



DATE **June 27, 2024**

To: The Montgomery Planning Board
 Planning Board Item #5

From: Robert Kronenberg, Deputy Director 

Subject: Adequate Public Facilities at Building Permit

Memorandum for Clarification of Implementation of Chapter 8 Authority to Approve Adequate Public Facilities (APF) Validity for Certain Single Family Residential Building Permits

MEMORANDUM

Staff is requesting approval of a Policy to clarify the approval process for APF reviews related to certain residential building permits that have expired from their original approval associated with an approved and platted Preliminary Plan of Subdivision or Administrative Subdivision Plan.

During the review and approval of a subdivision (Preliminary Plan of Subdivision or Administrative Subdivision Plan), applicants are subject to Chapter 50 of the Code, the 'Subdivision Regulations', for Plan Validity and APF Validity pursuant to Sections 50.4.2.G and 50.4.3.J.5, respectively. Typically, Plan Validity is established for a 3-year period, which means that within 3 years of the approved resolution, the applicant must record a plat in the Land Records showing all of the approved lots in the subdivision. In addition, the application is subject to APF review which involves analysis of adequate public facilities including roads, schools, water and sewer, utilities, and public safety facilities. The APF Validity can be established for a 5-year period, although a longer period for up to 10 years can be approved, depending on the size, type of project and other criteria. The difference in time periods allows the property owner to record the plat(s) within 3 years, and then have additional time (5 to 10 years depending on approval) to obtain building permit(s). Applicants can request longer Plan and APF Validity periods for bigger, more complex projects.

For larger, mixed-use projects, if an applicant is unable to record the lots or obtain building permits within the established validity periods, the applicant must file for an amendment to the Plan requesting an extension before the APF expires in order to maintain their approvals. However, for some small, and mostly residential-only subdivisions, many approved in the 1980s and 1990s, the APF validity has expired, as well as the ability to request an extension, and only a small number of lots remain to be developed. In these cases, Chapter 8, the Building Code, provides for the new APF

approval to be granted at the time of building permit, as opposed to going through the subdivision process under Chapter 50.

In general, the building permit process is a collaboration between the Planning Department and the Department of Permitting Services (DPS), as well as other agencies relevant to the review. DPS refers new building permits to the Planning Department to sign off on compliance with the Planning Board's conditions of approval. This review can include Plan and APF Validity, infrastructure improvements, forest conservation, bonds and agreements, amenities and other milestones. As mentioned, APF Validity is required before a building permit can be issued.

We are encountering situations where property owners or builders are trying to obtain building permits to construct single-family homes on a lot that has been recorded but for which the APF Validity may have expired, and the subdivision was approved but the lots remain unimproved. Other lots in the subdivision have been improved with homes and the required infrastructure for the overall development was completed long ago. All requirements, including forest conservation, stormwater management and road improvements, if applicable, have either been satisfied or will be required prior to permit issuance.

Recent examples:

Example 1:

A subdivision for 20 lots was approved by the Planning Board in 2004 with conditions of approval. Shortly after approval, the developer recorded plats for all of the lots in the subdivision and completed the necessary infrastructure and forest conservation requirements, as applicable, to obtain building permits. All but two of the building permits were issued and the lots were improved with single-family homes. The remaining two lots are now the subject of building permit applications but the APF Validity period expired years ago.

Example 2:

A subdivision for 3 lots was approved in 1990. The developer recorded the necessary plats and obtained building permits for two of the three lots. The shared driveway, utilities and other requirements of the approval are in place to accommodate all three lots. The owner/builder has now filed for a building permit for the last lot, but the 5-year validity period has expired.

In the examples cited above, the infrastructure is already in place, the lots have been recorded and other requirements or conditions have been met. However, a new APF approval is needed for DPS to issue the building permit. Under Chapter 8, Section 8-32, and the Administrative Procedures for Development Review, Section 50/59.10.01.10.D, if fewer than 50 peak hour person trips will be generated and a complete and adequate traffic statement is submitted, the Director or designee may review and approve a new APF Validity period to allow issuance of the building permit.

Recommendation:

Staff recommends that the Director or designee be able to review and approve a new APF Validity associated with single-family building permits under the following conditions:

- 1) This Policy only applies to single-family residential building permits.
- 2) The infrastructure to support the development, as required by the original approval, must be complete. This would include without limitation, roads, sidewalks, bikeways, utilities, and connections.
- 3) There are no more than 20% of the lots remaining to obtain building permits in the original development application. This percentage would not apply to small 2 and 3 lot subdivisions.
- 4) The unbuilt units would not generate more than 10 students at any school serving the development.
- 5) The permittee must still pay any school facility payment and Utilization Premium Payment, impact taxes, and other fees paid at the time of building permit, as required.
- 6) The permittee must complete an application to approve the APF along with any associated fees to allow DPS to issue the building permit.
- 7) A new APF Validity period would be valid only for the life of the building permit.

Staff process for review and approval of the new APF validity for building permits.

Below are the steps necessary for Planning Staff to process an application for a new APF Validity during the building permit process:

- 1) The application is assigned an APF number by IRC, and the application fee is accepted.
- 2) The application is referred by the Intake Review Team in IRC to the appropriate Area team (Downcounty, Midcounty, Upcounty) to complete a traffic statement and assessment of the traffic impact to determine if the lot(s) are under the 50 person trips.
- 3) The building permit process and notice provisions are followed (separate notice of the APF application is not required).
- 4) Pursuant to Chapter 8, Section 8-32(b) the Director refers building permit applications to DOT, MCPS, Fire & Rescue and Police and they have 30 days to comment. Because the APF validity review is part of the building permit process, and building permits are initially referred to these agencies, the 30-day comment period starts when the application is accepted.
- 5) Once Planning Staff completes the APF traffic statement review, and the applicable County agencies have reviewed the permit, the APF validity application can be approved by the Planning Director or the Deputy Director.
- 6) Once approved, Planning Staff will forward the approved APF application to Planning Department Permit Technician to record in the DPS permit system and in Planning's DAIC system.