on this topic it is reasonable to assume that the way the County assures that public facilities are adequate, especially transportation related facilities, will be changing under the new Subdivision Staging Policy. If this occurs, it will likely mean further revision of the Subdivision Regulations.
BOARD RECOMMENDATION

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, July 23, 2015.

[Signature]
Casey Anderson
Chair