







Proposed Omnibus Subdivision Regulations Amendment

-  Neil Braunstein, Supervisor, IRC neil.braunstein@montgomeryplanning.org, 301-495-4532
-  Patrick Butler, Supervisor, Mid-County patrick.bulter@montgomeryplanning.org, 301.495.4561
-  Christina Sorrento, Associate General Counsel christina.sorrento@montgomeryplanning.org, 301-495-4646
-  Stephen Smith, Planner Coordinator, IRC stephen.smith@montgomeryplanning.org, 301-495-4522

Completed: 10/9/20

Description

This report provides an overview of the proposed omnibus Subdivision Regulations Amendment that staff recommends be introduced by the County Council. This report is designed to give the Board and general public an overview of changes and provide an opportunity for discussion.

Summary

A comprehensive revision of Chapter 50, the Subdivision Regulations went into effect in February 2017. In the three years since the new chapter has been in effect, it has become clear that an additional amendment is necessary to further clarify language, correct mistakes, and add necessary missing provisions. While the vast majority of the proposed changes are minor, several substantive changes are also proposed, as noted below.

- New provisions for the approval of flag lots and lots without frontage
- New exemption from platting requirements for utility and telecommunication structures
- New provisions for vacating an approved subdivision plan
- New provision for extension of reservation of land for public use
- New provision to specify an initiation date for the adequate public facilities validity period, similar to the existing initiation date provisions for plan validity
- New requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request
- New limitation on Planning Board approved APF extensions to a total of 12 years
- New provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval

The minor changes include clarifications to existing text, changes to improve grammar and provide consistency in capitalization, updated citations for external laws and regulations, and consistency in section numbering.

Discussion of Major Changes

Provisions for Flag Lots and Lots Without Frontage

Flag lots are lots with a narrow strip that connects the main part of the lot to a public or private street right of way. Flag lots can be useful in designing a subdivision by allowing more efficient use of the land, but they can change the perceived character of an existing subdivision when they are created after the land has been initially subdivided. These same concerns also apply to lots without frontage. However, lots without frontage are less prevalent than flag lots, because they are limited to no more than two per subdivision by the current language of Chapter 50.

In order to limit the negative effects of flag lots and lots without frontage, new provisions are proposed that limit the creation of these types of lots.

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.

[b.] c. *Lots to abut on a public or private road.* Except as specified below, every lot must abut on a public or private road. A public road must be dedicated or donated to public use or have acquired the status of a public road under Chapter 49. A private road must be shown on a record plat.

[i.] The Board [may] must not approve [a maximum of 2] lots that do not abut a public or private road [if], 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 will be achieved. In approving a lot that does not abut a public or private road, the following provisions apply:

i. the Board must not approve more than two lots in a subdivision that do not abut a public or private road;

ii. the lots will be served by a private driveway that serves no other lots without frontage[.];

iii. 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 lot without frontage and the building envelopes of all lots that are adjacent to the rear lot line of the proposed lot without frontage or that are between the proposed lot without frontage and the road from which it is accessed;

- iv. 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;
- v. all building restriction lines must be shown on the plat; and
- vi. The access to lots with no road frontage must be adequate to serve the lots for emergency vehicles and for installation of public utilities. In addition, the lots must be accessible for other public services and not detrimental to future development of adjacent lands.

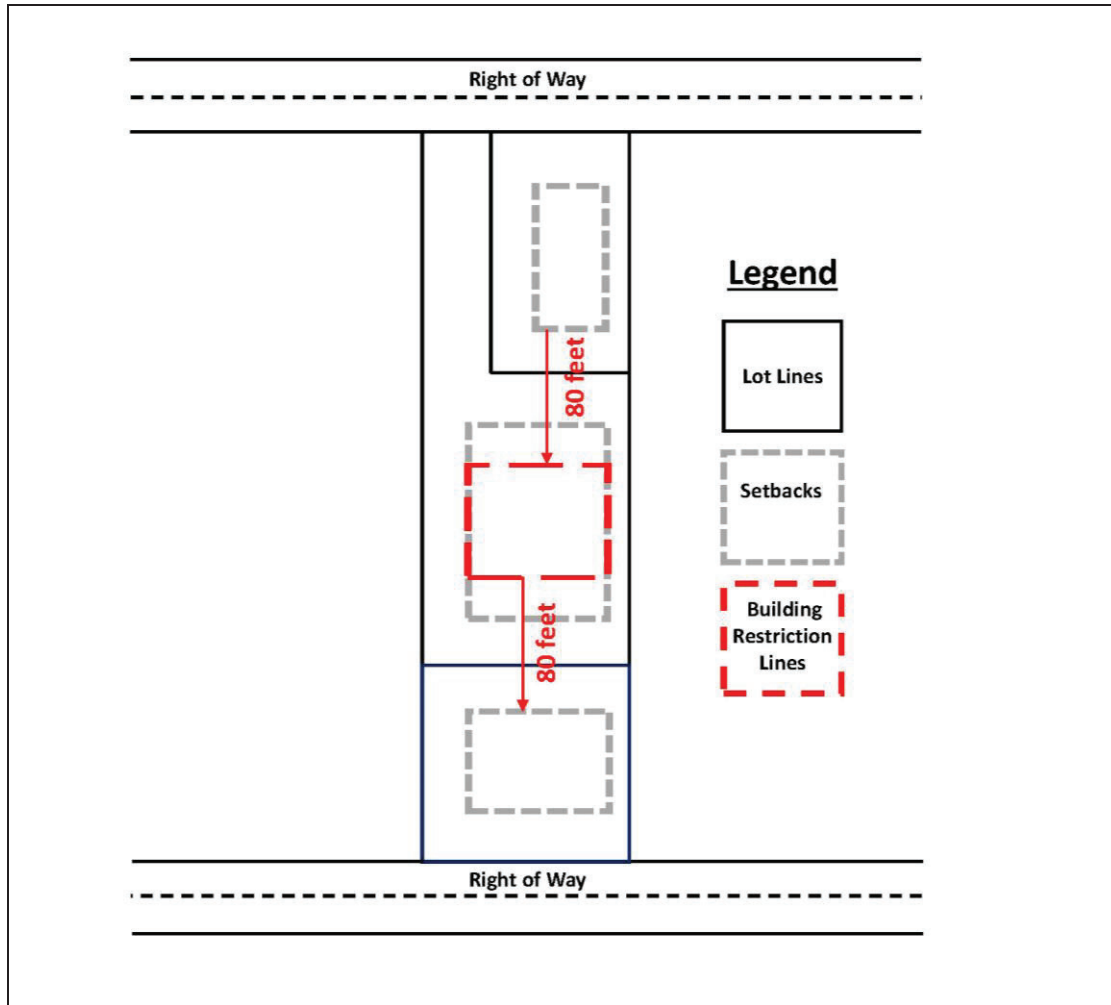


Figure 1 – flag lot with building restriction lines

The proposed provisions require the Planning Board to find that flag lots or lots without frontage are necessary because of unusual topography, environmental conditions, or the position of the tract in relation to surrounding properties and rights-of-way that permit no other feasible way to subdivide the property. The Planning Board must also find that adequate separation will exist between the building envelope of the proposed flag lot or lot without frontage and building envelopes on surrounding existing or proposed lots. To provide adequate separation, the proposed provisions require a separation of at least 80 feet between the building envelope on the flag or no-frontage lot and the building envelopes of lots abutting to the front or rear. The Planning Board may also place additional building restriction lines to create greater separation and to control the side-to-side placement of a house on the lot. A definition of building envelope has been added to the definition list in support of this section.

Exemption from platting requirements for utility and telecommunication structures

Generally, Chapter 50 requires that a plat be recorded before issuance of a building permit. However, Section 50.3.3.B lists circumstances in which this requirement does not apply. Utility and telecommunication towers are proposed to be added to the list to clarify that these projects are exempt from platting requirements because they are not buildings.

Section 50.3.3.B Exemptions to Platting Requirements

9. *Utility and Communication Structures.* The construction of telecommunication towers, antennas, solar arrays, relay stations, or similar facilities, including their associated accessory structures, which are not intended for the shelter, support, or enclosure of persons, unless otherwise required by the Board or further development of the land requires a subdivision plan.

Provisions for vacating an approved subdivision plan

New provisions are proposed that create a procedure that allows an applicant to vacate a previously approved subdivision plan. This will allow an applicant to pursue a different course of action on the subject property, including potentially no development, without being subject to the conditions of approval of the approved subdivision plan. Vacation of an approved plan is an available option only if no plats have been recorded.

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.

Provision for extension of reservation of land for public use

Section 50.4.3.D.5 provides the Planning Board the authority to reserve land within a subdivision for future public use. Reservation may be used when the land in question is not been dedicated or otherwise acquired at the time of subdivision but is expected to be acquired by a public agency within the next three years following approval of the subdivision. The proposed new language allows the Planning Board to extend a reservation period for up to three years upon the request of the property owner.

Section 50.4.3.D.5.a Reservation – Procedure

vi. *Extension.* After the initial reservation period, the Board may extend the reservation period upon request of the property owner if the Board determines that the reserved land continues to be necessary for public use. Any extension must not exceed 3 years.

Provision to specify an initiation date for the adequate public facilities validity period

When a subdivision plan is approved, it typically has a plan validity period and an adequate public facilities review (APF) validity period. The standard length of these periods has varied over the years – it is currently set at three years for plan validity and five years for APF validity. Plan validity is the period of time during which a plat must be recorded and APF validity is the period of time in which building permits must be issued.

Section 50.4.2.G specifies that the plan validity period starts on the initiation date, which is, if no appeal has been filed, 30 days from the mailing date of the resolution. If an appeal has been filed, then the validity period is tolled until the final decision from the Court. Chapter 50 does not currently specify an initiation date for the APF validity period, which means that the APF validity period starts 30 days before the plan validity period starts and does not have a tolling period for appeals. In order to synchronize these two validity periods and ensure that the APF validity period does not expire due to an appeal, new provisions are proposed in Section 50.4.3J.5 that specify an initiation date for the APF validity period.

Section 50.4.3.J Adequate Public Facilities

5. *Validity period.*

a. *Initiation date.* The adequate public facility validity period starts on the later of:

i. 30 days from the date of mailing indicated on the written resolution; or

ii. if an administrative appeal is timely noted by any party authorized to file an appeal, the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods.

b. if a corrected resolution is issued, the initiation date remains the date of mailing indicated on the original resolution.

Requirement that a new determination of school adequacy is required for unbuilt units during review of an APF extension request

Section 50.4.3.J.7 specifies procedures for extending the validity period of an adequate public facilities review. With the recently proposed County Growth Policy, the Planning Board added a requirement that a new determination of school adequacy must be conducted for any unbuilt dwelling units during review of an APF validity extension request. That same new requirement is proposed here for consistency.

Section 50.4.3.J Adequate Public Facilities

7. *Extensions.*

a. *Application.* Only the Board may extend the validity period for a determination of adequate public facilities; however, a request to amend any validity period phasing schedule may be approved by the Director if the length of the total validity period is not extended.

i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period or validity period phase expires.

ii. The applicant must submit a new development schedule or phasing plan for completion of the project for approval.

iii. For each extension of an adequate public facilities determination:

(a) the applicant must not propose any additional development above the amount approved in the original determination;

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

(c) the Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest; and

(d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Board to determine the amount of previously approved development attributed to the lot.

(e) a new adequate public facilities determination for school adequacy is required for the remaining unbuilt units under the school test in effect at the time of Board review.

Limitation on Planning Board approved APF extensions to a total of 12 years

Section 50.4.3.J.7 provides for extensions of the APF validity period, which may vary in length from two and half years to 12 years, depending on a variety of factors. Under the current regulations, a subdivision may be granted extensions in succession, with no limitation on the total length of the extension period. If the maximum length of currently allowable extensions is applied to an APF validity period, it could remain valid for up to 36 years. The additional extensions granted by the County Council would extend the validity period even more, currently up to an additional 10 years.

APF validity periods of this length for projects that are not proceeding in earnest tie up development capacity that might better be used by other projects. Therefore, a new provision is proposed that would limit the total length of any new APF validity extensions to a maximum of 12 years. This is in addition to any special validity period extensions granted by the County Council, such as the five two-year extensions that were enacted in response to adverse economic conditions.

Section 50.4.3.J.7 Adequate Public Facilities – Extensions

h. No combination of extensions of APF validity approved under Section 4.3.J.7 may exceed a total of 12 years from the date of the original APF expiration.

Provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval

With the adoption of the current version of Chapter 50 in 2017, a new type of subdivision plan, called an administrative subdivision plan, came into effect. Administrative subdivision plans are similar to preliminary plans, in that they can be used to subdivide property into a number of lots. However, they are typically acted on by the Planning Director instead of the Planning Board, have a 90-day review period instead of 120 days, have simplified procedures, and generally take less time to reach a decision than preliminary plans.

The current provisions for administrative subdivision plans do not include specific requirements for necessary findings for approval, plan certification, plan validity, revocation of an approved plan, and vacation of an approved plan. Due to this omission, administrative subdivision plans have been approved under the provisions and findings for preliminary plans. While this is legally sufficient, because administrative subdivision plans are a type of preliminary plan, creating separate approval procedures and findings provides greater clarity for applicants, staff, and the Planning Board. The approval procedures and findings are largely the same as those for preliminary plans, with small modifications to reflect the context of administrative subdivision plans.

Section 50.6.3 Approval Procedures

C. Required Findings. To approve an administrative subdivision plan, the Director or Board must make the following findings:

1. the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;
2. the administrative subdivision plan substantially conforms to the master plan;
3. public facilities will be adequate to support and service the area of the subdivision;
4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
5. all stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied;
6. any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M; and
7. any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.

D. Plan Certification

Every administrative subdivision plan approved by the Board or the Director must be certified by the Director to confirm that the plan reflects the approval. Any modification of the plan conditioned by the approval must be included in the plan before receiving the approval stamp. The approved plan must be filed in the records of the Board.

E. Amendments.

Any amendment to an approved administrative subdivision plan must follow the procedures, meet the criteria, and satisfy the requirements of this Division.

F. Plan Validity

1. Initiation date. The plan validity period for administrative subdivision plans starts on the later of:
 - a. 30 days from the date of mailing indicated on the Director's written approval or the Board's resolution; or
 - b. the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods, if an administrative appeal is timely noted by any party authorized to file an appeal.

If a corrected resolution is issued, the initiation date remains the date of mailing indicated on the original resolution.

2. Duration.

- a. An approved administrative subdivision plan remains valid for 3 years after its initiation date.

b. An administrative subdivision plan is validated when the applicant has secured all government approvals necessary to record a plat, and a plat for all property shown on the plan has been recorded in the County Land Records.

c. Any extension of the validity period must follow the procedures of Section 4.2.H.

d. For any action taken by the Director or Board to amend a previously approved administrative subdivision plan, the Director or Board will determine, on a case-by-case basis, whether the validity period should be extended and, if so, for what duration. In making the determination, the Director or Board must consider the nature and scope of the requested amendment.

e. Failure to timely validate or extend the validity period of an administrative subdivision plan is governed by the procedures of Section 4.2.I.

G. *Revocation or Vacation of an Administrative Subdivision Plan*

1. Revocation of an administrative subdivision plan must follow the procedures of Section 4.2.J.

2. Vacation of an administrative subdivision plan must follow the procedures of Section 4.2.K.

In addition to the standard procedures and findings needed for approval, new provisions are proposed to specify circumstances under which an administrative subdivision plan must be acted upon by the Planning Board instead of the Director. Under the existing chapter, the Director may decline to take action on an administrative subdivision plan that generates significant controversy, in which case the Planning Board would act on the plan. The proposed provisions specify that the Planning Board, and not the Director, must act on administrative subdivision plans that include flag lots or lots without frontage (because of their inherently controversial nature) or plans that propose reservation of land for public use (because only the Planning Board is authorized to approve reservations).

Section 50.6.3.B Approval Procedures – Action on An Administrative Subdivision Plan

5. In making the findings required in Section 6.3.C, the Director or Board must consider the technical requirements under Section 4.3. In performing this review, the Director is authorized to perform any relevant action that is permissible to the Board under Section 4.3, except for the following:

1. Section 4.3.C.1.b, with respect to flag lots;

2. Section 4.3.C.1.c, with respect to lots without frontage on a public or private road; and

3. Section 4.3.D.5, with respect to reservation of land for public use.

Recommendation

Staff recommends that the Planning Board request the County Council to introduce the proposed Subdivision Regulations Amendment.

Attachments:

Attachment A: Draft SRA for introduction

Attachment A

Subdivision Regulation Amendment No.: 20-XX
Concerning: Subdivision Ordinance –
Revisions, Clarifications, and
Corrections

Draft No. & Date: 1 – 10/1/20

Introduced:

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:

AN AMENDMENT to the Montgomery County Subdivision Regulations to:

- delete the definition of *Adequate Public Facilities Ordinance (APFO), Licensed Land Surveyor, Subdivision Staging Policy, and Septic Tiers*;
- amend the definition of *Administrative Civil Penalty, Board, Building Restriction Line, Citation, Civil Fine, Enforcement Agent, Engineer, Preliminary Plan, Pre-Preliminary Plan, Centerline of Road*;
- add a definition for *Building Envelope, County Growth Policy, Director Action, Growth Tiers, Land Surveyor, and Utilities*;
- amend provisions concerning;
 - filing and approval procedures for preliminary plan submission
 - the lot design of flag lots, frontage on a public or private road, alleys or pedestrian paths for residential lots,
 - the exemption to certain requirements for *Utility and Communication Structures*;
 - the taxing provisions for all public reservations;
 - the extensions for all public reservations;
 - the access easements for alleys;
 - establishing utility easements in a subdivision;
 - adequate public facilities;
 - a residential cluster subdivision;
 - the approval of an administrative subdivision, a minor subdivision or a plat
 - granting a waiver from any requirement of Chapter 50
- add a provision for places of worship and institutional uses, that a landscaping and lighting plan be submitted for review and approval concurrently with the preliminary plan; and

- generally amend the provisions governing Chapter 50.

By amending

Montgomery County Code	
Chapter 50.	“Subdivision of Land”
Division 50.2.	‘INTERPRETATION AND DEFINED TERMS”
Section 50.2.2.	“Definitions”
Division 50.3.	“GENERAL REQUIREMENTS”
Section 50.3.2.	“Record Plat Required”
Section 50.3.3.	“Exemptions to the Requirements of this Chapter”
Section 50.3.6.	“Submission Procedures for Subdivision Plans”
Division 50.4.	‘PRELIMINARY PLAN”
Section 50.4.1.	“Filing and Specifications”
Section 4.2.	“Approval Procedure”
Section 4.3.	“Technical Review”
Division 50.5.	“PRE-PRELIMINARY SUBMISSIONS”
Section 50.5.2.	“Approval Procedure”
Division 50.6.	“ADMINISTRATIVE SUBDIVISION PLAN”
Section 50.6.1.	“Applicability”
Section 50.6.2.	“Filing Requirements”
Section 50.6.3.	“Approval Procedures”
Division 50.7.	“MINOR SUBDIVISION”
Section 50.7.1.	“Applicability”
Section 50.7.2.	“Procedure for Platting Minor Subdivisions”
Division 50.8.	“PLATS – GENERALLY”
Section 50.8.1.	“Filing and Specifications”
Section 50.8.2.	“Approval Procedure”
Section 50.8.3.	“Recording Procedure”
Division 50.9.	“WAIVERS FROM THIS CHAPTER”
Section 50.9.5.	“Procedure for Granting Waivers”
Division 50.10.	“ADMINISTRATIVE PROCEDURES”
Section 50.10.2.	“Bonding and Surety”
Section 50.10.6.	“Enforcement of Chapter”

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. Division 50.2 is amended as follows:**

2 * * *

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

4 * * *

5 **Section 2.2. Definitions**

6 All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have
7 the same meanings as the definitions in those Chapters, unless otherwise defined
8 here. In this Chapter, the following words and phrases have the meanings
9 indicated.

10 **A.**

11 *[Adequate Public Facilities Ordinance (APFO):* Section 4.3.J of this Chapter,
12 which specifies that the Board must find that public facilities will be adequate to
13 support and serve a proposed subdivision before approval.]

14 *Administrative Civil Penalty:* A monetary penalty imposed by the Board after
15 considering the factors in this Chapter for violating a Planning Board [action]
16 Action or Director Action.

17 *Administrative Subdivision Plan:* A preliminary plan [for a proposed subdivision
18 prepared and] submitted for the Director’s approval before the preparation of a
19 plat.

20 * * *

21 *Board:* The Montgomery County Planning Board of the Maryland-National Capital
22 Park and Planning Commission.

23 * * *

24 Building Envelope: The portion of a lot, enclosed by the front, rear, and side
25 setback lines and any additional building restriction lines, in which a structure may
26 be placed.

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

29 * * *

30 Citation: A document noting a violation of a Planning Board [action] Action or
31 Director Action, seeking to impose a civil fine or corrective action.

32 Civil Fine: A requirement to pay a predetermined sum of money specified in an
33 administrative citation for violating a Planning Board [action] Action or Director
34 Action.

35 * * *

36 County Growth Policy: The resolution or law approved by the District Council to
37 determine the adequacy of public facilities and services.

38 * * *

39 Director Action: A written decision on a preliminary plan, site plan, or other plan,
40 including all associated terms, conditions, requirements, and other obligations or
41 limits, made by the Director under State law and Chapters 50 and 59, including any
42 regulations approved under State or County law. For the purposes of an
43 enforcement action, a Director Action excludes a decision made by the Director
44 under Chapter 22A.

45 * * *

46 *Enforcement Agent:* The Director, or the Director’s designee responsible for
47 determining compliance with a Planning Board Action or Director Action.

48 *Engineer:* A professional engineer [registered] licensed in Maryland.

49 * * *

50 *Growth Tiers:* Tiers adopted by Montgomery County under Subtitle 5 of the Land
51 Use Article.

52 * * *

53 [*Licensed*] *Land Surveyor:* A land surveyor who is licensed in the State to
54 “practice land surveying” as defined in the Maryland Business Occupations and
55 Professions Code Ann. Section 15-101 [(1995 Repl. Vol.)], as amended.

56 * * *

57 *Preliminary Plan:* A drawing for a proposed subdivision [prepared and] submitted
58 for [Board] approval before the preparation of a plat.

59 *Pre-Preliminary Plan:* A drawing for a proposed subdivision [prepared and]
60 submitted for binding or non-binding advice before the submission of a
61 [Preliminary Plan] preliminary plan.

62 * * *

63 *Road, Centerline of:* A line established as a centerline of a road right-of-way by
64 any State, County, or other official agency or governing body with jurisdiction and
65 shown on an officially adopted plan or recorded plat. In the absence of an official
66 centerline, the Board or Director must establish the centerline with consultation
67 from the applicable agency with jurisdiction over the road.

68 * * *

69 *Stop Work Order:* An administrative order issued by an enforcement agent that
70 requires a person to discontinue any further development, construction, or other
71 land disturbance activity authorized by a Planning Board Action or a Director
72 Action until a violation has been corrected.

73 * * *

74 [*Subdivision Staging Policy:* The resolution or guidelines adopted by the District
75 Council to determine the adequacy of public facilities and services.]

76 * * *

77 Utilities: Water, sewage, gas, electric, energy, telecommunications, telephone,
78 broadband, cable facilities, and similar facilities that serve the public.

79 * * *

80 **Sec. 2. Division 50.3 is amended as follows:**

81 **DIVISION 50.3. GENERAL REQUIREMENTS**

82 * * *

83 **Section 3.2. Record Plat Required**

84 * * *

85 B. [Construction of a new principal] A building permit may only [occur] be
86 issued for a building located on a lot or parcel shown on a plat recorded in the
87 County Land Records or on a [property that is] parcel exempt from recording
88 requirements under Section [3.3.B.] 50-3.3.B.

89 * * *

90 **Section 3.3. Exemptions to the Requirements of this Chapter**

91 A. An approved preliminary plan and recording of a plat under this Chapter are not
92 required for the division or conveyance of unplatted land in the following
93 instances:

94 1. *Court action.* Partition of land by will or through action of a court of
95 competent jurisdiction unless or until development of the land is proposed.

96 * * *

97 B. Recordation of a plat before issuance of a building permit is not required for:

98 1. *Agricultural land used for residential dwellings.* An unplatted parcel of
99 agricultural land at least 25 acres in size used for a primary dwelling unit if
100 density and development rights are available and the parcel is eligible to
101 obtain any required sewage disposal permits.

102 * * *

103 9. *Utility and Communication Structures.* The construction of
104 telecommunication towers, antennas, solar arrays, relay stations, or similar
105 facilities, including their associated accessory structures, which are not
106 intended for the shelter, support, or enclosure of persons, unless otherwise
107 required by the Board or further development of the land requires a
108 subdivision plan.

109 * * *

110 **Section 3.6. Submission Procedures for Subdivision Plans**

111 * * *

112 E. *Area within pending master plan.* The Board may defer action on a proposed
113 subdivision plan application, if all or any part of the plan is located in the
114 boundaries of a pending master plan or master plan amendment. For
115 purposes of this Section, a pending master plan or master plan amendment is
116 the public hearing draft master plan or master plan amendment.

- 117 1. The subdivider may resubmit a proposed subdivision plan deferred
118 under this Section to the Board either:
- 119 a. after the final disposition by the District Council of the pending
120 master plan or master plan amendment; or
- 121 b. no later than 12 months from the date the Board approves the public
122 hearing draft master plan or master plan amendment, unless there is
123 a determination by the Board that the subdivision plan application
124 presents a substantial conflict with the proposed public hearing draft
125 master plan or master plan amendment, in which case the Board may
126 defer a subdivision plan application for a maximum of 18 months
127 from the date the Board approves the public hearing draft master
128 plan or master plan amendment, but in no event beyond the period in
129 Subsection 3.6.E.1.a.

130 * * *

131 **Sec. 3. Division 50.4 is amended as follows:**

132 **DIVISION 50.4. PRELIMINARY PLAN**

133 * * *

134 **Section 4.1. Filing and Specifications**

135 * * *

- 136 B. *The drawing.* The subdivider must submit a preliminary plan drawing in a
137 form required by regulations of the Board. Details and information must
138 include:

139 * * *

- 140 3. certificate of an engineer or [licensed] land surveyor to affirm the
141 accuracy of boundary lines, topographic data, and other engineering or
142 survey data, and to certify that the subdivision plans and supporting

143 documents were prepared in a manner that satisfies all submission
144 requirements and applicable agency standards, policies, and procedures;

145 * * *

146 C. *Supporting information.*

147 * * *

148 4. *Concept road grade and profile.* For a public road, an engineer or a
149 [licensed] land surveyor must prepare conceptual road grade and profile
150 plans under the design criteria [of the Road Design and Construction
151 Code] approved by the Department of Transportation and indicate the
152 percentage of tangent grades, lengths of crest and sag, vertical curves
153 and elevations, and elevations of all intersecting roads. The plan must
154 indicate the direction of water flow. Where the topography makes the
155 determination of the adequacy of the road grades difficult, the Director
156 may require additional supporting information.

157 * * *

158 6. Sight distance evaluation for all [proposed] driveways that will serve
159 new development and [proposed] road intersections prepared under the
160 criteria of the applicable State or County transportation agency.

161 * * *

162 11. *Draft Traffic Mitigation Agreement.* A preliminary plan application for
163 property located in a Transportation Management District (TMD),
164 designated under Chapter 42A, Article II, must contain a draft Traffic
165 Mitigation Agreement (TMAg) or similar plan designated under
166 Chapter 42A prepared by the applicant that meets the requirements of
167 that Article.

168 * * *

169 E. *Hearing date.* The Board must schedule a public hearing to begin within 120
170 days after the date the Director accepts an application. The Director may
171 postpone the public hearing by up to 30 days once without Board approval.
172 The Director or applicant may request one or more extensions beyond the
173 original 30 days with Board approval. The Board must notice the public
174 hearing and indicate the new hearing date on the Board’s agenda. An
175 application that was filed before [{effective date of legislation}] February
176 13, 2017, is not subject to this subsection.

177 * * *

178 **Section 4.2. Approval [Procedure] Procedures**

179 * * *

180 B. *Review and recommendation.*

181 * * *

182 2. *Approvals from public agencies.* The following agency approvals are
183 required before the Board approves the preliminary plan:

184 * * *

185 c. *Stormwater management.* The Department of Permitting Services
186 must approve a stormwater management concept plan and floodplain
187 delineation, if required under Chapter 19;

188 * * *

189 F. *Amendments.*

190 1. [A major] Any amendment to an approved preliminary plan must follow
191 the [same] procedures, meet the [same] criteria, and satisfy the [same]
192 requirements of this Division.

193 2. Amendments are classified as [the original preliminary plan] either
194 major or minor.

195 a. A major amendment includes any requests to change density that
196 results in greater adequate public facility impact; or make major
197 changes to lot configuration or location, or right-of-way width or
198 alignment; or make a change to any condition of approval, except a
199 change to [validity period phasing as permitted in Section 4.2.F.2.]
200 plan validity period or APF validity period.

201 [2. A minor amendment to an approved preliminary plan must follow the
202 same procedures, meet the same criteria, and satisfy the same
203 requirements as the original preliminary plan, except as modified under
204 Section 4.2.F.2.b.]

205 b. A minor amendment to an approved preliminary plan includes any
206 change that does not change density in a manner that results in
207 greater adequate public facility impact; make major changes to lot
208 configuration or location, or right-of-way width or alignment; or
209 alter the intent, objectives, or requirements of the Board in
210 approving the preliminary plan. A change to plan validity period
211 or APF validity period is a minor amendment.

212 [b. The Board may approve a minor preliminary plan amendment
213 without a public hearing if the Director publishes a report and
214 recommendation on the amendment a minimum of 10 days before
215 the Board meeting. The Director may also]

216 c. The Director may approve a minor amendment to change validity
217 period phasing as permitted in Section 4.2.H.1.b.

218 G. *Plan Validity.*

219 1. *Initiation date.* The plan validity period for preliminary plans starts on
220 the later of:

- 221 a. 30 days from the date of mailing indicated on the written resolution;
222 or
223 b. [if an administrative appeal is timely noted by any party authorized to
224 file an appeal,] the date upon which the court having final jurisdiction
225 acts, including the running of any further applicable appeal periods, if
226 an administrative appeal is timely noted by any party authorized to
227 file an appeal.

228 If a corrected resolution is issued, the initiation date remains 30 days
229 from the date of mailing indicated on the original resolution.

230 2. *Duration.*

231 a. *Single-phase project.*

232 i. A preliminary plan approved after March 31, 2009 and
233 before April 1, 2017 remains valid for [60 months] 5 years
234 after its initiation date.

235 ii. A preliminary plan approved after March 31, 2017 remains
236 valid for [36 months] 3 years after its initiation date.

237 b. *Multi-phase project.*

238 * * *

239 iii. The time allocated to any phase must be [60 months] 5
240 years or less after the initiation date for that particular phase
241 for any preliminary plan approved after March 31, 2009,
242 but before April 1, 2017, and [36 months] 3 years after the
243 initiation date for that particular phase for any preliminary
244 plan approved after March 31, 2017.

245 iv. The cumulative validity period of all phases must be shorter
246 than or equal to the APF[O] validity period which begins on

247 the initiation date of the first preliminary plan approval,
248 including any extension granted under Section 4.3.J.7.

249 * * *

250 H. *Extension of plan validity period.*

251 * * *

252 2. *Effect of failure to submit a timely extension request.*

253 * * *

254 b. Where a preliminary plan has been allowed to expire due to the
255 applicant’s failure to file a timely request for extension, the Board may
256 reinstate the preliminary plan and establish a new validity period if
257 practical difficulty or undue hardship is demonstrated by the applicant.
258 The Board may require the applicant to get a new APF[O] review and
259 approval by the Board as a prerequisite or condition of its action to
260 extend an expired plan.

261 * * *

262 5. *Planning Board [action] Action.*

263 * * *

264 c. The Board may only grant an extension to a preliminary plan within
265 the plan’s APF[O] validity period, unless a further extension is
266 allowed by law.

267 * * *

268 I. *Effect of failure to timely validate plan or secure an extension.*

269 * * *

270 3. If a preliminary plan or a phase of the plan is not timely validated, any
271 APF[O] determination made by the Board associated with the void portion
272 of the preliminary plan is also void. In such event, the applicant loses any
273 further rights to claim any vehicle trips associated with the expired APF[O]

274 approval. The filing of a new preliminary plan application does not provide
275 the basis for reclaiming vehicle trips lost by the termination of the APF[O]
276 approval.

277 * * *

278 K. Vacating an approved subdivision.

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

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

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

287 * * *

288

289 **Section 4.3. Technical Review**

290 In making the findings under Section 4.2.D, the Board must consider the
291 following aspects of the application.

292 * * *

293

294 **B. Lot design.**

295 1. *General requirements.*

296 * * *

297 b. Flag Lots. The Board must not approve flag lots, except where unusual
298 topography, environmental conditions, or the position of the tract in
299 relation to surrounding properties and rights-of-way permit no other
300 feasible way to subdivide and the Board determines that appropriate

301 separation between building envelopes can be achieved. In approving a
302 flag lot, the following provisions apply:

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

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

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

313 [b.]c. *Lots to abut on a public or private road.* Except as specified below,
314 every lot must abut on a public or private road. A public road must be
315 dedicated or donated to public use or have acquired the status of a public
316 road under Chapter 49. A private road must be shown on a record plat.

317 [i.]The Board [may] must not approve [a maximum of 2] lots that do not
318 abut a public or private road [if], except where unusual topography,
319 environmental conditions, or the position of the tract in relation to
320 surrounding properties and rights-of-way permit no other feasible way to
321 subdivide, and the Board determines that appropriate separation between
322 building envelopes will be achieved. In approving a lot that does not
323 abut a public or private road, the following provisions apply:

324 i. the Board must not approve more than two lots in a subdivision that
325 do not abut a public or private road;

326 ii. the lots will be served by a private driveway that serves no other lots
327 without frontage[.];

- 328 iii. in residential zones, the Board must require building restriction lines
329 as needed to provide separation of at least 80 feet between the
330 building envelope of the proposed lot without frontage and the
331 building envelopes of all lots that are adjacent to the rear lot line of
332 the proposed lot without frontage or that are between the proposed
333 lot without frontage and the road from which it is accessed;
334 iv. the Board may require additional building restriction lines to ensure
335 appropriate separation between building envelopes and to provide
336 appropriate location of the building envelope within the lot;
337 v. all building restriction lines must be shown on the plat; and
338 vi. The access to lots with no road frontage must be adequate to serve
339 the lots for emergency vehicles and for installation of public utilities.
340 In addition, the lots must be accessible for other public services and
341 not detrimental to future development of adjacent lands.

342 [c.]d. Side lines. Side lines of interior lots must to the extent possible be
343 aligned perpendicular to the road line or radial to a curved road line.

344 [d.]e. Through lots. The Board must not approve through lots, except where
345 unusual topography, orientation, or the size of the subdivision permit no
346 other feasible way to subdivide.

347 [e.]f. Alley or pedestrian paths for residential lots. If a mid-block alley or
348 pedestrian right-of-way is provided in a residential subdivision for detached
349 houses, the subdivider must increase the lot widths adjoining the alley or
350 right-of-way to provide for a parallel side building restriction line 15 feet
351 from the alley or right-of-way

352 * * *

353 D. *Public sites and adequate open spaces.* A preliminary plan must provide for
354 required public sites and adequate open space areas.

355 * * *

356 5. *Reservation.*

357 a. *Procedure.* When the Board determines that a tract being subdivided
358 includes land that is necessary for public use but will not immediately
359 be acquired by donation, dedication, purchase, or condemnation when
360 the plat is recorded, the Board must determine the need to reserve the
361 land. The Board may require a reservation for a period of time [less
362 than] up to 3 years for road rights-of-way, public school and building
363 sites, parks, playgrounds, recreational areas, or other public purposes.

364 * * *

365 iii. *Taxes.* The Board must advise taxing and assessing bodies of all
366 public reservations, and such public reservations must be exempt
367 from all [State,] County[,] and local taxes during the reservation
368 period.

369 * * *

370 vi. *Extension.* After the initial reservation period, the Board may
371 extend the reservation period upon request of the property owner if
372 the Board determines that the reserved land continues to be
373 necessary for public use. Any extension must not exceed 3 years.

374 * * *

375 E. *Roads.*

376 * * *

377 2. *Design standards.*

378 * * *

379 e. *Non-through roads.* The Board must not approve any road that does not
380 connect to another road at its beginning and end, unless a determination
381 is made that:

382 * * *

383 iii. the road, excluding alleys, is properly terminated in a cul-de-sac or
384 other turnaround; and

385 * * *

386 f. *Intersection.*

387 * * *

388 ii. [Proposed] The distance between proposed road intersections,
389 excluding alleys and driveways, must be spaced as shown in the
390 table below, as measured from the centerline of the intersections.
391 When the Board finds that a greater or lesser [spacing] distance is
392 appropriate, the Board may specify a greater or lesser [spacing]
393 distance than otherwise required after considering the
394 recommendation of the transportation agency responsible for
395 maintaining the road.

396 * * *

397 3. *Additional requirements for public roads.*

398 * * *

399 b. *Existing public roads.* In a preliminary plan [or administrative
400 subdivision plan] application containing lots fronting on an existing
401 State, County, or municipally maintained road, the subdivider must
402 provide any additional required right-of-way dedication and reasonable
403 improvement to the road in front of the subdivision, including sidewalks
404 and bicycle facilities, as required by Master Plan, the Road Design and
405 Construction Code or by a municipality, whichever applies.

406 * * *

407 4. *Additional standards for private roads.*

408 * * *

409 d. *Road Classifications*. When the Department of Transportation determines
410 that the proposed road is not needed to maintain area circulation, provide
411 continuous corridors to serve the general public and quasi-public needs
412 such as communication, utility, and future potential transportation or
413 other systemic needs that serve the public on a long-term basis, and is not
414 needed to be part of the network modeled for area capacity, consideration
415 will be given to making the following roads private:

416 * * *

417 [ix. A private alley will not require an access easement if the alley only
418 serves one building or if the alley is a secondary access to one-
419 family residential dwellings.]

420 * * *

421 5. *Additional roadway provisions*.

422 * * *

423 d. *Road grade approval*. No final grading, sidewalk or pavement
424 construction, or installation of utilities must be permitted in the bed of
425 any proposed public or private road in any preliminary plan [or
426 administrative subdivision plan] until the grade has been approved under
427 this Chapter.

428 e. *Pedestrian paths*. When a pedestrian path is included in a preliminary
429 plan [or administrative subdivision plan], the subdivider must grade and
430 construct the path according to the plan approved by the Board,
431 Department of Permitting Services, or applicable municipality.

432 * * *

433 F. *Water supply and sewage disposal facilities*.

434 * * *

435 3. [*Septic*] *Growth tiers*.

436 * * *

437 d. The Board may approve a subdivision for any number of residential lots that
438 would be served by one or more septic systems on land located in the Tier
439 III or Tier IV area.

440 [e. The Board may approve a minor subdivision that would be served by one
441 or more septic systems on land located in the Tier IV area.

442 f. The Board may approve a major subdivision that would be served by one or
443 more septic systems on land in the Tier IV area.]

444 [g.]e. The official map displaying the Growth Tier areas as allowed under the
445 Maryland Sustainable Growth and Agricultural Preservation Act of 2012
446 is located on the Planning Department website. The Council may amend
447 the official map either by:

448 i. adopting Tiers in a General Plan amendment; or

449 ii. an amendment under Section 10.7.

450 The latest version of the map may be accessed from the Planning
451 Department website at www.montgomeryplanning.org.

452 * * *

453 G. *Markers and monuments.*

454 1. The subdivider must have metal property line markers, approximately 1/2-
455 5/8 inch in diameter and 18 inches in length, or other generally accepted
456 survey markers, placed in the ground at all lot corners, intersections of roads,
457 intersections of roads and alleys with record plat boundary lines, and at all
458 points on road, alley and boundary lines where there is a change in direction
459 or curvature, unless such point coincides with the location of a reference
460 monument. All markers must be properly set in the ground before the roads
461 and alleys are accepted for public maintenance. For projects that do not
462 include public roads, the owner and [licensed] land surveyor must certify to

463 the Department of Permitting Services that all property corner markers have
464 been set by a [licensed] land surveyor.

465 2. The [licensed] land surveyor hired by the owner must place markers and
466 monuments in the ground after road grading and paving in the subdivision
467 and grading and landscaping of adjacent lots are completed. The markers
468 and monuments must be located as specified on the plat. The [licensed] land
469 surveyor must certify to the Department of Permitting Services, or other
470 appropriate governmental agency or the municipality that all survey
471 monuments and markers are in place before the County or municipality
472 accepts any road or alley established by the plat for maintenance. The
473 amenity bonds must not be released by M-NCPPC until the [licensed] land
474 surveyor certifies to the Department of Permitting Services that all survey
475 monuments are in place.

476 * * *

477 I. [Public utilities. Pipelines, electric power and energy lines, and
478 telecommunications lines must be provided] Utilities. The developer must
479 ensure the installation of utilities [by the developer] in all subdivisions.

480 1. *Installation.*

481 a. Within the property being subdivided, the developer must install any new
482 [pipelines, electric power and energy lines, and telecommunications
483 lines] utilities underground.

484 * * *

485 2. *Completion.* The Board [may] must not approve a final plat until the
486 developer demonstrates that the applicable utility companies or public
487 agencies are able to provide utility [service] services to the subdivision and
488 installation by the developer has been assured under Section 10.2.

489 3. *Easements.*

490 a. The subdivider must establish utility easements[, which must be shown
491 on the record plat,] to allow for installation of utility [lines] facilities
492 servicing the proposed subdivision and the future extension thereof to
493 any property adjoining the subdivision[, which] that:

494 i. provide the minimum area needed to maintain each of the [lines]
495 facilities as determined by the Board [with] in consultation from the
496 utility provider; [and]

497 ii. are adjacent to, or accessible from, a road right-of-way[.]; and

498 iii. are shown on the record plat.

499 [With County DPS permission] With Department of Permitting
500 Services approval, utilities may be placed within conduit in public
501 road rights-of-way. Utilities placed within private road rights-of-way
502 by a developer must [also] be in conduit.

503 b. When a private road is allowed, the Board must [also] require the
504 developer to provide to the County a covenant granting an additional
505 public infrastructure area at least [4] 3 feet wide, unless the Planning
506 Board determines that a lesser amount will be sufficient. The public
507 infrastructure area must be within or adjacent to private [roads] road
508 rights-of-way or in other appropriate locations that create contiguous
509 service corridors within the [development that] subdivision. The public
510 infrastructure areas must connect to and [are] be accessible from a public
511 right-of-way to provide for installation of utility facilities. [future:

512 i. relocation of existing utilities permitted to remain in a road right-of-
513 way; and

514 ii. installation of new communication facilities.

515 When a structure is proposed under a private road and the public
516 infrastructure area is located in the road right-of-way, the] The

517 developer must construct conduits within the infrastructure area to
518 the County's specification.

519 J. *Adequate Public Facilities [Ordinance] (APF[O])*.

520 * * *

521 5. *Validity period.*

522 a. Initiation date. The adequate public facility validity period starts on the
523 later of:

524 i. 30 days from the date of mailing indicated on the written resolution;

525 or

526 ii. if an administrative appeal is timely noted by any party authorized to
527 file an appeal, the date upon which the court having final jurisdiction
528 acts, including the running of any further applicable appeal periods.

529 b. if a corrected resolution is issued, the initiation date remains the date of
530 mailing indicated on the original resolution.

531 [a.] c. A determination of adequate public facilities made under this Chapter
532 is timely and remains valid:

533 i. for 12 years after the [preliminary plan is approved] initiation
534 date for any plan approved after July 24, 1989, but before
535 October 19, 1999;

536 ii. for no less than 5 and no more than 12 years after the
537 [preliminary plan is approved] initiation date, as determined by
538 the Board when it approved the plan, for any plan approved after
539 October 18, 1999, but before August 1, 2007;

540 iii. for no less than 7 and no more than 12 years after the
541 [preliminary plan is approved] initiation date, as determined by
542 the Board when it approved the plan, for any plan approved after
543 March 31, 2009, but before April 1, 2017; and

544 iv. for no less than 5 and no more than 10 years after the
545 [preliminary plan is approved] initiation date, as determined by
546 the Board when it approved the plan, for any plan approved after
547 July 31, 2007, and before April 1, 2009, or after March 31, 2017.

548 [b.] v. for no less than 5 and no more than 10 years after the application
549 is approved, as determined by the Board when it approved the
550 application, for any adequate public facilities determination made
551 in association with a site plan under Chapter 59 or building
552 permit under Chapter 8 approved after July 31, 2007, and before
553 April 1, 2009, or after March 31, 2017.

554 d. If an applicant requests a longer validity period than the minimum
555 specified in Section 4.3.J.5.a, the applicant must submit a development
556 schedule or phasing plan for completion of the project to the Board for
557 its approval.

558 * * *

559 6. *Validity period – County arts or entertainment use.*

560 * * *

561 b. The Board must grant an application to extend the validity period
562 established under this paragraph for an additional 5 years if:

563 * * *

564 ii. at any time during the [24 months] 2 years before the application for
565 extension being filed, the vacancy rate for class A office buildings in
566 the Central Business District in which the project is located reaches 10
567 percent for direct and sublet space combined, as measured by a
568 commercial Multiple Listings Service benchmark; or

569 * * *

570 7. *Extensions.*

571 a. *Application.* Only the Board may extend the validity period for a
572 determination of adequate public facilities; however, a request to amend
573 any validity period phasing schedule may be approved by the Director if
574 the length of the total validity period is not extended.

575 * * *

576 iii. For each extension of an adequate public facilities determination:

577 * * *

578 (e) a new adequate public facilities determination for school
579 adequacy is required for the remaining unbuilt units under the
580 school test in effect at the time of Board review.

581 b. The Board may approve an amendment to the new development
582 schedule approved under [paragraph] Section 4.3.J.7.a.ii if the applicant
583 shows that financing has been secured for either:

584 * * *

585 e. Applications with Significant Infrastructure Investment. The Board
586 may extend [a] an initial determination of adequate public facilities
587 once for up to 12 more years beyond the otherwise applicable validity
588 period if the Board finds that:

589 i. the preliminary plan or APF approval for the development required
590 a significant commitment of funds by the applicant, amounting to
591 at least \$3 million, as adjusted annually from February 2017 by the
592 consumer price index, to comply with specified infrastructure
593 conditions;

594 * * *

595 h. No combination of extensions of APF validity approved under Section
596 4.3.J.7 may exceed a total of 12 years from the date of the original
597 APF expiration.

598 K. *Environment.*

599 * * *

600 2. *Restriction of subdivision for environmental protection.*

601 * * *

602 b. *Restrictions.*

603 i. *General.* In addition to any requirement imposed under Chapter
604 22A, the proposed preliminary plan [or administrative subdivision
605 plan] may be restricted under this Section by:

606 * * *

607 L. *Residential cluster subdivision.*

608 * * *

609 2. *Conditions for use.* The use of the cluster method of development is subject
610 to Board approval and the following conditions and requirements:

611 * * *

612 c. the open space and green areas proposed by the applicant in the cluster
613 development must comply with the general purpose of cluster
614 development, and the application must include a plan detailing the post-
615 development maintenance responsibilities and use of those areas; [and]

616 d. the Board must count the land dedicated to public use for school and
617 park sites in the tract area for the purpose of calculating density, and
618 allow the use of the resulting density development of the remaining land
619 when this can be accomplished in compliance with the purposes of this
620 Section[.]; and

621 e. future subdivision of land within the approved cluster subdivision that
622 would result in the creation of additional lots is not permitted after the
623 property is platted.

624 * * *

625 N. Landscape and Lighting Plans

626 1. For places of worship and institutional uses, a landscaping and lighting
627 plan, which must also include the parking lot layout, must be submitted for
628 review and approval concurrently with the preliminary plan.

629 * * *

630 **Sec. 4. Division 50.5 is amended as follows:**

631 **DIVISION 50.5. PRE-PRELIMINARY SUBMISSIONS**

632 * * *

633 **Section 5.2. Approval Procedure**

634 * * *

635 *C. Action on a pre-preliminary submission.*

636 At the applicant's discretion, action on a pre-preliminary plan may be either
637 advisory if only reviewed by the Development Review Committee or binding
638 if reviewed by the Board.

639 * * *

640 **Sec. 5. Division 50.6 is amended as follows:**

641 **DIVISION 50.6. ADMINISTRATIVE SUBDIVISION PLAN**

642 * * *

643 **Section 6.1. Applicability**

644 The subdivider may file an administrative subdivision plan application [instead of
645 a preliminary plan] under the following circumstances. [The Director must review
646 the necessary technical requirements of the administrative subdivision plan under
647 Section 4.3.] Administrative subdivision plans may only be used to create lots, as
648 expressly described below.

649 *A. Existing places of worship and institutional uses.* The Board may approve a
650 lot created for existing facilities such as: places of worship, private schools,

651 country clubs, private institutions, and similar uses located on unplatted
652 parcels, if:

653 * * *

654 3. [requirements for meeting] forest conservation[,] plan approval and
655 stormwater management[,] and environmental protection requirements, if
656 applicable, are satisfied before approval of the plat;

657 * * *

658 6. [the property is the subject of an approved conditional use and] all
659 conditions of [the] any conditional use approval, to which the property
660 may be subject, remain in full force.

661 B. *Subdivision for creation of certain residential lots located in the Agricultural*
662 *Reserve zone.* Up to 5 lots for detached houses [are permitted] may be created
663 under these procedures in the AR zone if:

664 * * *

665 6. forest conservation plan approval and stormwater management and
666 environmental protection requirements, if applicable, are satisfied before
667 approval of the plat.

668 C. *Subdivision for creation of certain residential lots.* Up to 3 lots for detached
669 houses [are permitted] may be created in any residential or rural residential
670 zone under these procedures if:

671 * * *

672 5. forest conservation[,] plan approval and stormwater management and
673 environmental protection requirements, if applicable, are satisfied before
674 approval of the plat.

675 D. *Consolidation of an existing [lots] lot with another lot or [parts] part of [lots]*
676 *a lot in a nonresidential zone.* In a nonresidential zone, a lot may be created

677 by combining existing adjoining lots, or a lot and a part of a previously platted
678 lot, if:

679 * * *

680 4. forest conservation plan, stormwater management, and environmental
681 protection requirements, if applicable, are satisfied before approval of the
682 plat; and

683 5. when located in a special protection area, [and] all applicable special
684 protection area requirements and guidelines are satisfied before the Board
685 approves the plat.

686 For the purposes of this section, a part of a lot that qualifies for the exemption
687 stated in section 50.3.3.B.2 may be used in lieu of a whole lot.

688 E. *Subdivision application for property to be used as Signature Business*
689 *Headquarters under Section 3.5.8.D of the Zoning Ordinance.* A lot or lots
690 created for a Signature Business Headquarters may be approved, if:

691 * * *

692 3. forest conservation[,] plan approval and stormwater management and
693 environmental protection requirements, if applicable, are satisfied before
694 approval of the plat; and

695 4. when located in a special protection area, all special protection area
696 requirements are satisfied before approval of the plat [, if the subject
697 property is located in a special protection area].

698 **Section 6.2. Filing Requirements**

699 A. *Filing.* The Applicant must file the administrative subdivision plan and
700 applicable supporting information under Section 50.4.1.C., together with an
701 application form and fee to satisfy Subsection 4.1.A.

702 * * *

703 **Section 6.3. Approval Procedures**

704 * * *

705 B. *Action on an administrative subdivision plan.*

706 1. Director Action. An administrative subdivision plan may be approved by
707 the Director without a public hearing if no objection to the application is
708 received within 30 days after the application notice is sent. After receiving
709 the recommendations of the Development Review Committee and other
710 reviewing agencies, and considering correspondence from other interested
711 parties, the Director must approve or disapprove the administrative
712 subdivision plan in writing. [In the alternative, the Director may require
713 that the plan be acted on by the Board. When applicable, the Director must
714 schedule Board action on its next available agenda. If approved, the plan
715 will remain valid under Section 4.2.G, by which time a plat must be
716 recorded.]

717 2. Planning Board Action. If an objection is received within 30 days after the
718 application notice is sent, and the Director considers the objection relevant,
719 a public hearing and action by the Board is required. The Director may
720 also require that the plan be acted on by the Board when no objection is
721 received. When applicable, the Director must schedule a Board hearing on
722 its next available agenda.

723 3. All necessary improvements to support the development must be
724 completed or assured under Section 10.2.

725 [3.]4. The Director must take action on an administrative subdivision plan or
726 schedule a public hearing within 90 days after the date an application is
727 accepted. The Director may postpone the public hearing once, by up to
728 30 days, without Board approval. The Director or applicant may request
729 an extension beyond the original 30 days with Board approval. Any

730 extension of the public hearing must be noticed on the hearing agenda
731 with the new public hearing date indicated.

- 732 5. In making the findings required in Section 6.3.C, the Director or Board
733 must consider the technical requirements under Section 4.3. In performing
734 this review, the Director is authorized to perform any relevant action that is
735 permissible to the Board under Section 4.3, except for the following:
- 736 a. Section 4.3.C.1.b, with respect to flag lots;
 - 737 b. Section 4.3.C.1.c, with respect to lots without frontage on a public or
738 private road; and
 - 739 c. Section 4.3.D.5, with respect to reservation of land for public use.

740 C. Required Findings. To approve an administrative subdivision plan, the
741 Director or Board must make the following findings:

- 742 1. the layout of the subdivision, including size, width, shape, orientation and
743 density of lots, and location and design of roads is appropriate for the
744 subdivision given its location and the type of development or use
745 contemplated and the applicable requirements of Chapter 59;
- 746 2. the administrative subdivision plan substantially conforms to the master
747 plan;
- 748 3. public facilities will be adequate to support and service the area of the
749 subdivision;
- 750 4. all Forest Conservation Law, Chapter 22A requirements are satisfied;
- 751 5. all stormwater management, water quality plan, and floodplain
752 requirements of Chapter 19 are satisfied;
- 753 6. any burial site of which the applicant has actual notice or constructive
754 notice or that is included in the Montgomery County Cemetery Inventory
755 and located within the subdivision boundary is approved under Subsection
756 50-4.3.M; and

757 7. any other applicable provision specific to the property and necessary for
758 approval of the subdivision is satisfied.

759 D. *Plan Certification*

760 Every administrative subdivision plan approved by the Board or the Director
761 must be certified by the Director to confirm that the plan reflects the approval.
762 Any modification of the plan conditioned by the approval must be included in
763 the plan before receiving the approval stamp. The approved plan must be filed
764 in the records of the Board.

765 E. *Amendments.*

766 Any amendment to an approved administrative subdivision plan must follow
767 the procedures, meet the criteria, and satisfy the requirements of this Division.

768 F. *Plan Validity*

769 1. *Initiation date.* The plan validity period for administrative subdivision
770 plans starts on the later of:

771 a. *30 days from the date of mailing indicated on the Director's written*
772 *approval or the Board's resolution; or*

773 b. *the date upon which the court having final jurisdiction acts, including*
774 *the running of any further applicable appeal periods, if an*
775 *administrative appeal is timely noted by any party authorized to file an*
776 *appeal.*

777 If a corrected resolution is issued, the initiation date remains the date
778 of mailing indicated on the original resolution.

779 2. *Duration.*

780 a. *An approved administrative subdivision plan remains valid for 3 years*
781 *after its initiation date.*

782 b. *An administrative subdivision plan is validated when the applicant has*
783 *secured all government approvals necessary to record a plat, and a plat*

- 784 for all property shown on the plan has been recorded in the County
785 Land Records.
- 786 c. Any extension of the validity period must follow the procedures of
787 Section 4.2.H.
- 788 d. For any action taken by the Director or Board to amend a previously
789 approved administrative subdivision plan, the Director or Board will
790 determine, on a case-by-case basis, whether the validity period should
791 be extended and, if so, for what duration. In making the determination,
792 the Director or Board must consider the nature and scope of the
793 requested amendment.
- 794 e. Failure to timely validate or extend the validity period of an
795 administrative subdivision plan is governed by Section 4.2.I.

796 G. *Revocation or Vacation of an Administrative Subdivision Plan*

797 1. *Revocation of an administrative subdivision plan must satisfy Section*
798 *4.2.J.*

799 2. *Vacation of an administrative subdivision plan must satisfy Section 4.2.K.*

800 H. *Appeal of an administrative subdivision plan.*

801 * * *

802 **Sec. 6. Division 50.7 is amended as follows:**

803 **DIVISION 50.7. MINOR SUBDIVISION**

804 **Section 7.1. Applicability**

805 The submission of a preliminary plan [or administrative subdivision plan] under
806 Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

807 * * *

808 B. *Conversion of an outlot into a lot.* An outlot may be converted into a lot if:

809 * * *

810 3. all applicable requirements or agreements under the Adequate Public
811 Facilities [Ordinance] provisions in Subsection 4.3.J and the Subdivision
812 Staging Policy are satisfied before recording the plat;

813 * * *

814 C. *Consolidation.* Adjoining properties in the Rural Residential or Residential
815 Detached zones, not developed under cluster provisions, may be combined in
816 the following ways:

817 1. by consolidating 2 or more lots into a single lot, consolidating lots and an
818 outlot into a single lot, or consolidating a lot and an abandoned road right-
819 of-way, if:

820 * * *

821 c.[all] any required right-of-way dedication is provided.

822 2. by consolidating [an existing platted lot or] a part of a lot that contains a
823 legally constructed detached house or an existing platted lot[,] with a piece
824 of land created as a result of a deed, if:

825 * * *

826 E. *Ownership Plat.* An ownership plat may be recorded to delineate separate
827 ownership units within a lot approved for any use except for single-unit living
828 as follows:

829 * * *

830 3. Private roads [may] must not be delineated as a separate ownership unit
831 on an ownership plat.

832 * * *

833 F. *Plat of correction.* A plat of correction may be used for any of the following:

834 * * *

835 2. to revise easements to reflect a Planning Board [action] Action, or as
836 necessitated by a State or County agency or public utility;

837 * * *

838 **Section 7.2. Procedure for Platting Minor Subdivisions**

839 The subdivider of a property that satisfies the requirements for a minor subdivision
840 under Section 7.1 may submit an application for record plat for approval under
841 Section 8.1 and Section 8.2.

842 A. *Additional considerations.*

843 * * *

844 3. Any applicable requirements of Chapter 22A must be satisfied before
845 approval of the plat by the Board.

846 * * *

847 **Sec. 7. Division 50.8 is amended as follows:**

848 **DIVISION 50.8. PLATS – GENERALLY**

849 * * *

850 **Section 8.1. Filing and Specifications**

851 * * *

852 C. *Plat drawing.* The plat drawing prepared with the application must be an 18-
853 inch by 24-inch sheet, including a margin of one-half inch outside ruled
854 border lines. It must be accurately drawn to a scale approved by the Board and
855 must include the following:

856 1. *Title block.* The title block must appear in the lower right corner of the
857 sheet and must include the following information:

858 * * *

859 e. name of firm of [licensed] land surveyor who prepared the plat and
860 date of completion; and

861 * * *

862 3. *Surveyor certificate.* Certificate by the [licensed] land surveyor in a form
863 required by the Board, certifying to the accuracy of the plat and to areas
864 included on the plat and dedicated to public use. The certificate must also
865 include conveyance information with recording references of the lands
866 contained in the plat.

867 * * *

868 4. *Owner's Certificate.* Certificate by the owner and all parties of interest,
869 in a form required by the Board, adopting the plat; granting slope, utility,
870 conservation, or any other easements; and establishing building
871 restriction lines that are required to be drawn or noted on the plat per the
872 conditions of the approved [Preliminary Plan or Administrative
873 Subdivision Plan] preliminary plan and dedicating to public use roads,
874 alleys, rights-of-way, and any other areas approved for dedication to
875 public use by the Board. The owner must certify that a [licensed] land
876 surveyor will be engaged to set all property corner markers under
877 Subsection 4.3.G.

878 * * *

879 E. *Other supporting information.* The following supporting information is also
880 required with the plat application.

881 1. *Documents and plans.* The following documents and plans must be
882 submitted:

883 * * *

884 c. copies of approved[, preliminary or] final forest conservation plan[, as
885 appropriate,] or exemption letter; and

886 * * *

887 2. *Preliminary plans using transferable development rights (TDRs).* For a
888 subdivision designated in sewer category 3 conditioned upon approval of

889 a preliminary plan that uses TDRs, a new plat using less than the
890 requisite number of TDRs [may] must not be approved until the sewer
891 category has been reconfirmed by the Council.

892 * * *

893 4. *Plat for a cluster subdivision.*

894 * * *

895 b. Plats may be submitted in phases; however, density on any one plat
896 [may] must not exceed 115 percent of the allowed density of the area
897 included on the plat.

898 * * *

899 **Section 8.2. Approval Procedure**

900 * * *

901 C. *Plat to comply with approved preliminary plan and site plan where required.*

902 1. With the exception of a minor subdivision, as defined in this Chapter, no
903 plat may be approved unless it complies with an approved preliminary
904 plan [or an administrative subdivision plan:]; however, the Board may
905 allow for minor modifications from [these plans] the plan which, in its
906 opinion, do not alter the intent of previous approval.

907 * * *

908 G. *Planning Board may [hold hearing] hear testimony on any plat.* The Board
909 may, upon its own motion, [hold a hearing] hear testimony before acting upon
910 any plat, in accordance with [notice required by] the Board's Rules of
911 Procedure.

912 * * *

913 I. *Signing.* A plat must be signed by applicable County agencies with review
914 authority before Planning Board [action] Action on the plat, unless the Board
915 specifically permits the signature to be added as a condition of its approval.

916 The plat must be signed by the authorized officers of the Board after the
917 Board acts to approve the plat or, in cases of conditional approval, when the
918 conditions are satisfied.

919 * * *

920 **Section 8.3. Recording Procedure**

921 A. *Processing of plats.*

922 * * *

923 2. The official seal of the [licensed] land surveyor who prepared the plat
924 must be impressed upon the original approved plat and reproductions

925 * * *

926 **Sec. 8. Division 50.9 is amended as follows:**

927 **DIVISION 50.9. WAIVERS FROM THIS CHAPTER**

928 * * *

929 **Section 9.5. Procedure for Granting Waivers**

930 A. *Referral for recommendations.* The Director must send a copy of each waiver
931 request to the applicable Development Review Committee agencies for
932 investigation, report, and written recommendation before acting on the
933 request. For waivers requested as part of a preliminary plan[, administrative
934 preliminary plan,] or [pre-application submission] pre-preliminary plan, those
935 agencies must submit any report and recommendation on the waiver in the
936 timeframes required for those plans. For separate waiver requests, final
937 recommendation must be provided to the Director within 30 days after
938 receiving the request, or the recommendation must be treated as favorable.

939 * * *

940 **Sec. 9. Division 50.10 is amended as follows:**

941 **DIVISION 50.10. ADMINISTRATIVE PROCEDURES**

942 * * *

943 **Section 10.2. Bonding and Surety**

944 A. *Guarantee of completion of improvements before recording final plat.*

945 1. Before plat recordation, the subdivider must demonstrate to the Board or
946 [applicable public agency must certify] the Director that the subdivider
947 has obtained the necessary permits and bonds or provided other surety
948 that ensures completion of all required public and private improvements
949 on the land covered by the plat being recorded.

950 * * *

951 **Section 10.6. Enforcement of Chapter**

952 * * *

953 B. *Administrative citation.*

954 1. The Director may deliver an administrative citation to a person whom the
955 Director believes committed a violation of a Planning Board [action]
956 Action, Director Action, or this Chapter. The Director must attest to the
957 truth of the facts and allegations in the administrative citation. An
958 administrative citation issued under this Subsection must be served on the
959 alleged violator personally, on the alleged violator's agent at the site of
960 the alleged violation, or by certified mail to the alleged violator's last
961 known address.

962 * * *

963 C. *Notice of Hearing.*

964 1. The Director may issue a notice of hearing to a person whom the Director
965 believes committed a violation of a Planning Board Action, Director
966 Action, or this Chapter. The notice of hearing must be served on the
967 alleged violator personally, on the alleged violator's agent at the site of

968 the alleged violation, or by certified mail to the alleged violator's last
969 known address.

970 * * *

971 D. *Civil fine and penalty.*

972 1. A citation may require the recipient to pay a civil fine for a violation of a
973 Planning Board [action] Action or Director Action.

974 2. The fine for each violation of a Planning Board [action] Action or
975 Director Action is the maximum allowed by the Land Use Article §23-
976 505 of the Maryland Code for each day that the violation continues.

977 * * *

978 5. In setting the amount of the administrative civil penalty, the Board or its
979 designee must consider:

980 * * *

981 b. the degree of deviation from the approved Planning Board [action]
982 Action or Director Action;

983 * * *

984 F. *Hearing.*

985 * * *

986 3. The Board may assign a hearing officer, including a Hearing Examiner
987 from the Office of Zoning and Administrative Hearings, to conduct a
988 public hearing and submit a report and recommendation on any alleged
989 violation of this Chapter or a Planning Board [action] Action or Director
990 Action. The hearing officer must submit the required report and
991 recommendation to the Board not later than 30 days after the hearing
992 record closes. The hearing officer may extend the time to file the report
993 by notifying all parties.

994 * * *

995 K. *Exclusive authority.* The Board or its designee has exclusive authority to
996 enforce violations of a Planning Board [action] Action or Director Action and
997 any violations of this Chapter. The authority granted in this Chapter
998 supersedes any other authority to enforce a Planning Board [action] Action or
999 Director Action granted to any other County or State agency.

1000 * * *

1001

1002 **Sec. 10. Effective Date.** This amendment takes effect 20 days after the date
1003 of Council adoption.

1004

1005 *Approved:*

1006

1007

1008 Marc Elrich, County Executive Date

1009

1010 *This is a correct copy of Council action.*

1011

Selena Mendy Singleton, Esq. Date
Clerk of the Council