

Ordinance No. 16-35
Subdivision Regulation Amend. No. 09-01
Concerning: Adequate Public Facilities-
Preliminary subdivision plans –
Validity Period
Revised: 3-25-09 Draft No. 4
Introduced: February 10, 2009
Public Hearing: March 17, 2009
Adopted: March 31, 2009
Effective: April 1, 2009

**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 County Executive

AN AMENDMENT to:

- (1) extend the validity period for a determination of adequate public facilities for certain developments;
- (2) extend the validity period for certain preliminary subdivision plans; and
- ~~[(2)]~~ (3) otherwise revise the validity period for certain developments.

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
~~[[Section]]~~ Sections 50-20 and 50-35

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>

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[[B]] (ii) for no less than [5] 5 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after October 19, 1999, but before August 1, 2007; and

(iii) for no less than 7 and no more than 12 years after the preliminary plan is approved, as determined by the Planning Board at the time of approval, for any plan approved on or after April 1, 2009, but before April 1, 2011; and

[[C]] (iv) for no less than [5] 5 and no more than 10 years after the preliminary plan is approved, as determined by the Board at the time of approval, for any plan approved on or after August 1, 2007, and before April 1, 2009, or on or after April 1, 2011. [[If an applicant requests a validity period that is longer than [5] 7 years, the applicant must submit a development schedule or phasing plan for completion of the project to the Board for its approval. At a minimum, the proposed development schedule or phasing plan must show the minimum percentage of the project that the applicant expects to complete in the first [5] 7 years after the preliminary plan is approved.

35 To allow a validity period longer than [5] 7 years,
36 the Board must find that the extended validity
37 period would promote the public interest. The
38 Board may condition a validity period longer than
39 [5] 7 years on adherence to the proposed
40 development schedule or phasing plan, and may
41 impose other transportation improvement or
42 mitigation conditions if those conditions are
43 needed to assure adequate levels of transportation
44 service during the validity period.]]

45 (B) If an applicant requests a validity period that is longer
46 than the minimum specified in this paragraph, the
47 applicant must submit a development schedule or phasing
48 plan for completion of the project to the Board for its
49 approval. At a minimum, the proposed development
50 schedule or phasing plan must show the minimum
51 percentage of the project that the applicant expects to
52 complete in the first 5 or 7 years, as appropriate, after the
53 preliminary plan is approved. To allow a validity period
54 longer than the minimum specified in this paragraph, the
55 Board must find that the extended validity period would
56 promote the public interest. The Board may condition a
57 validity period longer than the minimum specified in this
58 paragraph on adherence to the proposed development
59 schedule or phasing plan, and may impose other
60 transportation improvement or mitigation conditions if

61 those conditions are needed to assure adequate levels of
62 transportation service during the validity period.

63 ~~[(D)]~~ (3A) A determination of adequate public facilities made under
64 this Chapter is timely and remains valid:

65 * * *

66 (ii) The Board must grant an application to extend the
67 validity period established under ~~[(D)(i) of]~~ this
68 ~~[[subsection]]~~ paragraph for an additional 5 years
69 if:

70 * * *

71 ~~[[For any preliminary plan that was approved between January~~
72 ~~1, 2004 and (effective date), the validity period is extended 2~~
73 ~~years.]]~~

74 (4) The Planning Board may extend a determination of adequate
75 public facilities for an exclusively residential subdivision
76 beyond the otherwise applicable validity period if the
77 Department has issued building permits for at least 50 percent
78 of the entire subdivision before the application for extension is
79 filed. The Board may approve one or more extensions if the
80 aggregate length of all extensions for the development do not
81 exceed:

82 (A) for a preliminary plan approved before April 1, 2009, or
83 on or after April 1, 2011:

84 (i) 2½ years for a subdivision with an original validity
85 period of [5] ~~[[7]]~~ 5 years; or

109 (E) the Board may require the applicant to submit a traffic
110 study to help the Board decide if the extension would
111 promote the public interest.

112 * * *

113 **50-35. Preliminary subdivision plans-Approval procedure.**

114 * * *

115 (h) *Duration of Validity Period and Actions Required to Validate the Plan.*

116 * * *

117 (2) *Duration of Validity Period.*

118 (A) An approved preliminary plan for a single phase project
119 remains valid for ~~[[36]]~~ 60 months ~~[[from]]~~ after its
120 Initiation Date for any preliminary plan approved on or
121 after April 1, 2009, but before April 1, 2011, and for 36
122 months after its Initiation Date for any preliminary plan
123 approved on or after April 1, 2011. Before the validity
124 period expires, the applicant must have secured all
125 ~~[[governmental]]~~ government approvals necessary ~~[[as~~
126 ~~condition precedent for plat recordation]]~~ to record a plat,
127 and a final record plat for all property delineated on the
128 approved preliminary plan must have been recorded
129 ~~[[among]]~~ in the County land records.

130 (B) An approved preliminary plan for a multi-phase project
131 remains valid for the period of time ~~[[established]]~~ allowed
132 in the phasing schedule approved by the Planning Board.
133 Each phase must be assigned a validity period, the duration
134 of which must be proposed by the applicant as part of an

135 application for preliminary plan approval or [[an
 136 application]] for preliminary plan revision or amendment,
 137 [[reviewed by staff,]] and approved on a case-by-case basis
 138 by the Planning Board, after considering such factors as
 139 the size, type, and location of the project. The time
 140 allocated to [[a]] any phase must not exceed ~~[[36]]~~ 60
 141 months ~~[[from]]~~ after the initiation date ~~[[associated with]]~~
 142 for that particular phase for any preliminary plan approved
 143 on or after April 1, 2009, but before April 1, 2011, and 36
 144 months after the initiation date for that particular phase for
 145 any preliminary plan approved on or after April 1, 2011.
 146 The cumulative validity period of all phases ~~[[may]]~~ must
 147 not exceed the APFO validity period which runs from the
 148 date of the initial preliminary plan approval, including any
 149 ~~[[extensions]]~~ extension granted under Section 50-20(c)(5).
 150 ~~[[Validation of a]]~~ A preliminary plan for a phase ~~[[occurs~~
 151 ~~upon the recordation of]]~~ is validated when a final record
 152 plat for all property delineated in that ~~[[particular]]~~ phase
 153 of the approved preliminary plan is recorded in the County
 154 land records.

155 * * *

156 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2009.

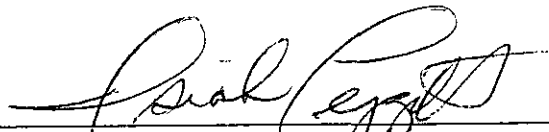
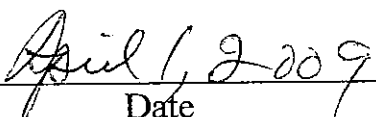
157 **Sec. 3. Automatic Extensions.**

158 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the
 159 validity period of any determination of adequate public facilities that
 160 was valid on March 31, 2009, or for which a timely application for an


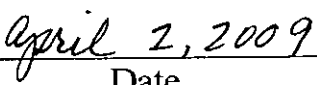
161 extension of the validity period was pending on March 31, 2009, is
162 automatically extended for 2 years after the date when the validity
163 period would otherwise have expired. This 2-year extension must be
164 treated for all purposes as part of the validity period that was extended.

165 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
166 validity period of any preliminary subdivision plan that was valid on
167 March 31, 2009, or for which a timely application for an extension of
168 the validity period was pending on March 31, 2009, including any
169 separate phase of a multi-phase plan, is automatically extended for 2
170 years after the date when the validity period would otherwise have
171 expired. This 2-year extension must be treated for all purposes as part
172 of the validity period that was extended.

173 *Approved:*

174
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176 _____
Isiah Leggett, County Executive Date

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

178
179  
180 _____
Linda M. Lauer, Clerk of the Council Date