



Subdivision Regulation Amendment (SRA) No. 20-01, Rules of Interpretation – Computing Time Periods

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Description

SRA 20-01 would extend the validity period or deadlines of approved subdivisions that are unexpired at a certain date.

Summary

Staff is in favor of the sponsors’ intent to provide an extension of the validity period or deadlines for previously approved unexpired subdivisions. However, staff does not believe that the proposed SRA is taking the correct approach to the two-year extensions.

In SRA 20-01, the extension is provided in the section on interpretation of the chapter. Although a simpler approach, it may result in more confusion in the end. Past extensions to preliminary subdivision plan validity and adequate public facility plan (APF) validity were provided through ordinances that were appended to Chapter 50 as editorial notes describing the various extensions. Those editorial notes are located at the ends of the sections in Chapter 50 on Plan Validity and APF Validity (at the end of Sections 50.3 and 50.4, respectively). Staff believes that the same approach should be followed again. Staff has provided suggested language at the conclusion of the technical staff report consistent with current text in Sections 50.3 and 50.4 establishing an extension of the validity period for APF and Preliminary Subdivision Plan.

Background/Analysis

The County Council adopted legislation in 2009, 2011, 2013 and 2015 for 2-year extensions of all valid adequate public facility and preliminary plan approvals because they were viewed as important measures to assist developers and builders during an economic downturn.

The rationale for SRA 20-01 is depicted below in an excerpt from the “Introduction Memo” from County Staff dated June 18, 2020:

The County is experiencing an unprecedented global pandemic and an economic crash. Stay-at-home orders, as essential as they have been, are a sudden shock to normal business operations. In the midst of these unprecedented times filled with change and uncertainty, the sponsor believes that previously established deadlines in subdivision approvals may be unrealistic. Within the workforce needed to move a development through engineering processes, there are inefficiencies in working from home. Financial commitments may require additional time to secure.

SRA 20-01 would extend the duration of all deadlines and validity periods established for previously approved, unexpired subdivisions by 2 years. The additional time runs from the period “applicable to the approval.” The period or date applicable to the approved application would include any extensions granted by the Planning Board. The extensions apply to unexpired approved applications. Projects with unexpired validity periods include those for which the applicant has made a timely extension request to the Planning Board.

Councilmember Riemer believes that SRA 20-01 would be a proactive step toward minimizing unnecessary disruptions to an important segment of the county’s economy.

SRA 20-01 as Introduced

As introduced, SRA 20-01 attempts to provide a simple streamlined way to accomplish the sponsors’ intent to extend the duration of all deadlines and validity periods established for previously approved, unexpired subdivisions by 2 years. The SRA does this by proposing the following language in Division 50.2. (INTERPRETATION AND DEFINED TERMS), Section 2.1. (Rules of Interpretation):

The following rules of interpretation apply to this Chapter.

B. How to Compute Periods Measured in Days. If this Chapter establishes a validity period or requires or allows a person to perform an act within a specific time period measured in days, the person must compute the deadline in the following manner:

* * *

4. For unexpired applications approved before {effective date}, the validity period or the time period is 2 years after the period applicable to the approval.

C. Requirements to Act by a Specific Date.

* * *

3. For unexpired applications approved before {effective date}, the specific date is 2 years after the date applicable to the approval.

* * *

Summary of the APF and Preliminary Plan Validity Period Procedure

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

When the Planning Board finds that public facilities are adequate to support a subdivision, the finding has a limited validity period. Prior to July 25, 1989, there were no time limits on a finding of adequate public facilities. However, it soon became obvious that allowing the pipeline to continue to grow had negative impacts since available capacity for both roads and schools was being absorbed by projects that had received approval but were never going to move forward. From July 25, 1989 until October 19, 1999, projects were given an APF validity period of 12 years. Even this was recognized to be a problem however, so beginning October 19, 1999, the time limits were changed to no less than 5 years for smaller projects and no more than 12 years for larger, more complex projects, as determined by the Planning Board at the time of subdivision. Between August 1, 2007 and March 31, 2009, and again since March 31, 2017, these time limits were further adjusted downward to be no less than 5 and no more than 10 years, as determined by the Planning Board at the time of subdivision.

Portions of Section 4.3.J of Chapter 50 contain the language setting the time limits of a finding for adequate public facilities by the Planning Board. Once the APF validity period has been established through the preliminary plan process, all building permits for a development must be issued within these time limits or an entirely new application must be submitted. Section 4.3.J also contains the language that determines the conditions under which the Planning Board may grant an extension of the validity period for a finding of adequate public facilities.

Section 4.2. of Chapter 50 contains the language setting the time limits for the preliminary plan validity period. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the preliminary plan validity. For a single-phase project, a preliminary plan approved after March 31, 2009 and before April 1, 2017 remains valid for 60 months after its initiation date. A preliminary plan approved after March 31, 2017 remains valid for 36 months after its initiation date. This means that a final record plat for all of the property delineated on the approved preliminary plan must be recorded among the County Land Records before the validity period expires. For a more complex, multi-phase project, the Planning Board can establish a validity period for each phase. However, the time allocated to any phase must be 60 months or less after the initiation date for that particular phase for any preliminary plan approved after March 31, 2009, but before April 1, 2017, and 36 months after the initiation date for that particular phase for any preliminary plan approved after March 31, 2017. Validation of a preliminary plan for each phase occurs upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

Conclusion

In general, given the unprecedented global pandemic and resulting economic impacts, staff recognizes the Council's desire to provide an extension for the validity period or deadlines for previously approved unexpired subdivisions. However, staff does not believe that the proposed SRA is taking the correct approach to the two-year extensions. In SRA 20-01, the extension is provided in the section on interpretation of the chapter. Although a simpler approach, it may result in more confusion in the end. Past extensions to plan validity and APF validity were provided through ordinances that were appended to Chapter 50 as editorial notes describing the various extensions. Those editorial notes are located at the ends of the sections in Chapter 50 on Plan Validity and APF Validity (at the end of Sections 50.3 and 50.4, respectively). Staff believes that the same approach should be followed again.

In addition, the proposed language places the extension under the heading “How to Compute Periods Measured in Days,” but validity periods are measured in years, not days.

Staff recommends inclusion of text consistent with language depicted in Chapter 50. For the readers’ convenience, the following text provides a framework consistent with the current language located in the editorial notes at the end of Sections 50.3 and 50.4:

(Place in the editorial notes at the end of Section 50.3)

Notwithstanding any provision of Section 4.2.G to the contrary, the validity period of any preliminary subdivision plan that was valid on {effective date}, or for which a timely application for an extension of the validity period was pending on {effective date}, including any separate phase of a multi-phase plan, is automatically extended for 2 years after the date when the validity period would otherwise have expired. This 2-year extension must be treated for all purposes as part of the validity period that was extended.

(Place in the editorial notes at the end of Section 50.4)

Notwithstanding any provision of portions of Section 4.3.J to the contrary, the validity period of any determination of adequate public facilities that was valid on {effective date} or for which a timely application for an extension of the validity period was pending on {effective date}, is automatically extended for 2 years after the date when the validity period would otherwise have expired. This 2-year extension must be treated for all purposes as part of the validity period that was extended.

Attachments

1. SRA No. 20-01 as introduced

ATTACHMENT 1

Subdivision Regulation Amendment No.: 20-01
Concerning: Rules of Interpretation –
Computing Time Periods
Draft No. & Date: 5 – 6/18/2020
Introduced: June 23, 2020
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Councilmember Riemer
Co-Sponsors: Councilmembers Friedson, Navarro, and Hucker

AN AMENDMENT to:

- Ext
end the validity period or deadlines of approved subdivisions that are unexpired at a certain date

By amending

Montgomery County Code
Chapter 50. “Subdivision of Land”
Division 50.2. “Interpretation and Defined Terms”
Section 2.1. “Rules of Interpretation”

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

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

1 **Sec. 1. Chapter 50 is amended as follows:**

2 * * *

3 **Division 50.2. INTERPRETATION AND DEFINED TERMS**

4 **Section 2.1. Rules of Interpretation**

5 The following rules of interpretation apply to this Chapter.

6 A. How to Compute Periods Measured in Months. If a period of time is
7 measured in months, the period begins and ends on the same day of a month;
8 however, if there are not enough days in the final month for this to be
9 possible, the period ends on the final day of the final month.

10 B. How to Compute Periods Measured in Days. If this Chapter establishes a
11 validity period or requires or allows a person to perform an act within a
12 specific time period measured in days, the person must compute the deadline
13 in the following manner:

14 1. If the period follows an event, count the day after the event as the first
15 day of the period.

16 2. Count the remaining number of calendar days in the period; however,
17 if the period is 7 days or fewer, omit Saturdays, Sundays, and legal
18 holidays.

19 3. Do not count the last day if it is a Saturday, Sunday, legal holiday, or
20 if the office where the person must file a document or perform an act
21 is not open during the regular hours of that office on that day.

22 4. For unexpired applications approved before {effective date}, the
23 validity period or the time period is 2 years after the period applicable
24 to the approval.

25 C. Requirements to Act by a Specific Date.

26 1. If the law requires or allows a person to perform an act by a specific
27 date, but the specific date is a Saturday, Sunday, or legal holiday, the

28 person may perform the act on the next day that is not a Saturday,
29 Sunday, or legal holiday.

30 2. Any action required to be taken within a specific time period is
31 measured from the date of a final agency action, or, if a party seeks
32 judicial review of the agency action, from the date the court makes a
33 final decision.

34 3. For unexpired applications approved before {effective date}, the
35 specific date is 2 years after the date applicable to the approval.

36 * * *

37 **Sec. 2. Effective Date.** This amendment takes effect when it becomes law.
38

39 *Approved:*

40

41

42 _____
Marc Elrich, County Executive Date

43

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

45

Selena Mendy Singleton, Esq. Date
Clerk of the Council