

## PROPOSED AMENDMENT TO THE ADMINISTRATIVE PROCEDURES FOR DEVELOPMENT REVIEW

### Description

This report provides an overview of the proposed amendment to the Administrative Procedures for Development Review 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.

Completed: 9-16-2022

MCPB  
Item No. 9  
9-29-2022

Montgomery County  
Planning Board  
2425 Reedie Drive,  
Floor 14  
Wheaton, MD 20902

## Planning Staff

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### Summary:

The Administrative Procedures for Development Review (COMCOR 50/59.00.01) went into effect in September 2017. In the five years since the Administrative Procedures have been in effect, changes in other laws and procedures have made it such that various provisions of the Administrative Procedures have become obsolete or in conflict with other requirements. In response to that, the majority of proposed changes in the current amendment are proposed to bring the Administrative Procedures into conformance with these other laws and procedures. In addition, other changes are proposed 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.

- Add provisions for signature business headquarters plans and biohealth priority campus plans, based on their addition to the zoning ordinance as new plan types
- Add noticing provisions for forest conservation plans, based on changes to the forest conservation law
- Remove the option for notices by email, so that all notices must be sent by regular mail
- Remove provisions related to the consent agenda, based on changes to the Planning Board's Rules of Procedure
- Clarify the procedures for amending a sketch plan
- Update deadlines and requirements for witness sign-up and submission of exhibits
- Added two additional items to the list of instances that require the Director to cede authority to act to the Planning Board
- Updated timelines for withdrawal of inactive applications

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

Staff recommends approval of the proposed changes for transmittal and introduction to the County Council.

## DISCUSSION OF SUBSTANTIVE CHANGES

### Signature Business Headquarters Plans and Biohealth Priority Campus Plans

Signature business headquarters plan was added as a new plan type in 2018 by Zoning Ordinance Section 59.7.3.5. Biohealth priority campus plan was added as a new plan type in 2022 by Zoning Ordinance Section 59.7.3.6. The Administrative Procedures are proposed to be amended to include provisions for these plan types.

### Noticing Provisions for Forest Conservation Plans

Noticing provisions for forest conservation plans were added to the Forest Conservation Law, Section 22-A.11 in 2021. The Administrative Procedures are proposed to be amended to include those noticing provisions.

### Noticing by Mail

The current Administrative Procedures provide for Planning Board hearing noticing by regular mail or by email. The proposed amendment would require that official notice be sent by mail. The amendment would not preclude additional notice be sent by email, but the mailed notice would constitute the official form of notice. Requiring that an individual provide a mailing address also ensures that staff can provide official notice to them as a party of record in the event of any subsequent legal proceedings related to the application.

### Consent Agenda

The Planning Board's Rules of Procedure were amended in 2022, including removal of the Consent Agenda section from the Board's overall agenda. The Administrative Procedures are proposed to be amended to remove references to the Consent Agenda and to instead reference the Board's current procedures.

### Sketch Plan Amendments

The Administrative Procedures are proposed to be updated to clarify that sketch plans may be amended by filing a separate amendment application or through a subsequent site plan approval, pursuant to Section 59.7.3.3.1 of the Zoning Ordinance.

### Update Deadlines And Requirements For Witness Sign-Up And Submission Of Exhibits

Deadlines for submitting visual exhibits to the Planning Board are proposed to be revised to indicate that items must be submitted by noon on the day before the hearing, consistent with the Planning Board's Rules of Procedure.

### Instances That Require The Director To Cede Authority To Act To The Planning Board

The Subdivision Regulations Amendment that was enacted in 2021 includes provisions that require the Director to cede authority to act on administrative subdivisions to the Planning Board when the application includes flag lots and/or lots without frontage on a public street or includes a reservation of land for public use. These two items are proposed to be added to a list in the Administrative Procedures of other such instances that require the Director to cede authority to the Planning Board, for consistency with the Subdivision Regulations.

### Timelines for Withdrawal of inactive Applications

The Administrative Procedures provide that applications that have been inactive for 365 days will be withdrawn unless the applicant responds with a substantive resubmittal within 30 days of being notified of the pending withdrawal. The proposed amendment would provide for withdrawal of inactive applications that have not yet been accepted (that is, those that are still in the intake process) after 180 days of inactivity. The 365-day inactivity period for applications that have been accepted is not proposed to be changed.

## CONCLUSION

Staff recommends that the Planning Board request the County Council to introduce the proposed Amendment to the Administrative Procedures for Development Review.

[Attachment A: Draft Amendment to the Administrative Procedures for Development Review](#)

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

Montgomery Planning Board Regulation on

## ADMINISTRATIVE PROCEDURES FOR DEVELOPMENT REVIEW

Issued by: Montgomery County Planning Board  
Regulation No.  
COMCOR No. 50/59.00.01

Authority: Montgomery County Code Chapter 50, Section 10.1 and  
Montgomery county code Chapter 59, Section 7.3.4  
Council Review: Method (2) under Code Section 2A-15

Effective Date: XXXXXX  
Comment Deadline: XXXXXXX

Summary: These regulations contain administrative requirements related to the review and processing of development applications that are acted upon by the Planning Board or Planning Director under Chapter 50 and Chapter 59 of the County Code.

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Background: These regulations clarify and further develop administrative procedures to implement the submittal and review of development plans under Chapter 50 and Chapter 59, and facilitate participation in the process by interested parties. These regulations amend the Administrative Procedures for Development Review that were adopted by the Planning Board in 2017, and approved by the County Council under Method 2 procedures.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

## 50.10.01.01 Purpose and Applicability

A. Purpose. These regulations define administrative procedures for the submission and review of all plans submitted to the Montgomery County Planning Department, under the Subdivision Regulations and the Zoning Ordinance of the Montgomery County Code. In addition, these regulations define the noticing procedures for forest conservation plans submitted to the Montgomery County Planning Department in compliance with the Forest Conservation Law. These procedures are designed to provide accurate and complete information and to ensure a thorough and timely review process as a basis for decisions. These regulations were adopted by the Planning Board and approved as regulations by the County Council under Chapter 50, Section 10.1 and as contemplated by Chapter 59, Section [7.3.4.F.3] 7.6.3.D. [These regulations supersede the Montgomery County Planning Department’s Manual of Development Review Procedures (December 2007).]

1. These regulations:

- (a) define a process that is comprehensive, clear, transparent, and understandable to citizens, developers, applicants, review agencies, staff, and other interested parties;
- (b) clarify standards and procedures for submission of timely and relevant information by applicants;
- (c) provide procedures for timely participation by government agencies in the review of applications; and
- (d) provide procedures for participation by interested parties, such as owners of properties adjoining the project site, so that their issues and concerns can be submitted to staff and the Board for consideration during the review process before the Board decides and acts on the proposed land development project.

2. These regulations are intended to identify the steps that an applicant must take to apply for the review and approval of specific types of development approvals that are acted upon by either the Board or Director, and to provide a comprehensive explanation of what is involved in processing a development application, including the steps to ensure a thorough and timely review.

B. Applicability. The development review process covered in these regulations [apply] applies to all development applications submitted to the Montgomery County Planning Department and acted upon by the Board or Director under Chapter 50 and Chapter 59 of the County Code. In addition, the noticing procedures covered in these regulations also apply to forest conservation plans not associated with

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

preliminary plans, administrative subdivision plans, sketch plans, site plans, signature business headquarters plans or biohealth priority campus plans.

C. Definitions. All terms used in these regulations that are defined in Chapter 22A, Chapter 50, or Chapter 59 have the same meanings as the definitions in those Chapters.

D. Rules of interpretation. The rules of interpretation contained in Chapter 22A, Chapter 50, and Chapter 59 apply to these regulations. Footnotes used in these regulations are a part of the requirements.

## 50.10.01.02 Basic Planning Department Policies for the Development Review Process

A. In processing and reviewing the application, the Planning Department staff must:

1. Appoint a lead reviewer to coordinate the review of the application and the receipt of inquiries related to the application or the regulatory process.
2. Review the application carefully, fairly, and in a timely manner.
3. Apply the applicable laws, regulations, and guidelines consistently.
4. Work with all parties to present a recommendation to the Board that complies with the applicable standards of review.
5. Attempt to identify issues early in the process and strive to resolve them as early as possible.
6. Cooperate with other agency and utility company staffs, the applicant, and the public to seek a mutually satisfactory resolution when issues arise.
7. Collaborate with other review agencies and other parties, actively seeking solutions that achieve the County’s planning and community-building goals.
8. Carry out County and Planning Board policies, with special attention to:
  - (a) adopted Master Plans;
  - (b) applicable land use, transportation, and environmental laws, regulations, and guidelines;
  - (c) [the Subdivision Staging Policy] the Growth and Infrastructure Policy, as amended;
  - (d) standards of professional responsibility; and

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(e) promotion of design excellence.

B. Planning Department staff and other government agency and utility company staff who participate in the review of development applications must:

1. Review each application carefully, fairly, and in a timely manner.
2. Participate in scheduled Development Review Committee (DRC) [and pre-DRC] meetings, either in person or by transmitting written comments to the DRC chair.
3. Make reasonable efforts to participate, when necessary, in supplemental meetings on specific cases, as requested by either the lead reviewer or the applicant.
4. Work collaboratively to identify and seek mutually satisfactory resolutions, using the lead-agency protocol for conflicting recommendations created through a Memorandum of Understanding between the Planning Department and several of the agency members of the DRC to involve appropriate managers or chiefs from the conflicting agencies.
5. Report recommendations to the Board that are contrary to Planning staff's in the rare event that agencies with conflicting comments are unable to timely reach a mutually satisfactory recommendation on issues related to a development application after following the protocol referenced above.

C. Applicants must:

1. Select a development team, consultants, and representatives appropriate for the project.
2. Follow Planning Board and County policies, procedures, and regulations related to the proposed development project.
3. Submit complete and accurate applications.
4. Refer questions, issues, and all revisions concerning the filed application to the lead reviewer.
5. Notify the lead reviewer promptly if there is a major change to the development project under review.
6. Work with review staffs and the public in a cooperative manner to seek a mutually satisfactory resolution when issues arise.



# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

## 50.10.01.03 Overview of the Application Types

These regulations specify the submission, notice, review and approval procedures that must be followed for all development applications and associated requests that are submitted to the Montgomery County Planning Department and acted upon by the Board or Director. The types of [application] applications that may be required before an applicant can apply for permits to disturb land and [construct] build structures are dependent on many factors, such as, the zoning on the subject site, the legal status (i.e., recorded lot, unplatted parcel, etc.) of the site, and the type of land use proposed for the project. This section includes an overview of the various application types.

A. Land Development Plan Applications. The land development plan applications covered by [this manual] these regulations include: pre-preliminary submissions, sketch or project plans, preliminary and administrative subdivision plans, site plans, signature business headquarters plans, biohealth priority campus plans, and record plats. [Figure 1, below summarizes these plans, including references to the specific sections of the County Code that contain their requirements, and how they fit into the overall regulatory review process.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedy Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

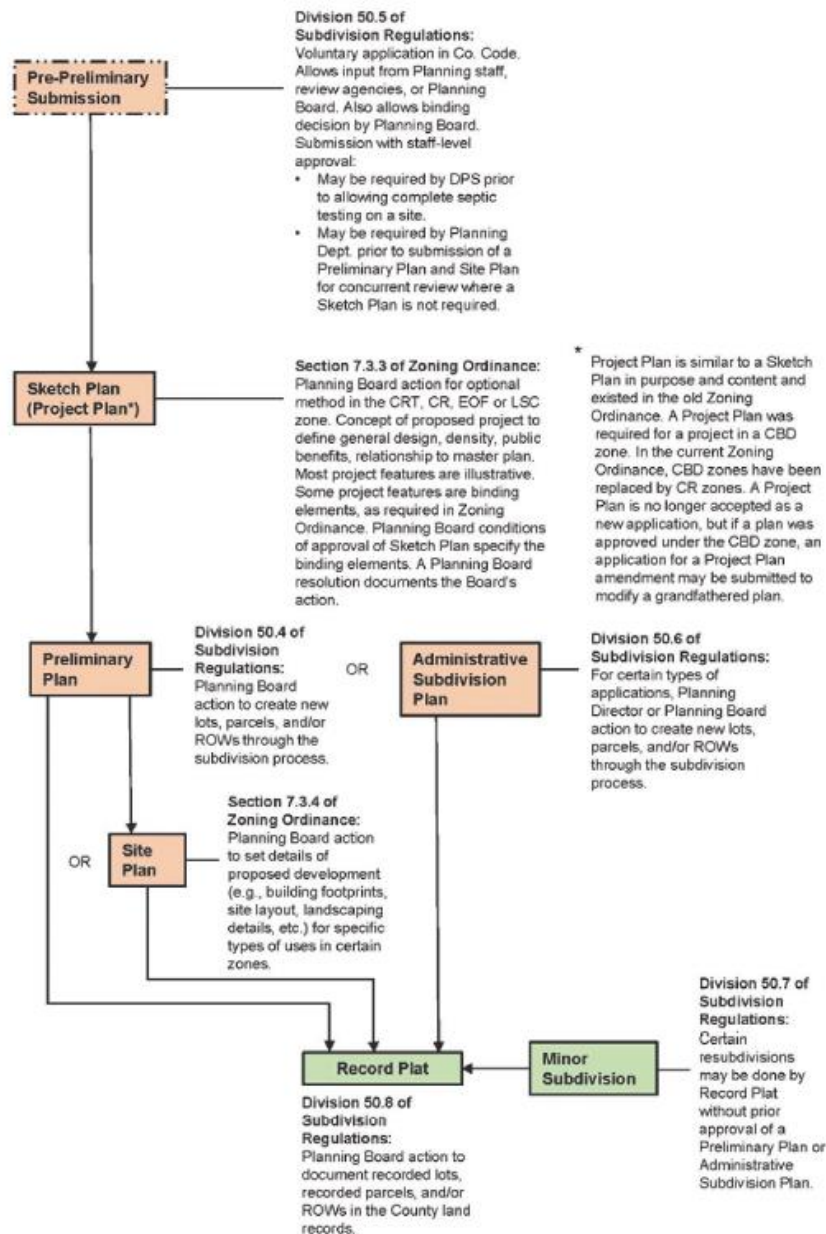


Figure 1. Land Development Plan Application Types]

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

B. Plan Amendments. Proposed changes to a land development plan that has been approved and certified by the Board or Director must be approved as a plan amendment. A plan amendment may be filed to request changes to features of an approved plan drawing, or to specific conditions of the Board’s or Director’s approval for the plan.<sup>1</sup>

1. Classification of Preliminary and Site Plan Amendments. An amendment to a preliminary plan or site plan may be classified as major or minor depending on the purpose of the proposed amendment and as specified by the Subdivision Regulations (Section 50.4.2.F) or the Zoning Ordinance (Section 59.7.3.4.J).

(a) Major amendments to a site plan or a preliminary plan must be [reviewed and] acted on by the Board.

(b) Minor amendments to a preliminary plan must be acted on by the Board; [however] except that, if the amendment is to change the validity period of the approved plan’s phasing schedule, the Director may act on the proposed amendment.

(c) Minor site plan amendments may be acted upon by the Director under certain circumstances as set forth in Section 59.7.3.4.J of the Zoning Ordinance.

(d) A new preliminary plan or administrative subdivision plan is required to resubdivide previously approved and recorded lots, or [change] to resubmit a revised version of a previous [plan] application that was denied.

2. Amendment to a Preliminary or Site Plan to change an associated Forest Conservation Plan. Preliminary or site plan amendments that involve amendments to associated forest conservation plans may be filed as minor amendments.

(a) Per the Forest Conservation regulations (COMCOR 22A.00.01, Section 22A.00.01.13.A(1)), a forest conservation plan amendment that proposes no more than 5000 square feet of additional forest clearing may be acted on by the Director.

(b) A forest conservation plan amendment that proposes more than 5000 square feet of additional forest clearing must be acted on by the Board. Corresponding amendments to the associated preliminary or site plan to reflect these changes must also be acted on by the Board.

([b] c) A proposed forest conservation plan amendment that involves changes to recorded conservation easements approved by the Board must be acted on by the Board. Corresponding amendments to the associated preliminary or site plan to reflect any easement changes must also be [filed] acted on by the Board.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

3. Amendments to Sketch Plans. Sketch Plans can be amended by filing a separate amendment application, or as part of a subsequent site plan application pursuant to Section 59.7.3.3.I of the Zoning Ordinance. A site plan must be submitted within 36 months after the date of the resolution for the sketch plan, and any request to amend the sketch plan to extend this period must be filed prior to the expiration of the 36-month period.

[3]4. Changes to Site Plan-approved structures. A structure located on property covered by an approved site plan may be replaced without applying for a site plan amendment if the replacement conforms to the specifications approved as part of the site plan; for instance, replacing an existing fence or retaining wall, in kind. Changes that do not conform to approved specifications must be filed as a minor or major site plan amendment, as appropriate, except for those changes allowed under 59-7.3.4.G.2.

(a) Playground areas and equipment. Many approved site plans that have residential uses include details for playground areas and equipment. For the purposes of site plan review, the term “playground equipment” includes benches, picnic tables, and trash receptacles, in addition to structures that are used for outdoor recreation activities by children, such as swing sets and slides. Over time, playground equipment may become old and outdated and need to be replaced; or a resident association may want to change its location or configuration, or remove it entirely.

i. Installation of a new playground or removal of an existing one requires review and action under the [Minor Site Plan Amendment] minor site plan amendment process.

ii. Replacing playground equipment requires review and approval by Planning Department staff. Such a change is not classified as a site plan amendment. The following rules apply to the substitution of playground equipment, for a site that has an approved site plan and specific playground equipment requirements:

a. A request for a playground equipment substitution must be made by submitting a complete Recreational Equipment Substitution Request Form.

b. The form may be filled out by the provider of the proposed playground equipment, but the project developer must also submit a cover letter confirming that the current [Site Plan] site plan applicant supports the proposed substitution.

c. Staff must review the substitution request to determine if the proposed equipment is equal in capacity, features, age group served, and quality<sup>2</sup> (including conformance with CPSC and ASTM<sup>3</sup> safety standards.)

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

d. If staff does not render a decision as to whether the proposed substitution meets the “or approved equal” standard within 45 calendar days after the applicant’s complete submission of a Recreational Equipment Substitution Request Form, the substitution is automatically approved.

e. After deciding, staff must reply, in writing, to the current [Site Plan] site plan applicant. If the request is denied, the staff must specify, in writing, each reason for the denial. Staff must place a copy of the reply letter in the [Site Plan] site plan file. The [Site Plan] site plan applicant may appeal a denial to the Board.

C. Other Application Types. An application must also be submitted to the Planning Department for the following:

[1. Request to Extend a Validity Period for an Approved Plan. A request for approval of an extension to the validity period of an approved plan or the validity period of an Adequate Public Facilities determination.]

[2]1. Subdivision Waiver Request. A request for a waiver from the requirement to submit a preliminary plan or administrative subdivision plan under Division 50.9 of Chapter 50.

[3]2. Adequate Public Facilities [Ordinance] ([APFO]APF) Review at Building Permit. A request for Planning Board APF review and finding required under Chapter 8 before issuance of a building permit for development on an existing recorded lot that is not subject to a previous preliminary plan approval, and does not require a site plan under Chapter 59, Section 7.3.4.; a signature business headquarters plan under Chapter 59, Section 7.3.5.; or a biohealth priority campus under Chapter 59, Section 7.3.6.

[4]3. Request to Extend a Hearing Date. A request for extension of a Board hearing date pursuant to Chapter 59, Sections 7.3.3.C or 7.3.4.C, and Chapter 50, Section 4.1.E.

[5. Exemption to Platting. A request for exemption under Chapter 50, Section 3.3 from the requirement to record a plat prior to the division or conveyance of land, or to support issuance of a building permit under Chapter 8.]

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<sup>1</sup> A plan amendment is different than a plan revision. A plan revision is a change to a submitted application that an applicant chooses to make prior to action. Significant revisions may, on a case-by-case basis, require re-notice of the application.

<sup>2</sup> The equipment proposed must also be able to fit in the space shown on the [Site Plan] site plan. If the proposed substitution becomes so big that it no longer fits in the “play area” shown on the [Site Plan] site plan, a [Site Plan Amendment] site plan amendment is [will be] required.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

<sup>3</sup> If there is a conflict between Consumer Product Safety Commission (CPSC) and American Society for Testing and Materials (ASTM) standards, ASTM standards will govern.

## 50.10.01.04 Notice

Certain types of notice must be provided by both the applicant and Planning Department staff at specific steps during the regulatory review process. The individuals receiving these notices vary depending upon the notice type, but include: owners of adjoining and confronting properties; nearby civic and homeowners’ associations; “interested parties” who request notice during the process; and the general public.

Individuals, groups, and interested parties receive notice in writing, [either] by mail[, or by email if they have indicated email as their preference]. The general public [receive] receives notice from signs that are [required to be] posted on a project site, and for applications that are acted upon by the Board, from the weekly Planning Board agenda on the Board’s website.

### A. Notice Standards

1. Notice Required. Notice is required for each application per the following table, or as otherwise specified in the Code:

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

APPLICATION TYPE	Pre-submittal Community Mtg.	Site Posting		Written Notice from Applicant		Written Hearing Notice from Planning Department	Planning Department Website Posting	
		Pre-submittal Community Mtg.	Application	Pre-submittal Community Mtg.	Application		DRC Agenda	Planning Board Agenda
Sketch Plan, including amendments <sup>1</sup>	X	X	X	X	X	X	X	X
Pre-Preliminary Submission			X		X	(only if Planning Board action is scheduled)	X	(only if Planning Board action is scheduled)
Preliminary Plan	X	X	X	X	X	X	X	X
Major Preliminary Plan Amendment			X		X	X	X	X
Minor Preliminary Plan Amendment					X	(only if Planning Board action is scheduled)		(only if Planning Board action is scheduled)
Administrative Subdivision Plan, including amendments			X		X	(only if Planning Board action is scheduled)	X	(only if Planning Board action is scheduled)
Site Plan <sup>1</sup>	X	X	X	X	X	X	X	X
Major Site Plan Amendment <sup>1</sup>			X		X	X	X	X
Minor Site Plan Amendment <sup>1</sup>					X	(only if Planning Board action is scheduled)		(only if Planning Board action is scheduled)

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

<u>Forest Conservation Plan</u>			<u>X</u>		<u>X</u>	<u>(only if Planning Board action is scheduled)</u>		<u>(only if Planning Board action is scheduled)</u>
<u>Forest Conservation Plan Amendment<sup>2</sup></u>			<u>X</u>		<u>X</u>	<u>(only if Planning Board action is scheduled)</u>		<u>(only if Planning Board action is scheduled)</u>
Signature Business Headquarters Plan	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>		<u>X</u>
<u>Biohealth Priority Campus Plan</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>		<u>X</u>
Record Plat								X
[Validity Period Extension Request]					[X]	[X]		[X]
Subdivision Regulations Waiver					X	X		X
Building Permit [APFO]APF					X	<u>(only if Planning Board action is scheduled)</u>		<u>(only if Planning Board action is scheduled)</u>

<sup>1</sup> Notice shown in this table is per Section 7.5.1 of Chapter 59.

<sup>2</sup> Forest conservation plan amendments are subject to noticing if a Planning Board hearing is required, if there is a change to an approved tree variance, or if a new tree variance is required.

2. Notice List. Applicants must create and submit a [Notice List] notice list as part of applications that require written notices to be sent. The [Notice List] notice list must be:

- compiled using the latest available records;



# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- compiled no more than 30 calendar days before the pre-submittal community meeting, if applicable; and

- updated no more than 30 calendar days before the date the Application is accepted by the Planning Department [Departments], [Development Application and Regulatory Coordination (DARC)] Intake and Regulatory Coordination (IRC) Division, Intake Section staff.

(a) Individuals and groups included. Individuals and groups that must be on the [Notice List] notice list are defined as follows:

i. Abutting and Confronting Property Owners. The applicant must compile the names and addresses of the owners of properties that are adjacent to the project site or directly across a right-of-way, of a width of less than 80 feet, from the project site. This list must be based on tax assessment ownership records from the Maryland Department of Assessments and Taxation (SDAT), Real Property Database. If an abutting or confronting property includes a multi-unit building (residential, non-residential, or mixed use), the [Notice List] notice list must include the property owner, the building management company, and the condominium association, if any. The list must also include any individual unit owner or renter in the building who has registered to receive notices on the MNCPPC website. If an abutting or confronting property is a recorded open space parcel for a subdivision, the applicant’s [Notice List] notice list must include the homeowners’ association, condominium association, or renters’ association and any individual owner of a property in that subdivision that is located within 300 feet of the subject property.

ii. Civic, Community, Condominium Associations, Homeowners’ and Renters’ Associations, and Municipalities.

a. The civic, community, condominium and homeowner’s associations that have registered with M-NCPPC<sup>4</sup> and are either: a) located within a half-mile radius of the center point of the subject property; or b) an association that has requested to receive notices for all development applications. At staff’s discretion, this list may be expanded for large or unusually shaped properties to include associations within a half-mile radius from a point or points along the property boundary, or to include a larger radius from the center point.

b. For a project that proposes to amend only a part of a site which is covered by an approved preliminary and/or site plan, and the site has been partially constructed, sold, and occupied, the project’s [Notice List] notice list is generated from the boundary of the amendment area. Property owners, including any individual unit owner or renter in a multi-unit building within the area being amended who has registered to receive notices on the MNCPPC website, must be included in the

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

[Notice List] notice list. Residents who are not property owners within the constructed part of the site must be notified of the proposed project through their HOA or Community Association.

c. Planning staff may require the applicant to add to the applicant’s [Notice List] notice list any common ownership association or civic association listed in the Planning Department’s records that abuts or confronts a public facility not adjacent or close to the project site, but which may require construction or improvement because of the proposed project. If required during plan review, as opposed to initial application, this notice must be directed to each designated association no later than 30 calendar days before the Board’s hearing on the application.

iii. Pre-Submittal Community Meeting Participants. An applicant for certain plan types is required to hold a community meeting before the application is submitted to the Planning Department. Only meeting participants who have asked to receive future notices are required to be on the [Notice List] notice list.

iv. Parties of Record from Previous [Plan] Applications. If a project site has an approved plan, and an applicant applies for a plan amendment, individuals or groups that were identified as Parties of Record in the earlier [plan] application must be added to the [Notice List] notice list of the current [plan] application. For example, a [Notice List] notice list for a preliminary plan [Amendment] amendment would include all individuals and groups who were identified as Parties of Record for the original preliminary plan application, in addition to those who meet the criteria covered above.

v. Others. The [DARC]IRC Division – Intake Section must be included on the applicant’s notification list. The applicant and members of the applicant’s team who wish to receive notices should also be included.

(b) Updates Required. The applicant must update the notice list of adjoining and confronting property owners if the application is pending for more than 6 months after the final application is accepted, and provide the new list to the [DARC]IRC Division for use in sending hearing notices.

B. Pre-submittal Community Meetings. For a sketch plan, preliminary plan, [or] site plan, signature business headquarters plan, or biohealth priority campus plan, the applicant must hold at least one public [pre-submission] pre-submittal community meeting no more than 90 calendar days before the initial application date. The purpose of the meeting is to explain the proposed project, address concerns about its impact on the community, and notify those attending of their right to participate in the review process. The applicant must expressly invite all individuals on the [Notice List] notice list and must also post one or more signs that are visible from the street on the property. The meeting must be held on an evening or a weekend, in a location convenient to the proposed development site. The applicant must

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

provide a sign-in sheet at the meeting so that attendees can identify themselves and provide their mailing address, if they wish to receive future notices.

C. Site Posting. In addition to site posting required for notice of the [pre-submission] pre-submittal community meeting, the applicant must post one or more signs at the development site for the plans noted in the table in subsection A.1 above, indicating that an application has been filed. The applicant must:

1. pay all costs associated with the sign posting requirements;
2. monitor the signs and replace any damaged or illegible signs; and
3. maintain posted pre-submittal community meeting signs until the date the meeting is held, and application signs throughout the review of the application.<sup>5</sup>

(a) Timing.

- i. Pre-Submittal Community Meeting signs must be posted at least 15 days before the meeting is held.
- ii. Signs to advertise the filing of the application must be posted before the application is accepted.

(b) Sign Specifications. The applicant and its sign vendor, if any, must follow the Sign Template for sign content and lettering specifications. The Planning Department may modify these requirements in special circumstances to assure that all signs will be visible to the public.

(c) Posting specifications. The required number and location of posted signs are as follows:

- i. A minimum of one sign must be placed parallel to each public or private street that is adjacent to the property.
- ii. If the frontage for a street adjacent to the project site is more than 500 feet long, an additional sign must be posted adjacent to the street for every 500 feet of frontage.
- iii. Signs are not required to be placed along and adjacent to a freeway.
- iv. Signs must be placed on the property in the most visible location available in such a manner that landscaping or other features do not impair or obstruct the visibility of the signs from the street.
- v. Signs must be posted within the project site, no more than 10 feet behind the property line adjacent to a street right-of-way or the access easement covering a private street.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- vi. Signs must not be placed within a street right-of-way or private street access easement.
  - vii. For a large site or one with unusual constraints, the requirements listed above may be modified by Planning Department staff to provide good visibility of posted signs.
- (d) Posting information. Posted signs must contain the following information.
- i. Signs advertising a Pre-Submittal Community Meeting must include:
    - a. meeting date, time, and place;
    - b. purpose of the meeting; and
    - c. applicant’s contact information.
  - ii. Signs advertising the submission of the application must include:
    - a. project name as it appears on the accepted application;
    - b. project number, as assigned by the Planning Department at the time of the application submission;
    - c. type of plan (i.e., preliminary plan, site plan, etc.);
    - d. size and zoning of the site;
    - e. each proposed use, and its associated proposed number of dwelling units, if residential use is proposed, and/or square footage of all non-residential buildings identified by type (i.e., office, retail, etc.); and
    - f. Planning Department contact information.
- D. Written Notice.
- 1. Timing. Required written notice must be sent per the following table:

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

Requirements	Pre-submittal Community Meeting <sup>1</sup>	Application Notice	Hearing Notice
Sign Posting	At least 15 days before meeting	Before application is accepted	
Written Notice Sent <sup>2</sup>	At least 15 days before meeting	No more than 5 days after application is accepted	At least 10 days before hearing date
Posting on Planning Board Agenda			At least 10 days before hearing date <sup>3</sup>
Responsible Party	Applicant	Applicant	Planning Department Staff

<sup>1</sup> Must occur no more than 90 days before an application is filed.

<sup>2</sup> By First-Class Mail [or email. To receive email, the party receiving the notice must have specifically requested it].

<sup>3</sup> At least 7 calendar days before the Board meeting for [a plan] an application that will be reviewed by the Board but acted on by another agency.

2. Standards. Written notice sent by the applicant and Planning Department staff must meet the following standards:

(a) Pre-submittal Community Meeting. The notice letter must be sent to everyone on the [Notice] notice list and must contain:

- i. date, time, and place for the meeting;
- ii. date that the notice is sent;
- iii. name and contact information of applicant or applicant’s representative. The listed individual must be available to provide further information about the proposed project and respond to any reasonable public request;
- iv. proposed project name;
- v. type of application that will be filed;

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

vi. property street address or other easily understood geographical reference to the location of the project site;

vii. property size and zoning;

viii. proposed use and density of development; and

ix. website and phone number for the [DARC]IRC Division.

(b) Application Notice.

i. Notice letter. The notice letter must be sent to everyone on the [Notice] notice list and any individuals who requested notice at the pre-submittal community meeting and must contain:

a. application number, as assigned by the Planning Department;

b. date that the notice was sent;

c. project [Name] name;

d. plan type;

e. property street address or other easily understood geographical reference to the location of the project site;

f. property size and zoning;

g. proposed use and density of development, if applicable, and if the application is an amendment to an approved plan, the changes that are proposed;

h. tentative Board hearing date scheduled by the Planning Department, if applicable;

i. deadline date for receiving comments on the application, if applicable; and

j. contact address and phone number for the [DARC]IRC Division.

ii. Notice letters for applications submitted for Director approval. The applicant must expand the notice list under subsection 50.10.01.04.A.2 above, to include all other parties of record noted in any previous files related to the current amendment, and mail the notice to all parties. In addition to the items in subsection 50.10.01.04.D.2(b)i above, the notice letter must include a deadline (at least 15 days after the mailing date of the notice) for the submission of comments regarding the application.

iii. Additional items. The following attachments must be included with the notice letter:

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- a. Separate, legible 11" x 17" copy of the applicant’s proposed plan drawing for the project.
- b. Latest version of the Planning Department’s brochure, entitled [“How to Participate Effectively in the Development Review Process”] ”Development Applications in Montgomery County”.
- (c) Hearing Notice.
  - i. Written notice. The notice must be sent to everyone on the notice list, anyone who requested notice and provided a mailing address at the pre-submittal community meeting or any other time during application review, and any individuals who submitted written comments and included a mailing address regarding the application. The notice must contain:
    - a. date and location of the meeting;
    - b. project name;
    - c. application number;
    - d. plan type;
    - e. property size and zoning;
    - f. project location; and
    - g. description of the proposed development or application.
  - ii. Website posting. [The Board holds hearings to review and act on some Plan Applications that are under its jurisdiction. It also holds hearings to provide comments on a Plan Application that is to be acted on by another body. Hearing items are listed in an agenda that typically occurs weekly, on every Thursday, through most of the calendar year. Specific times are set aside during the year for breaks in the agenda schedule.] The Board’s Weekly Agenda provides a notice for the general public of items to be reviewed by the Board, and public access to a staff report for each item where one is required. Information that can be found for each item on the agenda includes:
    - a. project name and plan number;
    - b. brief description of the application and project site;
    - c. area [Team] team lead review staff name;
    - d. staff recommendation and link to the staff technical report, if required; and

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

e. item number on the agenda and approximate time of day that the Board will take up the item.

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<sup>4</sup> Applicants may use the Association Finder Interactive Map tool, a GIS-based map created and maintained by the Planning Department for convenience.

<sup>5</sup> If an applicant does not maintain a properly posted sign on the project site, the Board may postpone a hearing on the application until the applicant has demonstrated that the site has been properly posted for at least 30 consecutive calendar days. Signs may be removed from the property after Board or Director action, as required, has been taken on the application.

## 50.10.01.05 Requirements for Application Submittal

### A. Pre-submittal.

1. Required Meeting with the Community. The applicant must hold at least one pre-submittal community meeting before submitting a project plan, sketch plan, preliminary plan, [or] site plan, signature business headquarters plan, or biohealth priority campus plan.

#### (a) Requirements of the meeting.

i. The applicant must schedule the meeting no more than 90 calendar days before the initial application date, on an evening or weekend, at a location that is convenient to the proposed project site.

ii. The purpose of the meeting is to present information about the proposed project and allow members of the community and the larger public to ask questions.

iii. The applicant must provide a sign-in sheet at the meeting so that attendees can identify themselves, provide a mailing [or email] address, and indicate whether they want to be added to the [Notice List] notice list.

iv. The applicant must take meeting minutes that include a summary of any issues or concerns raised by attendees.

2. Optional Meeting(s) with Staff. If site constraints or other issues related to the proposed development of a property raise questions about a future development application, an applicant may request one or more pre-submittal meetings with staff.



# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

B. Application. All applications covered by this manual must be filed with the [DARC]IRC Intake Section staff. The applicant or its representative must fill out and sign the application form and checklist certifying that application and checklist are complete and ready for processing.

1. Applicant’s Responsibility.

(a) Required submittal items. Applications for review and action by either the Board or Director are typically submitted and processed electronically through Montgomery Planning ePlans.<sup>6</sup> Filing an application includes submittal of an application form, followed by uploading electronic copies of required drawings and documents. The application must include all information required in the application checklist.

(b) Meeting required before plan amendment application. The required items for a plan amendment vary depending upon the specifics of the case. For each plan amendment, the applicant must contact the appropriate [Area Team] area team supervisor to determine the exact submission requirements. The amendment must clearly identify the items or areas of the approved plan proposed for revision.

2. Staff’s Responsibility.

(a) Intake Review. Staff must review the application and, within 10 days, either accept the application, or provide initial comments containing all revisions or additional materials required to make the application consistent with the submission requirements. Staff’s review consists of a [Pre-screen] pre-screen step to make any necessary corrections on the application form and compute the appropriate application fee, and then [Intake Review] intake review of the initial application materials to determine if the information submitted is complete and meets the requirements of the application checklist. Intake [Review] review is not a review of the merits of the application. Applicants should strive to ensure that each application is complete and correct at the time of initial submission. Staff must not accept an incomplete application for review.

3. Items Required for all Applications. Applications filed with the Planning Department must contain:

- (a) plan drawings, documents, and other items as required by the application checklist;
- (b) a certificate of compliance;
- (c) a statement of justification; and

(d) documentation of notice, including [pre-submission] pre-submittal community meeting and site posting.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

The following are also required before an application is accepted:

(e) a [paper] copy of the application form signed and dated by the property owner or applicant;  
and

(f) payment of the appropriate fee.<sup>7</sup>

4. Plan drawings and documents. A digital copy of all submittal items required by the application checklist for each application type must be provided with the application in the appropriate file format, with the appropriate file name, and prepared following the submittal requirements on the Planning Department Webpage. Plan drawings must be legible and include appropriate notes and specifications and proper certification by a licensed professional or other qualified preparer.

5. Certificates of Compliance. The Certificate of Compliance<sup>8</sup>, signed and dated by the Applicant, attests that, to the best of the applicant’s knowledge, information, and belief after reasonable investigation, the application conforms to all applicable Federal, State, and County laws and regulations, including standards of the applicable zone. The certification also confirms that the plans and documents in the application package provide complete and correct information on boundary, ownership, and other information on properties, topography, historic resources, etc.

6. Statements of Justification. The Statement of Justification is a written statement listing the facts and reasons that the applicant believes would support Board or Director approval of the application. The statement must address each finding that is required in either Chapter 50 or Chapter 59, depending on the type of application.

(a) Waiver requests. If the application includes a request for any waiver of any law or regulation, the statement must specifically identify the applicable code section and provide details of the facts and legal basis that support the granting of the requested waiver. If a waiver is requested for environmental reasons, the applicant should refer to the latest approved [Planning Board’s] Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland. If a proposed development application requires approval of a variance of a zoning standard by the Montgomery County Board of Appeals, [M-NCPPC] Planning Department staff will not process the application until the Board of Appeals acts.

(b) Supporting information. The applicant must attach any diagrammatic or illustrative materials that support the facts asserted in the statement of justification. The Applicant, or the Applicant’s representative, must certify that the information set forth in each statement of justification is true, complete, and correct to the best of their knowledge, information, and belief.

7. Documentation of Notice.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(a) Notice List. The submitted application documents must include a copy of the notice list, satisfying the requirements above. After mailing written notice, the applicant must retain each item of mail returned undelivered and produce any item retained for inspection by the staff or the Board upon request. If [DARC]IRC Division staff has not received a copy of the required written notice, the Development Review Committee meeting on the application must be postponed until the applicant demonstrates that each required notice was mailed. If an application is pending for more than one year, the applicant must update the notice list and re-send notice (with the latest plan drawings) to each party on the updated list before the plan is scheduled for Board action.

(b) Pre-submittal community meeting. The applicant must provide the following pre-submittal community meeting documentation with the application:

- i. a signed and notarized affidavit attesting to the date, time, and location of the meeting;
- ii. a dated copy of the invitation notice letter;

iii. a copy of the sign-in sheet, and a typed summary list that identifies each attendee, the attendee’s contact information, and identification of each attendee who provided a mailing address and wants to receive all future notifications concerning the proposed application; and

- iv. meeting minutes that include a summary of issues or concerns raised by attendees.

8. Documentation of Site Posting. The applicant must provide the following documentation of site posting:

(a) Initial application. When an application is initially submitted, the applicant must include a template of the proposed sign and a drawing showing the proposed posting locations on the development site.

(b) Before application acceptance. A document file containing the following items must be submitted before application acceptance to demonstrate that site posting requirements have been met:

- i. a signed and notarized affidavit attesting to the date and location of the posted signs;
- ii. date-stamped photographs of each posted sign;
- iii. the staff-approved sign layout plan drawing; and
- iv. a photograph of one of the actual signs.

C. Acceptance of an Application.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

1. Terms of acceptance. A final application must be complete and comply with all filing procedures to be accepted for review. [DARC]IRC Intake staff must give the applicant written confirmation when acceptance occurs. The acceptance of [a plan] an application means that it is complete [and accurate] for purposes of filing. Acceptance for filing does not constitute approval of the submitted plan; it allows the application to move forward to evaluation by the participating review agencies and others.

2. Regulatory clocks. After application acceptance, Code-required review clocks for the [plan] application are started and tentative Board hearing dates are assigned, as applicable. If the application is going to be discussed at a Development Review Committee (DRC) meeting, it is added to the next available meeting agenda.

3. Public record.<sup>9</sup> All information contained in the accepted application, or added during application review is part of the public record. In addition, all supporting materials presented to the Board or Director or otherwise incorporated into the plan as part of the action taken on an application, become part of the public record. By submitting [a plan] an application, the applicant agrees to complete the checklist of standard plan requirements included with each application form.

**D. Rejection of an Application.**

1. Inaccurate, misleading or false certifications. At any point in the review process, if staff finds that information certified by an applicant or a licensed professional<sup>10</sup> is materially inaccurate, misleading, or false, staff must report the matter in writing to the Director. The Director must review the report, give the applicant or professional an opportunity to respond in writing, and consider any other relevant information. If the Director finds that the applicant or professional submitted materially inaccurate, false, or misleading information, the Director must reject the application and take appropriate action, which may include reporting the facts to the appropriate licensing board.

2. New application needed. Any plan rejected for these reasons must be returned to the applicant without any refund of the initial application fee. The application must be dropped from the queue of pending plans, and the applicant must submit a new application with associated fees to be considered further.

E. Filing of Concurrent Applications. Many types of land development projects require the filing, review, and Board approval of more than one type of plan. With the agreement of Planning staff, some of these plans may be filed concurrently. Depending upon the application types, concurrent filing may require extensions of the mandatory review timeframes required by law to facilitate concurrent action on the applications.

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# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

<sup>6</sup> Complete instructions for making an application, including application forms and checklists are available on the Planning Department’s website at <http://montgomeryplanning.org/development/>.

<sup>7</sup> Fees paid by check must be made out to the Maryland-National Capital Park and Planning Commission (MNCPPC) or to the Montgomery County Planning Department.

<sup>8</sup> Standard Certificate of Compliance template available at: [<http://www.montgomeryplanning.org/development/forms/>] <https://montgomeryplanning.org/development/development-applications/> under the section for each plan type

## 50.10.01.06 Evaluation of Applications

After a final application is accepted, it must be reviewed to determine if it meets the requirements of the County Code and other applicable laws and adopted guidelines. Individual reviewers must provide their recommendations regarding the approval of the application. These recommendations are part of the basis for the eventual Board or Director action on the plan.

A. Referral and Inter-Agency Consultation. When a final application is accepted, the planning staff must:

- provide a copy of the plan and necessary supporting information to designated offices of the Commission, other government or public agencies, and utility companies for comment or approval, as required by applicable law; and

- if applicable, schedule a discussion of the application [between reviewers and the applicant] before the Development Review Committee (DRC) [chaired by the DARC Division Chief, or designee, within 15 days after the copies are sent].

1. Lead Reviewer. For each [plan] application, the appropriate chief or supervisor must assign a Planning Department lead reviewer. The lead reviewer ensures that the following steps are coordinated and occur in a timely manner.

(a) Comments and recommendations from the reviewers are included in the application file and conveyed to the applicant team.

(b) Documentation is added to [in] the application file noting assigned reviewers that do not participate or provide any substantive comments.

(c) Potential conflicting comments are identified.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(d) Plan revisions and information from the applicant in response to comments are provided to reviewers.

(e) The adopted protocol for resolving any agency conflicts is applied when necessary.

2. Responsibility of all reviewers. Comments from any reviewers must be made in writing before the end of each designated review period. A reviewer who is unable to meet this timeframe must complete their review by stating their need for additional time and providing an estimate of when their review will be provided.

[3. Consultation during review. Reviewers may hold meetings during the application review period to help evaluate the application as necessary or appropriate. These meetings may include the applicant, other interested parties, and the public. Minutes for each meeting must be prepared by the meeting organizer and included in the application file. Each set of minutes must include the date, time, meeting location, and a list of participants, major issues discussed, and any decision or recommendation made.]

[4]3. Review Steps. Chapter 50 and Chapter 59 establish review periods for the different applications, but these may be extended depending upon the number of issues identified as part of the review and the need for plan revisions. The typical review for most applications consists of the following steps:

- (a) Agency review before DRC meeting
- (b) DRC meeting
- (c) Applicant revisions after DRC meeting
- (d) Agency review and approval of each final revised plan
- (e) Planning Staff prepares a written report
- (f) Staff report is posted 10 days before a Board hearing
- (g) Board or Director Action

[5]4. Extended review. Review and action on the application types covered in these regulations involves approval of certain required plan components by other agencies, such as, fire access and road grade plans; and concurrent review of related applications, such as, stormwater management concept and Special Protection Area (SPA) water quality plans, water and sewer category change requests, well and septic permits, or conditional use applications. Obtaining these related approvals may require extension of the review timeframes specified above. Delays may also result if an applicant does not submit adequate revisions under section 50.10.01.06.B.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

[6]5. Extension of a Board hearing date or Director decision date. Review deadlines may be extended for sketch, site, preliminary, and administrative subdivision plans under Chapter 59, Sections 7.3.3.C and 7.3.4.C, and Chapter 50, Sections [4.2.E]4.1.E and [6.3.B.3]6.3.b.4, respectively, by rescheduling the required decision date. A request must be made in writing to the Planning Department for such extension.<sup>[11]</sup> Per Chapter 50 and Chapter 59, the Director may postpone the decision date by up to 30 days one time without Board approval. The Board may act to grant extensions of more than 30 days upon request from the Director or applicant. Any extension of a hearing date acted upon by the Board must be noticed on the hearing agenda [with the new hearing date indicated. The new hearing date must be identified for individuals on the notice list as part of the written hearing notice.] The new hearing date must be noticed on the appropriate agenda for the new date and identified on the notice list as part of the written hearing notice.

[7]6. Extension of plat review. An applicant may consent to waive the 90-day review period required under Chapter 50, Section 8.2.B to gain time to obtain the necessary approvals from the reviewing agencies; otherwise, staff must base their required recommendation on the latest version of the plat. When staff’s final recommendation on a plat is denial, the applicant must be permitted to submit a final plat and staff must prepare a staff report and schedule a Board hearing on the next available agenda.

[8]7. Application lapse deemed withdrawal. An application that has not yet been accepted that has been inactive for 180 days or an application that has been accepted that has been inactive for 365 days with no substantive response to review comments, or that has not been properly extended under Chapter 50 or 59, must be treated as withdrawn unless the applicant can demonstrate good cause to extend the application. The staff must send written notice to an applicant whose plan has been inactive indicating that the applicant has 30 calendar days to request an extension of the staff review. Any request for an extension must:

- (a) be in writing;
- (b) show good cause to grant an extension; and
- (c) propose a timeframe to finalize the application.

If the applicant does not request an extension by the due date, staff must send the applicant written notice that the application has been withdrawn by default. A new application and fee must be submitted to re-file any plan that is withdrawn by default.

B. Plan Revision.<sup>[12]</sup><sup>11</sup> Each applicant is responsible for timely response to reviewer comments. The response may be by resubmitting plans and other documents with revisions, requesting a meeting with

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

reviewers to discuss the comments, or indicating the desire to proceed to Board or Director action without any revision. Resubmitted materials should be submitted within 14 days after the comments are received, unless staff and the applicant agree on an extended deadline. Depending on the size and complexity of the proposed project, a plan may be revised multiple times during the application review. Any final revised plan for an application that is scheduled for Board action must be submitted not less than 65 days before the scheduled Board meeting date.

1. Major revision. If the lead reviewer determines that an applicant’s revised plan or any other related revised document constitutes a major change<sup>[13]12</sup> from the original submission, the applicant must:

- (a) re-send written notices to all parties on the [Notice List] notice list; and
- (b) revise and resubmit an application form if the revision involves a change in:
  - i. acreage of the application site;
  - ii. type of use or units proposed;
  - iii. proposed density of any use;
  - iv. proposed method of development; or
  - v. ownership, applicant, or engineer.

The submittal of a major application revision should be discussed with the assigned lead reviewer before they are submitted, and will require extension of any minimum review timeframe specified by law. The lead reviewer must decide how the revised plan will be reviewed after submittal, and may schedule another DRC meeting.

C. Public Participation. Any individual or organization with an interest in or concern about a proposed development or specific application may participate in the review and approval process by:

- attending the [pre-submission] pre-submittal community meeting organized and held by the applicant before an application is submitted to the Planning Department.
- reviewing information about the submitted [plan] application in person at the Planning Department offices or online at the Planning Department website; and
- attending the DRC meeting scheduled for the application<sup>[14]13</sup>, if applicable. The DRC meeting is not open to public participation; but members of the public may attend and listen to the discussion. Groups should notify [DARC]IRC staff about their interest in attending the DRC meeting before the



# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

scheduled date so that space accommodations can be made. Details of the DRC meetings are on the Planning Department’s website.

1. Public comment. Members of the public who have questions or concerns [should] may contact the Planning Department’s lead reviewer at any time during the review process. Any [Public] public comments [should] must be submitted in writing by letter or email[,] and will become part of the public record of the application. The Planning staff must make [every] reasonable [effort] efforts to address issues raised by the public during the plan review[,] and address the issues that are not resolved in their recommendations on the plan. Public comments may also be presented directly to the Board if a public hearing is scheduled, pursuant to the Board’s Rules of Procedure.

2. Community meetings during review. Meetings with members of the public may be scheduled for a case upon request to the lead reviewer, or for particularly complex or controversial cases, staff may initiate a community meeting. These meetings may [must] include other agency representatives and the applicant, as appropriate.

D. Staff Reports. The lead reviewer, after completing the application review and receiving all required agency recommendations or approvals, must prepare a report summarizing the proposed findings of fact and conclusions of law that the Board or Director must make and recommend approval, approval subject to conditions, or denial of the application.

1. Contents of the staff report. A staff report should include the following elements:
  - (a) a site description, including a vicinity map and aerial photograph of the site;
  - (b) an overview of the project, and a plan drawing;
  - (c) a summary of previous approvals, if any;
  - (d) a summary of the major issues and concerns related to the application and staff’s proposed resolution;
  - (e) staff’s recommended action, including for an approval, any recommended conditions; and
  - (f) staff’s findings of fact and conclusions regarding each applicable requirement of law related to the plan under the applicable sections of Chapter 50[, Section 4.2.D] and Chapter 59[, Sections 7.3.3.E and 7.3.4.E]; and the basis for each finding and conclusion.

2. Staff Reports for Board action. The staff report for a plan or major plan amendment application under Chapter 50 or 59 must be published on the Board’s website as part of the [Hearing Agenda] meeting agenda at least 10 days before the date of the scheduled meeting.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

3. Staff Reports for a minor plan amendment. A staff report for a minor plan amendment involving limited aspects of the original plan must include the applicable elements listed above and details on each item that is proposed to be changed.

4. Objections to a staff report scheduled for Board action. The applicant or other individuals may submit objections to any finding or conclusion in a staff report that is scheduled for Board action no later than noon on the business day prior to [one full business day before] the scheduled Board meeting that includes the application or as set forth in the Board’s Rules of Procedure. Each objection must be made in writing to the Board Chair and must clearly identify and fully explain the basis for each disagreement. The applicant or any other party may also object to any finding or conclusion in the staff report during the scheduled public hearing on the application.

[5. Request to postpone a public hearing agenda item. The applicant or any other party may request postponement of a scheduled public hearing after the staff report has been published. The request must be made in writing to the Chair of the Planning Board no later than one full business day before the scheduled Board meeting that includes the application. Each request for postponement must clearly identify and fully explain the basis for postponement. The staff must notify the applicant of each postponement request, and the applicant must be given an opportunity to respond. A decision to postpone a public hearing may only be made by the Planning Board Chair or the Planning Board.

6. Removing items from the Consent Agenda. The Planning Board may only approve a plan amendment under Chapters 50 and 59 on its Consent Agenda if the amendment is unopposed. If any individual or party opposes an amendment scheduled on the Consent Agenda at any time before the Board votes on the amendment, the Board must remove the item from the Consent Agenda and schedule it for a Full Hearing. Any Board member may also remove an item from the Consent Agenda on the day it is to be heard by making a motion in open session.]

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<sup>9</sup> The public record is not the same as the legal record that the Board bases its decision upon for purposes of a petition for judicial review.

<sup>10</sup> Licensed professionals include engineers, surveyors, landscape architects, attorneys, and any other profession licensed by the State of Maryland.

[<sup>11</sup> Template for the Regulatory Extension Request Application.]

[<sup>12</sup>]<sup>11</sup> A plan revision is distinct and separate from a plan amendment. A plan revision incorporates changes that are made as part of the plan review process (i.e., before a plan is approved by a regulatory body). An amended plan incorporates changes made to a certified or approved plan.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

[<sup>13</sup>]<sup>12</sup> A major revision includes any increase or significant decrease in density or number of units, an increase in the limits of disturbance, a significant change in lot layout, or an increase in building height or scale. The lead reviewer determines if an applicant’s proposed plan revision is a major or minor revision.

[<sup>14</sup>]<sup>13</sup> The DRC meeting is generally held every 2 weeks[, on Tuesday]. A DRC Agenda containing items and the times they will be discussed, is posted on the MNCPPC website.

## 50.10.01.07 Action on a Plan

[A plan] An application is acted on by the Board or Director, depending on the application type. The Chapter 50 and Chapter 59 requirements for action on a plan are as follows:

Application Type	Approval Authority
Pre-preliminary Submission	Planning Board <u>or Planning Director, per Section 50.6.3.B of the Montgomery County Code.</u>  [(when a binding decision is requested by the applicant)]
Sketch Plan <u>and Sketch Plan Amendments</u> (and amendments to previously approved Project Plans)	Planning Board
Administrative Subdivision Plan <u>and Amendments</u>	Planning Director <u>or Planning Board, per Section 50.6.3 of the Montgomery County Code</u>  (Director may decide to cede authority to the Board)
Preliminary Plan and Preliminary Plan Amendment	Planning Board  (Director may act on changes to validity period phasing)
Site Plan and Major Site Plan Amendment	Planning Board

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

Minor Site Plan Amendment	Planning Board or Planning Director, <u>per Montgomery County Code Section 59.7.3.4.J.2</u>  [(depending upon the elements of the plan that are being amended)]
Record Plat	Planning Board

A. Board Action. Board action as part of their regularly scheduled meetings is required for sketch plans, preliminary plans, site plans, signature business headquarters plans, biohealth priority campus plans, [and] record plats, waivers under Chapter 50, and APF determinations; and may be required for pre-preliminary [submissions] applications [and] administrative subdivision plans, and amendments to land development plan applications.

1. Board Meeting Agenda. The Board votes to act on [a plan] an application during [their] its meetings pursuant to its Rules of Procedure and applicable law. [in one of two ways:

(a) After a public hearing. The Board typically acts on development applications immediately after a hearing<sup>15</sup>. The hearing provides an opportunity for testimonial evidence to be presented to the Board by staff, the applicant, and other interested parties.

(b) On a Consent Agenda. Items that are reviewed and acted on as part of a Consent Agenda without any discussion.]

2. Scheduling. Board action on [a development] an application must be scheduled per the requirements of Chapter 50 and Chapter 59. Depending on the plan type, the hearing [or consent agenda action] dates must be scheduled either 90[,] or 120 days after a complete [plan] application is accepted by [DARC]IRC Intake staff. The following table contains the scheduling requirements for the applicable plans.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

Application Type	Maximum Days Between Application Acceptance and Decision <sup>1</sup>	Reference to County Code
Pre-preliminary Submission	90  (if applicant requests a Board hearing)	Ch. 50, Sec. 5.2
Sketch Plan <u>and Amendments</u>	90	Ch. 59, Sec. 7.3.3.C
Administrative Subdivision Plan <u>and Amendments</u>	90  (if [Director determines] a Board hearing is necessary)	Ch. 50, Sec. 6.3
Preliminary Plan and Amendments	120	Ch. 50, Secs. 4.1.E and 4.2.F
Site Plan and Amendments	120	Ch. 59, Secs. 7.3.4.C and 7.3.4.J
Record Plat	30  (this timeframe is measured from submittal of final plat)	Ch. 50, Sec. [8.3.F]8.2.F

<sup>1</sup> This column does not include hearing date extensions that may be granted under Chapter 50 and Chapter 59.

(a) Start of clock. For a pre-preliminary submission, sketch, preliminary, [or] site plan, or biohealth priority campus plan application, the plan action date must be scheduled at the time of application acceptance, and noted in the Application Notice letter sent by the applicant. If the Director determines that an administrative subdivision plan requires a Board hearing and action, the hearing must be scheduled on the next available agenda date.

(b) Possible extension. Depending on the complexity of the plan and the degree of controversy, Board hearing dates may need to be extended, as discussed above, to have sufficient time to identify and understand the issues of the proposed project and sufficiently explore and incorporate features to address these issues.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(c) Minimum requirements for scheduling a Board hearing. Action on [a plan] an application must not be scheduled until the lead reviewer determines that:

- i. a final plan has been submitted by the applicant and date stamped by the lead reviewer to identify it as the official plan for Board consideration;
- ii. all agency reviews are completed and written recommendations have been received; and
- iii. all relevant issues and concerns have either been resolved or will be presented to the Board for resolution.

(d) Request to postpone a public hearing agenda item. The applicant or any other party may request postponement of a scheduled public hearing after the staff report has been published. The request must be made in writing to the Chair of the Planning Board no later than 12:00 p.m. on the day prior to the scheduled hearing. Each request for postponement must clearly identify and fully explain the basis for postponement. The staff must notify the applicant of each postponement request, and the applicant must be given an opportunity to respond. A decision to postpone a public hearing may only be made by the Planning Board Chair or the Planning Board.

3. Visual exhibits. Applicants must submit digital copies of [the following] any [visual] exhibits to the lead reviewer for use in the Board hearing, at least 3 business days before the scheduled date of the hearing:

- (a) a rendered copy of the applicable land development plan (pre-preliminary, sketch, preliminary, administrative subdivision, and site);
- (b) a rendered forest conservation plan and landscape plan, if applicable; and
- (c) other exhibits, depending upon the issues of the plan, as requested by the lead reviewer.

Anyone wishing to present visual exhibits to the Board must submit them to the Chair’s office by 12:00 p.m. on the day prior to the hearing. [Visual Exhibits may be presented at the hearing by any participant. They should be prepared in digital form and saved on an electronic medium (e.g., USB flash drive, CD, etc.) so they are viewable by all at the meeting and can be retained as part of the meeting record] Any exhibits submitted will become part of the hearing record [16]15.

4. Testimony. Any interested party may present testimony for consideration as part of the Board’s hearing by signing up in [advance, or at the hearing] accordance with the Board’s Rules of Procedure.

5. Action on a record plat. Staff must schedule action for a record plat immediately after the final plat is accepted. Action is generally taken by the Board without discussion [as part of its Consent

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

Agenda]. A staff memorandum that includes a summary of staff’s review and recommendations and a copy of the proposed plat must be posted on the Commission’s website at least 10 days before the scheduled Board action date. Staff may add record plats to the [Consent Agenda] Board’s agenda not later than 5 days before the scheduled action date in limited circumstances. Plats may be listed [in the same Consent Agenda] as part of the same agenda item and approved by the Board in one vote without discussion or individual motions.

B. Director Action. Action on administrative subdivision plans and certain minor amendments to preliminary plans and site plans may be taken by the Director instead of the Board. A public hearing is not required before the Director acts, but the Director may determine that a hearing is warranted in some cases. When such a determination is made, the Director must cede their authority to act on the application to the Board and schedule the public hearing on the next available Board meeting agenda.

1. Public participation for a Director action. The required written application notice for an application that will be acted upon by the Director must include the fact that a public hearing will not be scheduled. The notice must also state that comments concerning the application must be submitted to the Director, and specify the time within which the comments must be received to be considered as part of the Director’s decision. Any comment period must be a minimum of 15 days from the date the written application notice is sent.

2. Timing. The timing of a Director action is subject to the scheduling requirements of subsection 50.10.01.07.A.2, above.

C. Documentation of action. Written documentation of a Board or Director action is required.

1. Resolutions. Resolutions documenting a Board action required under Chapter 50 and Chapter 59 must be adopted per the Board’s Rules of Procedure. The resolution mailing date is the basis for calculation of the plan validity periods specified in Chapter 50 and Chapter 59.

(a) Resolution notice. A copy of the resolution must be sent by staff to the applicant, the applicant’s engineer and attorney, if applicable, and all parties of record who provided a mailing address for the hearing<sup>[17]</sup><sup>16</sup>, and included in any certified plan drawing set.

2. Written Director action. The Director’s action on an application may be by letter or memorandum, or as part of the staff report. When the Director accepts all findings in the staff report and staff’s recommendation, the Director’s counter-signature and action date on the staff report is sufficient documentation of the action. The Director’s action date is the start of the plan validity [periods] period of the approved plan.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(a) Notice of Director action. A copy of the Director’s approval must be sent to the applicant, placed in the public record of the [case] application, and included in any certified plan drawing set.

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[<sup>15</sup>]<sup>14</sup> Rules for the conduct of hearings before the Board are found in the Board’s Rules of Procedure.

[<sup>16</sup>]<sup>15</sup> With advanced notice before the day of the scheduled hearing, [DARC]IRC Division staff will scan paper copies of visual exhibits and create digital copies for use in the meeting.

[<sup>17</sup>]<sup>16</sup> The parties of record for a hearing include the applicant, the applicant’s engineer, the applicant’s attorney, any individual or group that testifies at the hearing and provides a mailing address, and any individual or group that submits written testimony and provides a mailing address [after a staff report has been posted].

## 50.10.01.08 Plan Certification

Certification of plan drawings is required for preliminary plans, administrative subdivision plans, [and] site plans, signature business headquarters plan, and biohealth priority campus plans (and any amendment [to either] thereto) that have been approved. The certified plan set must include all plans associated with these approvals, including, but not limited to,[:] forest conservation or tree save plans, landscape and lighting plans, architectural plans, and impervious surface plans [approved as part of a SPA water quality plan].

A. Steps for certification. After the Board or Director, as appropriate, approves [a project] an application that requires a certified plan to confirm the approval, the following steps must be taken:

1. The applicant must make any modifications to the application drawings that were required by the conditions of the approval, add a copy of the signed Board Resolution or Director approval, and submit the plan drawing set to the Planning Department.

2. Staff should review the submitted application drawing set within 15 days and either accept the plans or provide review comments to the applicant outlining necessary corrections.

3. Accepted drawings must be stamped approved, signed, and dated by the Director or designee.

[4. The applicant must produce and submit one paper copy of the stamped certified plan set with original developer and professional certification signatures and submit it to the Planning Department for archiving.]



# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

[5]4. A copy of the fully executed certified plan will be added to the electronic files for the application [must be posted electronically] on the Planning Department’s website [for viewing by all interested parties].

B. Separate exhibit required for ownership units. Ownership units may not be included on a certified preliminary plan, or site plan, signature business headquarters plan, or biohealth priority campus plan drawing set. When an applicant intends to create ownership units within a lot included on such plans, a separate ownership unit drawing must be submitted for certification along with the preliminary plan, [or] site plan, signature business headquarters plan, or biohealth priority campus plan.

### 50.10.01.09 Post-Approval Requirements

A. Inspections. The applicant must schedule all Planning Department inspections that are required by conditions of any approval [approved preliminary plan, administrative subdivision plan, or final forest conservation or tree save plan] with a Planning Department inspector per the approved inspection schedule. The inspection must confirm that land development activities occurring on a project site will conform to all requirements of the approved plans. Required pre-construction inspections must be coordinated with the DPS inspector and an applicant’s representative to ensure that requirements for sediment and erosion control and stormwater management do not conflict with approved requirements for forest conservation and protection of environmentally-sensitive areas.

B. Surety and bonds. The applicant must enter into a Surety and Maintenance Agreement<sup>[18]</sup> with the Board as required by any approved application, submit a cost estimate<sup>[19]</sup> of the materials and facilities that are required to establish the surety amount, and provide a performance bond<sup>[20]</sup> or other form of surety.

1. Timing and elements included.

(a) Subdivision and site plan surety. Surety and bonding for the required elements of a preliminary plan, administrative subdivision plan, [or] site plan, signature business headquarters plan, or biohealth priority campus plan must be provided per the timing specified in the conditions of approval; generally, before the issuance of building permits, use and occupancy permits, or sediment control permits. The elements include but are not limited to: landscape plant material, on-site lighting, indoor and outdoor recreational facilities, site furniture, mailbox pad sites, trash enclosures, retaining walls, fences, railings, private utilities, private roads and associated improvements, including sidewalks, bikeways, storm drainage facilities, street trees and street lights.

(b) Forest conservation and tree save plan surety. Surety and bonding for the required elements of a forest conservation plan or tree save plan must be provided before the Planning Department

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

inspector authorizes any clearing or grading of the development site. The elements include but are not limited to[:] plant materials, tree protection measures, mitigation plantings, invasive species control measures, planting site preparation, fencing, [and] boundary signage, and maintenance costs.

2. Review and approval. The required surety and bonds must be submitted to the [DARC]IRC Division for distribution to the appropriate review staff.

C. Other.

1. Before submittal of a Record Plat. An application for a record plat will not be accepted without verification that the following requirements have been met.

(a) Certified plans. The applicant must submit a copy of the certified preliminary plan and associated forest conservation plan, and the Board’s resolution on the preliminary plan, with the record plat application. The applicant must also submit a copy of the certified site plan, signature business headquarters plan, or biohealth priority campus plan and associated forest conservation plan, and site plan, signature business headquarters plan, or biohealth priority campus plan resolution for any property that is subject to site plan, signature business headquarters plan, or biohealth priority campus plan approval.

(b) Road improvements. The applicant must comply with Chapter 50, Sections 4.3.E.2.b, 4.3.E.3.b, 4.3.E.4.e, and 4.3.E.5.d by:

i. Public roads. Applying to DPS for right-of-way permit(s) or satisfying any alternative requirements of DPS to ensure proper design of public roads.

ii. Private roads. Obtaining the certification of an engineer that each private road has been designed to meet the requirements of Chapter 50, Section 4.3.4.

(c) [Forest conservation] Conservation easements. Documentation needed to create all conservation easements must be prepared in at least draft form.

(d) Street naming and address plan. The applicant must request an Address Plan or Address Verification from [DARC]IRC Division staff before the initial submission of the Record Plat application. Staff will work with the applicant to assign addresses for newly created lots and verify addresses for existing properties that are to remain in their original configuration. If the approved subdivision includes new streets, the applicant must submit a list of proposed street names for staff review and approval to ensure that: new streets are not assigned names that are already in use in the County; the assigned names do not cause confusion in locating addresses for properties or structures; and they meet other Board guidelines for street names<sup>[21]</sup>~~17~~.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(e) Other necessary covenants or agreements. All covenants, agreements and easements required by Board conditions of approval must be prepared in at least draft form.

(e) Required agency approvals. Regulatory approvals that are conditioned as part of the Board’s approval of an application, such as, a DPS well and septic permit or stormwater management concept, must be obtained before a plat is submitted.

2. Before issuance of Building Permit. The applicant must verify for [DARC]IRC Division staff that all conditions of a Board approval that were required to be met before the issuance of a building permit have been satisfied.

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[<sup>18</sup> Template for a Subdivision and Site Plan Surety and Maintenance Agreement and Forest Conservation Plan Maintenance & Management Agreement: Onsite and Offsite.

<sup>19</sup> Template for the Cost Estimate Table.

<sup>20</sup> Template for a Subdivision and Site Plan Bond, Subdivision and Site Plan Letter of Credit, Forest Conservation Plan Bond, and Forest Conservation Letter of Credit.]

[<sup>21</sup>]<sup>17</sup> Rules and guidelines for assigning addresses and street names in the County are provided in the latest version of the Addressing and Street Naming Guidelines and Procedures Manual for Montgomery County, Maryland ([DARC]IRC Division, Montgomery County Planning Department, M-NCPPC).

### **50.10.01.10 Alternative Procedures and Additional Requirements**

Certain types of applications have additional requirements not covered by Chapter 50 or the sections above, or are subject to alternative procedures for submission and review. These alternative requirements and procedures are described below.

#### **A. Administrative Subdivision Plan.**

1. Board action required. The Director must cede their authority to act on an administrative subdivision plan application and schedule action by the Board if:

(a) an objection to the application is received during the review, and the Director determines the objection is relevant;

(b) the project site is within a Special Protection Area and required to submit a Water Quality Plan;

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(c) the application includes a request for a waiver under Section 50.9 of Chapter 50;

(d) the application includes a request for abandonment of land dedicated for public use under Section 50.8.4.A.2 of Chapter 50; [and]

(e) the application includes a change to a recorded conservation easement on the project site[.];

(f) the application includes flag lots and/or lots without frontage on a public road; and

(g) the application includes a reservation of land for public use.

2. Director participation in application review. The Director may not participate in the DRC meeting or any other meetings that occur on an application before acting on the plan.

3. Effect of an appeal to an Administrative Subdivision Plan. An appeal of an administrative subdivision plan filed under Section 6.3.C of Chapter 50 stays the Director’s action on the plan until the Board acts on the appeal after a public hearing.

B. Validity Period Extension Requests. The date when the Planning Board’s resolution for a preliminary plan is mailed establishes both the plan validity period and the validity period for the associated adequate public facilities review. The Board may extend these validity periods under Chapter 50, Sections 4.2.H and 4.3.J.7.

1. Application. An application filed for extension of a validity period must include a letter from the applicant, or the applicant’s representative, which identifies the facts, conditions, and provisions of law relied upon by the applicant to justify an extension.

2. Review and Action. Planning Department staff may review an application filed for extension of a validity period without referring it to other government or public agencies, and utility companies. A DRC meeting on the application is not required. Staff must prepare a staff report for the application as noted above, and schedule action per the timing required for the plan under which the validity period was established.

C. Subdivision Regulations Waiver Requests. Chapter 50, Division 50.9 specifies waivers that the Planning Board may grant. Waivers are generally reviewed as part of an application for a preliminary plan of subdivision. However, a waiver of the requirement to submit a preliminary plan of subdivision may be requested. In that case, a separate subdivision waiver application is required.

1. Application. Each application for waiver must include a letter from the applicant or the applicant’s representative which specifies the facts, conditions, and provisions of law on which the applicant relies to justify a waiver.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

2. Review and Action. An application for a subdivision regulations waiver must be reviewed per the requirements of Chapter 50, Section 9.5.A and acted upon by the Board.

D. Adequate Public Facilities [Ordinance] ([APFO]APF) Review at Building Permit. Per Chapter 8, Section 8-31, a building permit must not be issued for lots that do not have a valid [APFO]APF approval from the Board. If such approval is not granted by the conditions of an approved preliminary plan, administrative subdivision plan, [or] site plan, signature business headquarters plan, or biohealth priority campus, the Department of Permitting Services refers the building permit application to the Board for a determination that public facilities will be adequate to serve the proposed development. In these cases, an application for [APFO]APF review should be filed under these procedures.

1. Application. Each application for a building permit APFOAPF review must include an application form, and applicable fee, and sufficient information to demonstrate the expected impact on and use of public facilities by the development.

2. Referral of the application. Immediately after accepting the application, the Director must send a copy to DOT, MCPS, DPS Fire Department Access and Water Supply, and any other applicable reviewing agencies for their comments concerning the plan. Per Chapter 8, each recipient must respond to the Board within 30 days after receiving the application from the Director.

3. Review. After receiving the recommendations of the participating reviewers, staff must prepare a staff report for the application as noted above.

4. Action. Action on an application for [APFO]APF review at building permit may be taken by either the Director or Board, depending upon the circumstances of the request.

(a) If a complete and adequate traffic statement is submitted and the proposed development generates less than 50 total peak hour person trips, the APF determination may be approved administratively by the Planning Department Director or designee.

(b) If a complete and adequate traffic study is submitted and the proposed development generates 50 or more total peak hour person trips, the APF determination must be approved by the Planning Board following a public hearing.

[E. Request to Extend a Hearing Date. The Director and Board may extend the hearing date that is required to be set at the time certain applications are accepted under Chapter 59, Sections 7.3.3.C and 7.3.4.C, and Chapter 50, Section 4.1.E. A request for such extension must be made in writing by the applicant or the Planning Department lead reviewer. The Regulatory Extension Request Template may be used for this purpose.

# MONTGOMERY COUNTY PLANNING BOARD REGULATION

MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902

<b>Subject</b> Administrative Procedures for Development Review	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

1. Board action on the request. If the Board is required to act on a request to extend a hearing date, staff must prepare a memorandum immediately after receiving the request and schedule the action on the next available agenda.]

[F]E. Request for an Exemption to Platting. When DPS requires verification from the Planning Department that a property is exempt from the requirement to be recorded by a plat per Chapter 50, Section 3.3, a written request must be submitted to the [DARC]IRC Division. The request must include copies of all information needed to support the exemption as outlined in Section 3.3.

[G]E. Concept Plan. A concept plan is an optional, voluntary application that may be filed before a sketch, preliminary, [or] site plan, signature business headquarters plan, or biohealth priority campus plan application to obtain advice concerning a proposed development project from the Development Review Committee (DRC).

1. Application. Each application for a concept plan must include an application form, a narrative statement from the applicant, or the applicant’s representative, that identifies the aspects of the proposed development on which advice is being sought, and sufficient information on accompanying plan drawings to show existing conditions and the extent of proposed development.

2. Referral of the application. Immediately after accepting the application, the Director must send a copy to the DRC reviewing agencies for their comments concerning the plan.

3. Review. The application must be scheduled for discussion at the next available DRC meeting after acceptance. Planning Department staff must prepare a summary of the DRC comments and provide it to the applicant within two weeks from the DRC meeting.