

Ordinance No. _____
Subdivision Regulation Amend. No. 05-03
Concerning: Adequate Public Facilities
- Validity Period
Revised: 10-5-05 Draft No. 2
Introduced: October 11, 2005
Public Hearing: December 6, 2005
Adopted: _____
Effective: _____

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

By: Council President at the request of the Planning Board

AN AMENDMENT to the Subdivision Regulations to:

- (1) clarify the validity period of a finding of adequate public facilities by the Planning Board, and the process and standards to extend a finding of adequacy;
- (2) repeal certain temporary provisions regarding findings of adequate public facilities; and
- (3) update obsolete language and make corrective and stylistic changes.

By amending the following sections of the Montgomery County Code, Chapter 50:

Section 50-20, Limitations on issuance of building permits

Section 50-35, Preliminary subdivision plans – Approval procedure

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

OPINION

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following Ordinance:

1 **Sec. 1. Sections 50-20 and 50-35 are amended as follows:**

2 **50-20. [[Limitations]] Limits on issuance of building permits.**

3 (a) A building permit must not be approved for the construction of a
4 dwelling or other structure, except [structures or dwellings] a dwelling
5 or structure on a farm strictly for agricultural use, unless [such] the
6 dwelling or structure [is to] would be located on a lot or parcel of land
7 which is shown on a plat recorded in the County plat books [of the
8 county], and which has access as prescribed in [Sec.] Section 50-
9 29(a)(2). [; provided, that such] However, a building permit may be
10 issued for [the following]:

11 (1) A parcel covered by an exception specified in Section 50-9 [of
12 this chapter];

13 (2) A parcel covered by a valid site plan approved [no more than
14 four years prior to] after October 8, [1985] 1981, under
15 Division 59-D-3, on which construction had begun [as of that
16 date] by October 8, 1985, or on the medical center; or

17 (3) A parcel covered by a special exception approved under
18 Division 59-G-1, which was being implemented as of October
19 8, 1985.

20 (b) A building permit [may] must not be approved for the construction of
21 a dwelling or other structure, except [those] a dwelling or structure
22 strictly for agricultural use, which is located on more than one [(1)]
23 lot, which crosses a lot line, which is located on the unplatted
24 remainder of a resubdivided lot, or which is located on an outlot,
25 except [as follows] a building permit:

26 (1) [A building permit was] applied for on or before February 1,
27 1985[.];

- 28 (2) [A building permit] approved after February 1, 1985, for
29 development that crosses a lot line where a wall is located on,
30 but not over, the lot line and there are projections for the roof,
31 eaves, and foundation footings which project not more than 2
32 feet across the vertical plane of the lot line; and projections for
33 sills, leaders, belt courses and similar ornamental features
34 which project not more than 6 inches across the vertical plane
35 of the lot line[.];
- 36 (3) [A building permit may be approved] for an aboveground or
37 [an] underground public facility or amenity that crosses the
38 vertical plane of any lot line, as projected below grade, if shown
39 on a CBD Zone Project Plan for optional method development,
40 approved in accordance with the procedures of Division 59-D-2
41 [of the Montgomery County Code]; or if shown on a
42 Development Plan approved in accordance with the procedures
43 of Division 59-D-1 [of the Montgomery County Code.];
- 44 (4) [A building permit may be approved] for an underground
45 parking facility that crosses the vertical plane of any lot line, as
46 projected below grade, and extends into a public right-of-way if
47 approved by the appropriate public agency[.];
- 48 (5) [A building permit may be approved] for the reconstruction of a
49 one-family dwelling that is located on [part(s)] all or part of a
50 previously platted [lot(s)] lot, recorded by deed [prior to] before
51 June 1, 1958, [in the event that] if the dwelling is destroyed or
52 seriously damaged by fire, flood or other natural disaster[.] or;
- 53 (6) [A building permit may be approved] for an addition to an
54 existing one-family dwelling, a porch, deck, fence or accessory

55 structures associated with an existing one-family dwelling
 56 located on [part(s)] all or part of a previously platted [lot(s)] lot,
 57 recorded by deed [prior to] before June 1, 1958.

58 (c) (1) Words and phrases used in this subsection have the meanings
 59 indicated in Section 8-30.

60 (2) Except as provided in [paragraph (4) of] this subsection and
 61 Article IV of Chapter 8, a building permit may be issued only if
 62 a timely determination of the [existence of adequate] adequacy
 63 of public facilities to serve the proposed development has been
 64 made under this Chapter. This subsection does not apply to any
 65 proposed development that is:

66 (A) exclusively residential on a lot or parcel recorded before
 67 July 25, 1989, or otherwise recorded in conformance
 68 with a preliminary plan of subdivision approved before
 69 that date; or

70 (B) otherwise exempt from the requirement for determining
 71 adequacy of public facilities before a preliminary plan of
 72 subdivision is approved.

73 (3) A determination of adequate public facilities made under this
 74 Chapter is timely and remains valid:

75 [(i)] (A) For [twelve (12)] 12 years [from] after the date of
 76 preliminary plan approval for [plans] any plan approved
 77 on or after July 25, 1989, but before October 19, 1999[.];
 78 [However, an adequate public facilities determination for
 79 an exclusively residential subdivision remains valid after
 80 twelve (12) years if fifty (50) percent of the entire
 81 subdivision has received building permits and the

- 82 developer submits a letter of intent to develop the
83 remainder by a specified date;]
- 84 [(ii) Until July 25, 2001, for a preliminary plan of subdivision
85 that allows nonresidential development which was
86 approved on or after January 1, 1982, but before July 25,
87 1989;] and
- 88 [(iii)] (B) For no less than 5 and no more than 12 years, as
89 determined by the Planning Board at the time of
90 subdivision, for [projects] any plan approved on or after
91 October 19, 1999.
- 92 (4) The Board may extend a determination of adequate public
93 facilities for an exclusively residential subdivision beyond the
94 otherwise applicable validity period if 50 percent of the entire
95 subdivision has received building permits before the application
96 for extension is filed. The Board may approve one or more
97 extensions if the aggregate length of all extensions for the
98 development do not exceed:
- 99 (A) 2½ years for a subdivision with an original validity
100 period of 5 years; or
- 101 (B) 6 years for a subdivision with an original validity period
102 longer than 5 years.
- 103 [(iv)] (5) The Planning Board may extend a determination of adequate
104 public facilities for a preliminary plan of subdivision [that
105 allows] for nonresidential development [may be extended by
106 the Planning Board] beyond the otherwise applicable validity
107 [periods in (i), (ii) and (iii)] period if:

- 108 (A) [At] at least [forth percent (40%)] 40% of the approved
109 development has been built, is under construction, or
110 building permits have been issued, such that the
111 cumulative amount of development will meet or exceed
112 [the percentage requirement of this paragraph] 40%;
- 113 (B) [All] all of the infrastructure required by the conditions
114 of the original preliminary plan approval has been
115 constructed, or payments for its construction have been
116 made; and
- 117 (C) [The] the development is an "active" project, [as
118 demonstrated by] meaning that either occupancy permits
119 have been issued for at least 10 percent of the project
120 [having been completed] within the [last four] 4 years
121 before an extension request is [made] filed, or occupancy
122 permits have been issued for at least 5 percent of the
123 project [having been completed] within the [last] 4 years
124 before an extension request is [made,] filed if 60 percent
125 of the project has been built or is under construction. If
126 occupancy permits are not typically issued for the type of
127 development for which an extension is requested, a part
128 of the development can be treated as complete when its
129 final inspection has been approved. The Board may treat
130 a building as complete even if occupancy permits have
131 been issued for only part the building.
- 132 [(v)] (6) For any development [projects consisting] that consists of
133 more than one preliminary plan, the requirements in [(iv) (A)
134 through (C) above] paragraph (5) apply to the combined

135 project. A project consists of more than one preliminary plan if
136 the properties covered by the preliminary plans of subdivision
137 are contiguous and:

138 (A) were owned or controlled by the same applicant at the
139 time of subdivision, and approved contemporaneously, or

140 (B) were owned or controlled by different applicants at the
141 time of subdivision, but covered by a single approved
142 comprehensive design plan [approved by the Planning
143 Board].

144 [(vi)] (7) Submittal and review requirements for extensions of
145 adequacy determinations.

146 (A) A new development schedule or phasing plan for
147 completion of the project must be submitted to the
148 Planning Board for approval;

149 (B) [No] no additional development beyond the amount
150 approved in the determination of adequate public
151 facilities for the preliminary plan of subdivision may be
152 proposed or approved;

153 (C) [No] no additional public improvements or other
154 conditions beyond those required for the original
155 preliminary plan may be required by the Planning Board;
156 and

157 [(D) If the preliminary plan is for a development project
158 located in an area that is subject to a moratorium under
159 the Annual Growth Policy, a traffic mitigation program
160 must be in place, or the project must otherwise be subject
161 to existing traffic mitigation requirements of the Code.]

162 [(E)] (D) [An] an application for an extension must be filed
163 before [the expiration of] the validity period for which
164 the extension is requested has expired.

165 [(vii)] (8) The length of [the] any extension of the validity period, or
166 all extensions taken together if more than one extension is
167 allowed, under [(iv) above] paragraph (5) must be based on the
168 approved new development schedule under [(vi) (A) above]
169 paragraph 7(A), but must not exceed 2 ½ years for [projects up
170 to] any development with less than 150,000 square feet, or 6
171 years for [projects] any development with 150,000 square feet
172 or greater. The extension expires if the development is not
173 proceeding in accordance with the phasing plan[,], unless the
174 Board has approved a revision to the schedule or phasing plan
175 [is approved by the Planning Board].

176 [(viii)] (9) [An] The Board may approve an amendment to the new
177 development schedule approved under [subsection (vi) (A)]
178 paragraph 7(A) [may be approved by the Planning Board] if
179 [documentation is provided to show] the applicant shows that
180 financing has been secured for either:

181 [(1)] (A) completion of at least one new building in the next
182 stage of the amended development schedule; or

183 [(2)] (B) completion of infrastructure required to serve the next
184 stage of the amended development schedule.

185 [(4)] Paragraph (2) of this subsection does not apply to:

186 (i) Proposed development that is exclusively residential on a
187 lot or parcel recorded before July 25, 1989, or otherwise

188 recorded in conformance with a preliminary plan of
 189 subdivision approved before that date;

190 (ii) Proposed development that is otherwise exempted from
 191 the requirement for adequate public facilities for
 192 preliminary plan of subdivision approval under this
 193 chapter or other law; and

194 (iii) Proposed nonresidential development on a lot or parcel
 195 recorded before January 1, 1982, or otherwise in
 196 conformance with a preliminary plan of subdivision
 197 approved before January 1, 1982, if it is registered and
 198 otherwise satisfies the requirements of article IV of
 199 chapter 8. On or after July 25, 2001, a new adequate
 200 public facilities determination is required.]

201 (10) The validity period of a finding of adequate public facilities is
 202 not automatically extended under any circumstance, including
 203 when an applicant has completed all conditions imposed by the
 204 Planning Board at the time of preliminary plan approval to meet
 205 adequate public facilities requirements.

206 [(5)] (11) If a new adequate public facilities determination is required
 207 under this subsection, the procedures [set forth] in Section 8-34
 208 apply.

209 **50-35. Preliminary subdivision plans - Approval procedure.**

210 * * *

211 (k) *Adequate public facilities.* [A] The Planning Board must not approve
 212 a preliminary plan of subdivision [must not be approved] unless the
 213 [Planning] Board [determines] finds that public facilities will be
 214 adequate to support and service the area of the proposed subdivision.

215 Public facilities and services to be examined for adequacy [will]
216 include roads and public transportation facilities, sewerage and water
217 service, schools, police stations, firehouses, and health clinics.

218 (1) Periodically the [District] County Council [will] must establish
219 by resolution, after public hearing, guidelines [for the
220 determination of] to determine the adequacy of public facilities
221 and services. [An annual] A growth policy periodically
222 approved by the County Council may serve this purpose if it
223 contains those guidelines. To provide the basis for the
224 guidelines, the [Planning] Board and the County Executive
225 must provide the following information and recommendations
226 to the Council [as follows]:

227 [a.] (A) The [Planning] Board must [prepare an analysis of]
228 analyze current growth and the amount of additional
229 growth that can be accommodated by future public
230 facilities and services. The [Planning] Board must also
231 recommend any changes in preliminary plan approval
232 criteria it finds appropriate in the light of its experience
233 in administering [these regulations] this Chapter.

234 [b.] (B) The [County] Executive must comment on the Board's
235 analyses and recommendations [of the Planning Board]
236 and [must] recommend criteria [for the determination of]
237 to determine the adequacy of public facilities [as the
238 executive deems appropriate].

239 (2) [The] Each applicant for a preliminary plan of subdivision
240 must, at the request of the [Planning] Board, submit sufficient
241 information [and data] on the proposed subdivision to

242 demonstrate the expected impact on and use of public facilities
243 and services by [possible uses] occupants of [said] the
244 subdivision.

245 (3) The [Planning] Board must submit [the] each proposed
246 preliminary plan of subdivision to the [County] Executive in
247 addition to the agencies specified in [Section 50-35] subsection
248 (a).

249 (4) The [Planning] Board must consider the recommendations of
250 the [County] Executive and other agencies in determining the
251 adequacy of public facilities and services in accordance with
252 the [guidelines and limitations established by the County
253 Council in its annual] growth policy [or established by
254 resolution of the District Council after public hearing].

255 [(5) Until such time as the annual growth policy or resolution of the
256 District Council provides guidelines and limitations for the
257 determination of the adequacy of public facilities and services,
258 public facilities may be determined to be adequate to service a
259 tract of land or an affected area when the following conditions
260 are found to exist:

261 a. The tract or area will be adequately served by roads and
262 public transportation facilities. The area or tract to be
263 subdivided shall be deemed adequately served by roads
264 and public transportation facilities if, after taking into
265 account traffic generated by all approved subdivisions
266 and the subject subdivision, the following conditions will
267 be satisfied:

- 268 (i) For the geographic area in which the proposed
269 subdivision is located, an acceptable average peak-hour
270 level of service will result from:
- 271 1. Existing publicly maintained all-weather roads;
 - 272 2. Additional roads programmed in the current adopted
273 capital improvements program of the County or the
274 Maryland consolidated transportation program, for which
275 one hundred (100) percent of the expenditures for
276 construction are estimated to occur in the first four (4)
277 years of the program; and
 - 278 3. Available or programmed public bus, rail, or other public
279 or private form of mass transportation.
- 280 (ii) For intersections or links significantly affected by traffic
281 from the subject subdivision, an acceptable peak hour
282 level of service will result from:
- 283 1. Existing publicly maintained all-weather roads;
 - 284 2. Additional roads identified on the approved road program
285 published by the County Executive; and
 - 286 3. Available or programmed public bus, rail, or other form
287 of mass transportation.
- 288 (iii) For the purposes of subsection (ii) above, the County
289 Executive shall publish periodically an approved road
290 program which shall list all roads programmed in the
291 current adopted capital improvements program and the
292 Maryland consolidated transportation program for which:

- 293 1. In the case of the capital improvements program,
294 one hundred (100) percent of the funds have been
295 appropriated for construction costs; and
- 296 2. The County Executive has determined that construction
297 will begin within two (2) years of the effective date of the
298 approved road program.
- 299 (iv) For the purposes of subsections (i) and (iii) above, roads
300 required under Section 302 of the Charter to be
301 authorized by law are not considered programmed until
302 they are finally approved in accordance with Section 20-
303 1 of this Code.
- 304 (v) Any parcel zoned for light industrial use (I-1) which has
305 been in reservation for public use pursuant to action of
306 the Montgomery County Planning Board at any time
307 since June 1, 1981, and which has not changed in size or
308 shape since June 1, 1958, will not be subject to the above
309 subsection (a) if a preliminary plan was submitted prior
310 to June 1, 1981.
- 311 b. The tract or area has adequate sewerage and water
312 service.
- 313 (i) For a subdivision dependent upon public sewerage and
314 water systems:
- 315 1. Said area or tract to be subdivided shall be deemed to
316 have adequate sewerage and water service if located
317 within an area in which water and sewer service is
318 presently available, under construction, or designated by
319 the County Council for extension of water and sewer

- 320 service within the first 2 years of a current approved 10-
321 year water and sewerage plan.
- 322 2. If the area or tract to be subdivided is not situated within
323 an area designated for service within the first 2 years of a
324 current approved 10-year water and sewerage plan, but is
325 within the last 8 years of such plan, it is deemed to have
326 adequate water and sewerage service if the applicant
327 provides community sewerage and/or water systems as
328 set forth in Subtitle 5 of Title 9 of Article Health-
329 Environmental of the Annotated Code of Maryland
330 provided the installation of such facilities has been
331 approved by the State Department of Health and Mental
332 Hygiene, the Washington Suburban Sanitary
333 Commission, the Health and Human Services
334 Department, and the Montgomery County Council.
- 335 (ii) For a subdivision dependent upon the use of septic
336 systems: Said area or tract to be subdivided shall be
337 deemed to have adequate sewerage service if
338 development with the use of septic systems is in
339 accordance with Section 50-27, or regulations published
340 by the Maryland State Department of Health and Mental
341 Hygiene pursuant to Article Health-Environmental,
342 Annotated Code of Maryland, whichever imposes the
343 greater or more stringent requirement.
- 344 (iii) In its determination of the adequacy of sewerage or water
345 service, the Planning Board shall consider the
346 recommendation of the Washington Suburban Sanitary

- 347 Commission, the capacity of trunk lines and sewerage
348 treatment facilities and any other information presented.
- 349 c. The tract or area is so situated as not to involve danger or
350 injury to health, safety or general welfare. Such danger or
351 injury may be deemed not to exist:
- 352 (i) When physical facilities, such as police stations,
353 firehouses and health clinics, in the service area for the
354 preliminary subdivision plan are currently adequate or
355 are scheduled in an adopted capital improvements
356 program in accordance with the applicable area master
357 plan or general plan to provide adequate and timely
358 service to the subdivision; and
- 359 (ii) If adequate public utility services will be available to
360 serve the proposed subdivision; and
- 361 (iii) When, in the case of schools, the capacity and service
362 areas are found to be adequate according to a
363 methodology set forth in a resolution adopted by the
364 District Council after public hearing; provided, however,
365 that until such resolution by the District Council takes
366 effect, the Planning Board shall determine the adequacy
367 of school facilities after considering the
368 recommendations of the Superintendent of Schools.
- 369 d. Existing or proposed street access within the tract or area
370 is adequate. Street access may be deemed adequate if the
371 streets:
- 372 (i) Are adequate to serve or accommodate emergency
373 vehicles,

- 374 (ii) Will permit the installation of public utilities and other
 375 public services,
 376 (iii) Are not detrimental and would not result in the inability
 377 to develop adjacent lands in conformity with sound
 378 planning practices, and
 379 (iv) Will not cause existing street patterns to be fragmented.]

380 [(6)] (5) For a proposed subdivision located in a Transportation
 381 Management District designated under Chapter 42A, Article II,
 382 if the Planning Board [determines] finds, under criteria and
 383 standards adopted by the County Council, that additional
 384 transportation facilities or traffic alleviation measures are
 385 necessary to ensure that public transportation facilities will be
 386 adequate to serve the proposed subdivision, the subdivision
 387 plan [may] must [not] be [approved unless approval is] subject
 388 to the execution of a traffic mitigation agreement.

389 [(7)] (6) [Exemptions. Places] This subsection does not apply to any
 390 place of worship, [and residences] residence for religious staff,
 391 parish [halls, and additions to schools] hall, or addition to a
 392 school associated with [places] a place of worship[, are not
 393 subject to the provisions of section 50-35(k), "Adequate Public
 394 Facilities."].

395 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of
 396 Council adoption.

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

398

Linda M. Lauer, Clerk of the Council

Date