Clerk’s Note: A technical correction is made to line 1040. The bracketed word “Hearing” is removed and the underlining is removed from the word “hearing” because wording remains the same as current text. A second correction is made to lines 106-107 to clarify that the structures are exempt unless required by the Board or future development requires a subdivision plan. In a third correction, the paragraph number on line 102 is corrected.

THIRD CORRECTED
Ordinance No.: 19-22
Subdivision Regulation Amendment No.: 20-02
Concerning: Subdivision Ordinance –
Revisions, Clarifications, and
Corrections
Draft No. & Date: 4 – 7/26/2021
Introduced: December 8, 2020
Public Hearing: February 9, 2021
 Adopted: September 28, 2021
Effective: October 18, 2021

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

Lead Sponsor: Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Subdivision Regulations to:

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

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

**Boldface** Heading or defined term.

**Underlining** Added to existing law by introduced Subdivision Regulation Amendment.

[Single boldface brackets] Deleted from existing law by introduced Subdivision Regulation Amendment.

**Double underlining** Added to the Subdivision Regulation Amendment by amendment.

[[Double boldface brackets]] Deleted from existing law or the Subdivision Regulation Amendment by amendment.

* * * Existing law unaffected by Subdivision Regulation Amendment.
OPINION

Subdivision Regulation Amendment (SRA) 20-02, lead sponsor Council President at the request of the Planning Board, was introduced on December 8, 2020.

Chapter 50, Subdivision Regulations, was adopted by the County Council in 2017. SRA 20-02 clarifies language, corrects mistakes, and adds necessary missing provisions. While many of the amendments are minor, there are some major changes, including:

- new provisions for the approval of flag lots and lots without frontage;
- new exemption from platting requirements for utility and telecommunications structures;
- new provisions for vacating an approved subdivision plan;
- new provision for extension of reservation of land for public use;
- new provision to specify an initiation date for the adequate public facilities validity period, similar to the existing initiation date provisions for plan validity;
- new limitation on Planning Board-approved APF extensions to a total of 12 years;
- new provisions for administrative subdivision plans for approval procedures, required findings, plan certification, amendments, validity period, revocation, and vacation of approval; and
- a grandfathering provision to allow applications to be reviewed under the regulations that were in effect at the time of the application’s filing.

The Council’s public hearing was conducted on February 9, 2021. There were two speakers. Neil Braunstein, Supervisor, IRC, from the Planning Department testified in support. William Kominers, an attorney from Lerch, Early & Brewer also testified. He testified that he had a number of suggested revisions, but was generally in support of the SRA.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation. The PHED Committee held a worksession on July 12, 2021. The Committee unanimously recommended approval of SRA 20-02 with amendments. Those amendments included minor formatting amendments proposed by both Council Staff and Planning, as well as an amendment regarding structures crossing lot lines from the Planning Department.

The Council agreed with the recommendation of the Committee. For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 20-02 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:
Sec. 1. Division 50.2 is amended as follows:

DIVISION 50.2. INTERPRETATION AND DEFINED TERMS

Section 2.2. Definitions

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

A.

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

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

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

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

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

* * *

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

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

* * *

[[**County Growth and Infrastructure Policy:** The resolution or law approved by the District Council to determine the adequacy of public facilities and services.]]

* * *

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

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

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

* * *

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

* * *


* * *


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

* * *

Road, Centerline of: A line established as a centerline of a road right-of-way by any State, County, or other official agency or governing body with jurisdiction and shown on an officially adopted plan or recorded plat. In the absence of an official centerline, the Board or Director must establish the centerline with consultation from the applicable agency with jurisdiction over the road.
Stop Work Order: In this Chapter, an administrative order issued by an enforcement agent that requires a person to discontinue any further development, construction, or other land disturbance activity authorized by a Planning Board Action or a Director Action until a violation has been corrected.

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

Sec. 2. Division 50.3 is amended as follows:

DIVISION 50.3. GENERAL REQUIREMENTS

Section 3.2. Record Plat Required

B. [Construction of a new principal] A building permit may only [occur] be issued for a building located on a lot or parcel shown on a plat recorded in the County Land Records or on a [property that is] parcel exempt from recording requirements under [Section 3.3.B.] Subsection 3.3.B, and in a manner that does not result in the building or structure crossing a lot line.
A. An approved preliminary plan and recording of a plat under this Chapter are not required for the division or conveyance of unplatted land in the following instances:

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

* * *

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

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

* * *

**[9]**

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

* * *

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

**E. Area within pending master plan.** The Board may defer action on a proposed subdivision plan application*[.] if all or any part of the plan is located in the boundaries of a pending master plan or master plan amendment. For purposes of this Section, a pending master plan or master plan amendment is the public hearing draft master plan or master plan amendment.
1. The subdivider may resubmit a proposed subdivision plan deferred under this Section to the Board either:
   a. after the final disposition by the District Council of the pending master plan or master plan amendment; or
   b. no later than 12 months from the date the Board approves the public hearing draft master plan or master plan amendment, unless there is a determination by the Board that the subdivision plan application presents a substantial conflict with the proposed public hearing draft master plan or master plan amendment, in which case the Board may defer a subdivision plan application for a maximum of 18 months from the date the Board approves the public hearing draft master plan or master plan amendment, but in no event beyond the period in Subsection 3.6.E.1.a.

* * *

Sec. 3. Division 50.4 is amended as follows:

DIVISION 50.4. PRELIMINARY PLAN

* * *

Section 4.1. Filing and Specifications

* * *

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

* * *

3. certificate of an engineer or [licensed] land surveyor to affirm the accuracy of boundary lines, topographic data, and other engineering
or survey data, and to certify that the subdivision plans and supporting documents were prepared in a manner that satisfies all submission requirements and applicable agency standards, policies, and procedures;

C. Supporting information.

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

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

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

* * *

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

* * *

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

A. **Referral of plan.** After accepting an application, the Director must send a copy to the Development Review Committee and other reviewing bodies, requesting each agency to submit a recommendation concerning the plan. The Director must send copies, as needed, to:

1. **WSSC,** for water and sewer service;
2. the Department of Transportation, for roads, streets, intersection locations, site access, sight distances, traffic calming, paths, pedestrian and bicycle facilities (including bike share), parking, transit facilities, transportation demand management elements, and storm drainage within County-maintained rights-of-way and easements with all reviews consistent with the objective to achieve Vision Zero goals;

* * *

9. Montgomery County Public Schools, for school site planning or for an application for residential development;
B. Review and recommendation.

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

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

F. Amendments.

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

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

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

   [2. A minor amendment to an approved preliminary plan must follow the same procedures, meet the same criteria, and satisfy the same requirements as the original preliminary plan, except as modified under Section 4.2.F.2.b.]
[a]b. A minor amendment to an approved preliminary plan includes any change that does not change density in a manner that results in greater adequate public [[facility]] facilities impact; make major changes to lot configuration or location, or right-of-way width or alignment; or alter the intent, objectives, or requirements of the Board in approving the preliminary plan. A change to plan validity period or APF validity period is a minor amendment.

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

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

G. Plan Validity.

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

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

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

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

2. Duration.
a.  \textit{Single-phase project.}

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

ii. A preliminary plan approved after March 31, 2017 remains valid for [36 months] 3 \textit{years} after its initiation date.

b.  \textit{Multi-phase project.}

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

iv. The cumulative validity period of all phases must be shorter than or equal to the [APFO] APF validity period [which begins on the initiation date of the first preliminary plan approval, including any extension granted under Section 4.3.J.7.]

* * * *

H.  \textit{Extension of plan validity period.}

* * * *

2.  \textit{Effect of failure to submit a timely extension request.}

* * * *

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

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

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

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

3. If a preliminary plan or a phase of the plan is not timely validated, any [APFO] APF determination made by the Board associated with the void portion of the preliminary plan is also void. In such event, the applicant loses any further rights to claim any vehicle trips associated with the expired [APFO] APF approval. The filing of a new preliminary plan application does not provide the basis for reclaiming vehicle trips lost by the termination of the [APFO] APF approval.

K. **Vacating an approved subdivision.**

1. An applicant may request that the approval of a subdivision plan, for which no subsequent plats have been recorded, be vacated.
2. A request to vacate an approved subdivision plan must include proof of ownership and notarized signatures of all property owners or other persons who are authorized by the property owner.

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

* * *

Section 4.3. Technical Review

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

* * *

C. Lot design.

1. General requirements.

* * *

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

i. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed flag lot and:
(a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed flag lot [[or]]; and

(b) [[that are between the proposed flag lot]] the building envelopes of all lots that are between the proposed flag lot and the road on which it fronts;

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

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

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

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

i. the Board must not approve more than two lots in a subdivision that do not abut a public or private road;
ii. the lots will be served by a private driveway that serves no other lots without frontage[.];

iii. in residential zones, the Board must require building restriction lines as needed to provide separation of at least 80 feet between the building envelope of the proposed lot without frontage and:

(a) the building envelopes of all lots that are adjacent to the rear lot line of the proposed lot without frontage [or]; and

(b) [that are between the proposed lot without frontage and]] the building envelopes of all lots that are between the proposed lot without frontage and the road from which it is accessed;

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

v. all building restriction lines must be shown on the plat; and

[iii]vi. [The]] the access to lots with no road frontage must be adequate to serve the lots for emergency vehicles and for installation of public utilities. In addition, the lots must be accessible for other public services and not detrimental to future development of adjacent lands.

[c]d. Side lines. Side lines of interior lots must to the extent possible be aligned perpendicular to the road line or radial to a curved road line.
Through lots. The Board must not approve through lots, except where unusual topography, orientation, or the size of the subdivision permit no other feasible way to subdivide.

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

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

5. Reservation.

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

iii. Taxes. The Board must advise taxing and assessing bodies of all public reservations, and such public reservations must be exempt from all [State,] County[.] and local taxes during the reservation period.
vi. **Extension.** After the initial reservation period, the Board may extend the reservation period upon request of the property owner if the Board determines that the reserved land continues to be necessary for public use. Any extension must not exceed 3 years.

**E. Roads.**

2. **Design standards.**

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

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

   f. **Intersection.**

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

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

4. Additional standards for private roads.
   d. Road [[Classifications]] classifications. When the Department of Transportation determines that the proposed road is not needed to maintain area circulation, provide continuous corridors to serve the general public and quasi-public needs such as communication, utility, and future potential transportation or other systemic needs that serve the public on a long-term basis, and is not needed to be part of the network modeled for area capacity, consideration will be given to making the following roads private:
ix. A private alley will not require an access easement if the alley only serves one building or if the alley is a secondary access to one-family residential dwellings.]

5. Additional roadway provisions.

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

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

F. Water supply and sewage disposal facilities.


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

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

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

i. adopting Tiers in a General Plan amendment; or

ii. an amendment under Section 10.7.

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

G. Markers and monuments.

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

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

** * * *

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

1. **Installation.**

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

** * * *

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

3. **Easements.**

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

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

providers;

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

c. are available to all utilities; and
d. are shown on the record plat.

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

[b. When a private road is allowed, the Board must also require the developer to provide to the County an additional public infrastructure area at least 4 feet wide, adjacent to private roads or in other appropriate locations that create contiguous service corridors within the development that connect to and are accessible from a public right-of-way to provide for future:

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

ii. installation of new communication facilities.

When a structure is proposed under a private road and the public infrastructure area is located in the road right-of-way, the developer must construct conduits within the infrastructure area to the County’s specification.]

568 5. Validity period.

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

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

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

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

c. A determination of adequate public facilities made under this Chapter is timely and remains valid:

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

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

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

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

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

[b]d. If an applicant requests a longer validity period than the minimum specified in Subsection 4.3.J.5.a, the applicant must submit a development schedule or phasing plan for completion of the project to the Board for its approval.

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

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

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

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

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

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

   e. Applications with significant infrastructure investment. The Board may extend [a] an initial determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period if the Board finds that:
i. the preliminary plan or APF approval for the development required a significant commitment of funds by the applicant, amounting to at least $3 million, as adjusted annually from February 2017 by the consumer price index, to comply with specified infrastructure conditions;

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

K. Environment.

2. Restriction of subdivision for environmental protection.

b. Restrictions.

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

L. Residential cluster subdivision.

2. Conditions for use. The use of the cluster method of development is subject to Board approval and the following conditions and requirements:
c. the open space and green areas proposed by the applicant in the cluster development must comply with the general purpose of cluster development, and the application must include a plan detailing the post-development maintenance responsibilities and use of those areas; [and]
d. the Board must count the land dedicated to public use for school and park sites in the tract area for the purpose of calculating density, and allow the use of the resulting density development of the remaining land when this can be accomplished in compliance with the purposes of this Section[.]; and
e. future subdivision of land within the approved cluster subdivision that would result in the creation of additional lots is not permitted after the property is platted[.], except for amendments to cluster subdivisions that were approved prior to October 30, 2014 and that result in land being reviewed and approved as part of an Optional Method MPDU Development application with at least 25% moderately priced dwelling units (MPDUs), provided that the remaining portion of the cluster subdivision complies with all applicable development standards.

* * *

N. [[Landscape and Lighting Plans]] Landscape and lighting plans.

1. For places of worship and institutional uses, a landscaping and lighting plan, which must also include the parking lot layout, must be submitted for review and approval concurrently with the preliminary plan.
Sec. 4. Division 50.5 is amended as follows:

DIVISION 50.5. PRE-PRELIMINARY SUBMISSIONS

Section 5.2. Approval Procedure

C. Action on a pre-preliminary submission.

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

Sec. 5. Division 50.6 is amended as follows:

DIVISION 50.6. ADMINISTRATIVE SUBDIVISION PLAN

Section 6.1. Applicability

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

A. Existing places of worship and institutional uses. [The Board may approve

a] A lot may be created for existing facilities such as[.] places of worship,
private schools, country clubs, private institutions, and similar uses located
on unplatted parcels[[,]] if:

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

* * *

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

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

* * *

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

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

* * *

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

D. Consolidation of an existing [lots] lot with another lot or [parts] part of [lots] a lot in a nonresidential zone. In a nonresidential zone, a lot may be created by combining existing adjoining lots, or a lot and a part of a previously platted lot, if:

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

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

For the purposes of this section, a part of a lot that qualifies for the exemption stated in Subsection 3.3.B.2 may be used in lieu of a whole lot.

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

* * *

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

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

Section 6.2. Filing Requirements

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

* * *

Section 6.3. Approval Procedures

* * *

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

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

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

[3]4. The Director must take action on an administrative subdivision plan or schedule a public hearing within 90 days after the date an application is accepted. The Director may postpone the public hearing once, by up to 30 days, without Board approval. The Director or applicant may request an extension beyond the original 30 days with Board approval. Any extension of the public hearing must be noticed on the hearing agenda with the new public hearing date indicated.
5. In making the findings required in Subsection 6.3.C, the Director or Board must consider the technical requirements under Section 4.3. In performing this review, the Director is authorized to perform any relevant action that is permissible to the Board under Section 4.3, except for the following:
  a. Section 4.3.C.1.b, with respect to flag lots;
  b. Section 4.3.C.1.c, with respect to lots without frontage on a public or private road; and
  c. Section 4.3.D.5, with respect to reservation of land for public use.

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

1. the layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59;

2. the administrative subdivision plan substantially conforms to the master plan;

3. public facilities will be adequate to support and service the area of the subdivision;

4. all Forest Conservation Law, Chapter 22A requirements are satisfied;

5. all stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied;

6. any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 4.3.M; and
7. any other applicable provision specific to the property and necessary for approval of the subdivision is satisfied.

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

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

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

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

2. Duration.
   a. An approved administrative subdivision plan remains valid for 3 years after its initiation date.
b. An administrative subdivision plan is validated when the applicant has secured all government approvals necessary to record a plat, and a plat for all property shown on the plan has been recorded in the County Land Records.

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

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

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

G. Revocation or [Vacation of an Administrative Subdivision Plan] vacation of an administrative subdivision plan.

1. Revocation of an administrative subdivision plan must satisfy Subsection 4.2.J.

2. Vacation of an administrative subdivision plan must satisfy Subsection 4.2.K.

H. Appeal of an administrative subdivision plan.

Sec. 6. Division 50.7 is amended as follows:

DIVISION 50.7. MINOR SUBDIVISION

Section 7.1. Applicability
The submission of a preliminary plan [or administrative subdivision plan] under Sections 4.1 and 4.2, and Sections 6.1 and 6.2, is not required for:

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

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

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

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

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

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

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

3. Private roads [may] **must** not be delineated as a separate ownership unit on an ownership plat.
F. **Plat of correction.** A plat of correction may be used for any of the following:

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

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

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

A. **Additional considerations.**

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

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

**DIVISION 50.8. PLATS – GENERALLY**

**Section 8.1. Filing and Specifications**

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

1. **Title block.** The title block must appear in the lower right corner of the sheet and must include the following information:
e. name of firm of [licensed] land surveyor who prepared the plat and date of completion; and

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

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

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

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

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

* * *
2. Preliminary plans using transferable development rights (TDRs). For a subdivision designated in sewer category 3 conditioned upon approval of a preliminary plan that uses TDRs, a new plat using less than the requisite number of TDRs [may] must not be approved until the sewer category has been reconfirmed by the Council.

4. Plat for a cluster subdivision.
   b. Plats may be submitted in phases; however, density on any one plat [may] must not exceed 115 percent of the allowed density of the area included on the plat.

Section 8.2. Approval Procedure

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

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

G. Planning Board may [hold hearing] [[hear testimony]] hold hearing on any plat. The Board may, upon its own motion, [hold a hearing] [[hear testimony]] hold a hearing before acting upon any plat, in accordance with [notice required by] the Board’s Rules of Procedure.
I. **Signing.** A plat must be signed by applicable County agencies with review authority before Planning Board [action] Action on the plat, unless the Board specifically permits the signature to be added as a condition of its approval. The plat must be signed by the authorized officers of the Board after the Board acts to approve the plat or, in cases of conditional approval, when the conditions are satisfied.

* * *

### Section 8.3. Recording Procedure

#### A. Processing of plats.

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

* * *

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

**DIVISION 50.9. WAIVERS FROM THIS CHAPTER**

* * *

### Section 9.5. Procedure for Granting Waivers

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

* * *

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

**DIVISION 50.10. ADMINISTRATIVE PROCEDURES**

* * *

**Section 10.2. Bonding and Surety**

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

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

* * *

**Section 10.6. Enforcement of Chapter**

* * *

B. **Administrative citation.**

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

* * *
C. **Notice of hearing.**

1. Director may issue a notice of hearing to a person whom the Director believes committed a violation of a Planning Board Action, Director Action, or this Chapter. The notice of hearing must be served on the alleged violator personally, on the alleged violator’s agent at the site of the alleged violation, or by certified mail to the alleged violator’s last known address.

* * *

D. **Civil fine and penalty.**

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

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

* * *

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

* * *

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

* * *

F. **Hearing.**

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

* * *

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

* * *

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

Sec. 11. Filed Preliminary Plans. Any preliminary plan application filed and certified as complete before the effective date of this amendment may, at the applicant’s option, be reviewed under the Subdivision Regulations in effect when the application was submitted.

Approved:

Marc Elrich, County Executive          Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.          Date
Clerk of the Council