Item 6 - Correspondence

From:	Stephen Crum
To:	MCP-Chair
Cc:	Braunstein, Neil; patrick.bulter@montgomeryplanning.org; Sorrento, Christina; Smith, Stephen
Subject:	Proposed Omnibus Subdivision Regulations Amendment, Item No. 6, Date: 10/22/20
Date:	Monday, October 19, 2020 10:37:33 AM
Attachments:	image001.png L_Subdivision Regulations Amendment_01_sec.pdf

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Chair Anderson-

Please find attached, comments related to the Omnibus Subdivision Regulations Amendment which will come before the Montgomery County Planning Board on Thursday, October 22, 2020.

Thank you-

Stephen-

Stephen E. Crum, P.E.
Engineers · Planners · Landscape Architects · Surveyors
9220 Wightman Road, Suite 120
Montgomery Village, Maryland 20886-1279
Phone: 301.670.0840 x 1019 • Direct: 240.912.0819
Mobile: 301.717.5983
Email: scrum@mhgpa.com
Web: www.mhgpa.com

Macris, Hendricks and Glascock, P.A.
Engineers ▪ Planners ▪ Surveyors ▪ Landscape Architects

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279
Phone 301.670.0840
Fax 301.948.0693
www.mhgpa.com

MHG

October 19, 2020

Casey Anderson, Chair
and Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
2425 Reedie Drive, 14th Floor
Wheaton, MD 20902

Via Electronic Mail:
mcp-chair@mncppc-mc.org

Re: Comments to the Proposed
Omnibus Subdivision
Regulations Amendment
MCPB Item No. 6
October 22, 2020

Dear Chair Anderson and Members of the Planning Board:

This letter is submitted on behalf of Macris, Hendricks and Glascock's engineering and land surveying practice areas regarding the recommendations contained within the October 9, 2020 Proposed Omnibus Subdivision Regulations Amendment.

Section 2.2. Definitions

Applicant, Developer or Subdivider: An individual, partnership, corporation, or other legal entity and its agent that undertakes the subdivision of land or the activities covered by this Chapter. The terms include all persons involved in successive stages of the project, even though such persons may change and ownership of the land may change. Each term includes the other.

Comments: The term "Applicant" is used 99 times in Chapter 50 and the term "Subdivider" is used 42 times, while the term "Developer" is only used 13 times. Many land owners who make subdivision applications view themselves as neither developers nor subdivders, particularly in the case individual homeowners adjusting lot lines and institutions converting a parcel into a single record lot to obtain a building permit. For consistency, shouldn't the term "Applicant" be used throughout Chapter 50?

Section 2.2. Definitions

Building Restriction Line: A line designating an area in which development or building is prohibited ***[****by the Board under Section 50.4.3.K of these regulations****]****.*

Comments: Building restriction lines as defined in Chapter 50 have conventionally been taken to include setback lines as defined in Chapter 59. While these two terms have been used interchangeably in the past this amendment would be an opportunity to clarify that building restriction lines are not zoning setback lines.

Section 2.2. Definitions

F:
Floodplain: as defined in Chapter 19.
Floodplain, 100-year: as defined in Chapter 19.

Comments: Flag Lot should be defined. Paraphrased from the Staff Report: "Lots with a narrow strip of land, which connects the building envelop of the lot to a public or private street right-of-way and provides the minimum frontage as required by Chapter 59."

Section 50.4.3.C.1 Lot Design – General Requirements

b. Flag Lots. The Board must not approve flag lots, except where unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way permit no other feasible way to subdivide and the Board determines that appropriate separation between building envelopes can be achieved. In approving a flag lot, the following provisions apply:

i. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot or that are between the proposed flag lot and the road on which it fronts;

ii. the Board may require additional building restriction lines to ensure appropriate separation between building envelopes and to provide appropriate location of the building envelope within the lot; and

iii. all building restriction lines must be shown on the plat.

Comments: The staff report correctly acknowledges that flag lots can be useful in designing a subdivision and we commend including clarification on the use of this type of lot after many years of ambiguity. The use of flag lots can further the goal of providing more affordable housing within the County. We would, however, suggest the following changes to the provisions allowing flag lots:

Under paragraph i.; the zoning categories in which the separation provisions apply should be expanded to include the various designations found in Chapter 59, i.e. Rural Residential Zones, Residential Detached Zones, Residential Townhouse Zones, etc. Further, the prescribed separation distance of 80 feet should vary depending on the zoning category of the subject property and

other means of providing separation, i.e. buffers between lots should be allowed, such as landscaping, earth berms, and building orientation.

Under paragraph ii.; these building restriction lines should include a purpose similar to other building restriction lines, i.e. septic building restriction line or floodplain building restriction line.

Under paragraph iii.; since record plats often become the repository for references to prior land use and subdivision approvals, the plat should also include notes regarding the intended purpose of these building restriction lines such that if and when the purpose is no longer valid these restrictions would no longer apply. For example, if the properties are subject to a Zoning Map Amendment, which changes the zoning category to a non-residential zone, these building restriction lines would no longer be necessary.

This section is silent on the use of flag lots in non-residential zoning categories and should be expanded to provide provisions where the use of flag lots would be allowed. Since there is generally less concern over the negative effects of flag lots in non-residential zoning categories, we would suggest that flag lots be affirmatively permitted without the requirements for separation restrictions. Further, how will flag lots be addressed in subdivisions of land within CR family of zoning categories?

Section 50.4.2 Approval Procedures

K. Vacating an approved subdivision.

1. An applicant may request that the approval of a subdivision plan, for which no subsequent plats have been recorded, be vacated.

2. A request to vacate an approved subdivision plan must include proof of ownership and notarized signatures of all property owners or other persons who are authorized by the property owner.

3. The Director must approve the request to vacate the approved subdivision plan if the Director finds that the request is not contrary to the public interest.

Comments: These provisions should be expanded to include companion plan approvals, including Preliminary Forest Conservation, Final Forest Conservation, Preliminary Water Quality, and Final Water Quality Plans approval as part of a subdivision application.

We appreciate your efforts to solicit comments from the various stakeholders and we thank the Board for its consideration of these comments. I look forward to participating in the hearing on Thursday, October 22, 2020, and any subsequent worksessions. Once you have had a chance to review these comments, I would welcome the opportunity to continue the discussion if you have any questions. Thank you.

Very truly yours,

Stephen E. Crum

Stephen E. Crum, P.E.

Cc: Neil Braunstein, neil.braunstein@montgomeryplanning.org
Patrick Butler, patrick.bulter@montgomeryplanning.org
Christina Sorrento, christina.sorrento@montgomeryplanning.org
Stephen Smith, stephen.smith@montgomeryplanning.org

From:	Kominers, William
To:	MCP-Chair
Cc:	Braunstein, Neil; Sorrento, Christina; Griffin Benton
Subject:	Agenda Item #6 -- Subdivision Regulations Amendment (October 22, 2020)
Date:	Wednesday, October 21, 2020 9:05:24 AM
Attachments:	COMMENTS ON SUBDIVISION REGULATIONS PROPOSED AMENDMENTS v2(3853030.pdf

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Chair Anderson and Members of the Board,

Attached please find my comments on the proposed Amendment to the Subdivision Regulations that is to be discussed by the Board tomorrow, October 22.

Please place my comments in the record of the discussion on the Amendment. Unfortunately, due to scheduling conflicts, I will be unable to present these comments in person at the Board's meeting.

I have had several discussions with the Staff about the proposed Amendment. The Staff has been very accessible and helpful in clarifying the intent in numerous areas. I hope this has resulted in a better text. I expect to continue this dialogue as the Amendment is introduced and proceeds through review.

Thank you for your consideration of my comments.

Bill Kominers

William Kominers, Attorney
Lerch, Early & Brewer, Chtd. rising to every challenge for 70 years
7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814
T 301-841-3829 | F 301-347-1783 | Main 301-986-1300
wkominers@lerchearly.com | Bio

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William Kominers
Attorney
Phone 301-841-3829
wkominers@lerchearly.com

COMMENTS ON SUBDIVISION REGULATIONS AMENDMENTS

(William Kominers; October 21, 2020)

Lines 278-286. Section 4.2.K. In Subsection 4.2.K.1, the recording of a plat should not be an impediment to voluntarily vacating a subdivision plan. The APF approval can expire after a plat is recorded and, as a result, the ability to implement the subdivision plan disappears, yet the plat remains recorded. Similarly, in Subsection 4.2.K.3, the necessity for the Director to find that the request to vacate is "not contrary to the public interest" is unnecessary. If the Director does not agree to vacate the approved subdivision, the applicant always has the ability to allow the plan to simply expire by passage of time, creating the same result. Placing these constraints on vacating a plan seem an unnecessary impediment to implement the desire of the applicant. I recommend deleting those constraints.

Lines 399-405. Section 4.3.E.3.b. This section deletes the term "administrative subdivision plan" from the text. This occurs in several places in the Amendment. The text is not clear whether this is an intention to exclude the administrative subdivision plan from having to comply with the specific requirement, or merely to utilize the broad term "preliminary plan," on the theory that it includes the administrative subdivision plan as a type of preliminary plan. The Staff Report, or legislative history should be made clear whether the deletion of the term "administrative subdivision plan" in this section and others is meant to exclude, or merely to subsume the administrative subdivision plan within the broader preliminary plan.

Lines 497-498. Section 4.3.I.3.a.iii. This section requires that utility easements be shown on a record plat. While normally desirable, in the case of a development or redevelopment of existing platted property, a new record plat may not otherwise be needed. Complying with this section may cause replatting the property (with many potential negative consequences) simply to show a new utility easement. The Subdivision Regulations should allow the new utility easement to be shown through the use of easement document, rather than the necessity of being shown on a record plat, in those situations where the property is already platted and is not otherwise intended to be re-platted as a part of the new development approval.

Lines 522-528. Section 4.3.J.5. This Subsection adds an initiation date for the APF validity period, and includes the clarification, already present for preliminary plans in Subsection 4.2.G., that in the event of an appeal being taken, the validity period begins at the end of the appeal. This treats both approvals in the same way and avoids the inconsistency today that the APF validity might be running during an appeal, while the plan's validity has not yet begun. This is an important, positive change.

Lines 595-597. Section 4.3.J.7.h. The County should not limit the APF validity period for extensions to 12 years. There are many examples in the County of projects that have APF approvals that last well beyond that length of extension period, because of the size and complexity of the project, the unique nature of the project, or similar reasons. The County will be depriving itself of the flexibility to make case by case determination in the future. Flexibility is needed to compete with neighboring jurisdictions to attract and/or to retain major business or developments.

The proposed change will prevent the implementation of many projects that are just the type of economic development, comprising quality jobs and growing numbers of jobs, that the County is or should be seeking. Cutting these projects off because of an arbitrary limitation, seems to be short-sighted. These are often projects that have been providing steady job growth, implemented over time, consistent with market forces. Market forces do not always conform to Montgomery County time schedules, as we can see with the COVID-19 pandemic.

Commercial development is not implemented in a continuous straight line, there are peaks and valleys, responding to demands of business and the market. Logical, deliberate buildout can require more time than planned, as internal and external conditions change. Often this necessitates longer durations and therefore more extensions.

The development horizon for many non-residential development projects extends well beyond 12 years of extensions. Especially with large scale, long-term developments, market conditions, multiple buildings or phases in a project, the logical buildout sequence, internal business decisions and changes of direction, and the external effects of recession or other financial challenges, all cause need for a longer period for implementation and therefore the longer period needed for APF duration.

Commercial projects often have been conditioned on improvements or contributions designed to accommodate the APF impacts of the project. In order to proceed, those requirements must have been fulfilled. Having built or contributed to the improvements, the project has, in good faith, fulfilled its obligations to the County, and addressed its APF-related impacts. The public benefit of obtaining the improvements has already occurred, even though all phases of the development have not yet proceeded. In that interim, the public has had the benefit of use of the improvements, without the corresponding development impacts. But, having provided the improvements needed to address the impacts, there is no reason why the project should not proceed, at whatever time economic and market conditions allow. In fact, it would be inequitable and a breach of trust not to allow the project to go forward, after having provided the facilities required by the regulatory approval. There is a vested contractual interest that must be respected.

Lines 621-623. Section 4.3.L.e. This provision appears to prohibit future subdivision of land within a cluster subdivision once the property is platted, if such subdivision might result in the creation of additional lots. However, this Section does recognize the situation where the lots in that cluster subdivision might be reconfigured generally so as to maintain the required open space,

maintain the cluster aspect, and yet create additional lots through an approval by the Planning Board. That possibility should not be foreclosed by a blanket prohibition. I suggest adding language to allow subdivision "if approved by the Planning Board as a preliminary plan amendment."

Lines 675-687. Section 6.1.D. This Section allows the consolidation of properties within a non-residential zone. The process currently requires that there be one complete lot and then one or more parts of lots. The additional language at Lines 686-687 is beneficial to this Section, and I support this addition. This language clarifies that for purposes of this Section, a property qualifies as a "whole lot" if it has qualified for the exemption under Section 50.3.B.2.

But even with this additional clarification, the language of Subsection D seems to only do a part of the job. What is the necessity for having at least one "whole" lot involved? Particularly as it is restricted to non-residential zones, this Section should allow consolidation of many parts of lots by themselves. Because this consolidation is done as an administrative subdivision, rather than a minor subdivision, it will go to either the Planning Director or the Planning Board for approval. Thus, there should be adequate oversight of the combination of parts of the lots.

The provisions of Subsections 1 and 3 already limit use to the existing development, or, in the event that new development is proposed, require that adequate public facilities have to be demonstrated before the plat is approved. But the consolidation of the parts of lots could occur, limited to the existing approved development, if any. The plat could then be recorded, and when ready to proceed with new development, the adequate public facilities review could occur at that time, thus, satisfying the intention of Subsection 3.

There seems to be little reason why parts of lots could not be consolidated in this manner without the need to include an existing whole lot.

Lines 1002-1003. The provisions of Subsections 1 and 3 already limit use to the existing development, or, in the event that the new development is proposed, require that adequate public facilities have to be demonstrated before the plat is approved. For example: pending plans to create flag lots; pending extensions for residential projects that would otherwise not have to undergo a new APF test for schools as a part of their extension. I am certain there are many more examples. But the grandfathering, or the transition treatment of pending applications, should be addressed in the amendment. Those pending applications should be allowed to proceed to approval under the law prior to the effective date, and then similarly complete the later approval steps in the process.

Thank you for your consideration of my comments.