CORRECTED COPY

Ordinance N	0	16-35
Subdivision I	Regulation	n Amend. No. <u>09-01</u>
Concerning:	Adequat	e Public Facilities-
Preliminary s	ubdivisio	n plans –
Validity I	Period	
Revised: 3	-25-09	Draft No. 4
Introduced: _	Februa	ary 10, 2009
Public Hearin	ng: <u>March</u>	17, 2009
Adopted:	March	31, 2009
Effective:	April 1	<u>. 2009</u>

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]] <u>Sections</u> 50-20 <u>and 50-35</u>

Boldface *Heading or defined term.*

<u>Underlining</u>
Added to existing law by original bill.

[Single boldface brackets]

Deleted from existing law by original bill.

<u>Double underlining</u> *Added by amendment.*

[[Double boldface brackets]] Deleted from existing law or the bill by amendment.

* * Existing law unaffected by bill.

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OPINION

Subdivision Regulation Amendment 09-01 was introduced on February 10, 2009, at the request of the County Executive to temporarily extend the validity period of a finding of adequate public facilities and an approval of a preliminary plan of subdivision by the Planning Board.

The Council held a public hearing on March 17, 2009, to receive testimony concerning the proposed amendment. The Council's Planning, Housing, and Economic Development Committee considered this SRA at a worksession on March 23, 2009, and recommended that it be enacted with further amendments.

The District Council reviewed Subdivision Regulation Amendment 09-01 at a worksession held on March 31, 2009, and enacted the Amendment as recommended by the Planning, Housing and Economic Development 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. 09-01 will be approved.

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. Section 50-20 [[is]] and Section 50-35 are amended as follows: 50-20. Limits on issuance of building permits. 2 * * 3 * 4 (c) (3) (A) A determination of adequate public facilities made under 5 this Chapter is timely and remains valid: 6 [[(A)]] (i) [[For]] for 12 years after the preliminary plan 7 is approved for any plan approved on or after July 8 9 25. 1989. but before October 19. 1999;

10	[[(B)]]] <u>(ii)</u> [[For]] <u>for</u> no less than [5] [[7]] <u>5</u> and no more
11		than 12 years after the preliminary plan is
12		approved, as determined by the Planning Board at
13		the time of approval, for any plan approved on or
14		after October 19, 1999, but before August 1, 2007;
15		[[and]]
16	<u>(iii)</u>	for no less than 7 and no more than 12 years after
17		the preliminary plan is approved, as determined by
18		the Planning Board at the time of approval, for any
19		plan approved on or after April 1, 2009, but before
20		<u>April 1, 2011; and</u>
21	[[(C)]]]] $\underline{\text{(iv)}}$ [[For]] $\underline{\text{for}}$ no less than [5] [[7]] $\underline{5}$ and no
22		more than 10 years after the preliminary plan is
23		approved, as determined by the Board at the time
24		of approval, for any plan approved on or after
25		August 1, 2007, and before April 1, 2009, or on or
26		after April 1, 2011. [[If an applicant requests a
27		validity period that is longer than [5] 7 years, the
28		applicant must submit a development schedule or
29		phasing plan for completion of the project to the
30		Board for its approval. At a minimum, the
31		proposed development schedule or phasing plan
32		must show the minimum percentage of the project
33		that the applicant expects to complete in the first
34		[5] 7 years after the preliminary plan is approved.

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

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(B) If an applicant requests a validity period that is longer than the minimum specified in this paragraph, 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 or 7 years, as appropriate, after the preliminary plan is approved. To allow a validity period longer than the minimum specified in this paragraph, the Board must find that the extended validity period would promote the public interest. The Board may condition a validity period longer than the minimum specified in this paragraph on adherence to the proposed development schedule or phasing plan, and may impose other 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]] $\underline{5}$ years; or

86			[[(B)]] (ii) 6 years for a subdivision with an original
87				validity period longer than [5] [[7]] 5 years; and
88		<u>(B)</u>	for a	preliminary plan approved on or after April 1, 2009,
89			and b	pefore April 1, 2011:
90			<u>(i)</u>	2½ years for a subdivision with an original validity
91				period of 7 years; or
92			<u>(ii)</u>	6 years for a subdivision with an original validity
93				period longer than 7 years.
94				* * *
95	(7)	[[Sub	mittal	and approval requirements for]] For each extension
96		of an	adequ	ate public facilities determination[[.]];
97		(A)	[[The	e]] the applicant must submit a new development
98			sched	dule or phasing plan for completion of the project to
99			the B	Soard for approval;
100		(B)	the a	pplicant must not propose any additional development
101			beyo	nd the amount approved in the original determination
102			[[of a	adequate public facilities]];
103		(C)	the	Board must not require any additional public
104			impr	ovements or other conditions beyond those required
105			for th	ne original preliminary plan;
106		(D)	the a	pplicant must file an application for an extension with
107			the E	Board before the [[original]] applicable validity period
108			has e	xpired; and

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	y subdivision plans-Approval procedure.
114			* * *
115	(h)	Duration of	Validity Period and Actions Required to Validate the Plan.
116			* * *
117		(2) Duran	tion 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]] <u>in</u> 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
			· · · · · · · · · · · · · · · · ·

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

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

Sec. 3. Automatic Extensions.

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

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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	ph.	treated for all purposes as part of the validity period that was extended.
165	<u>(b)</u>	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:	
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175		naklessell April 1, 2009
176	Isiah Legge	tt, County Executive Date
177	This is a co	rrect copy of Council action.
178		
179	Janda	Mr. Laver april 2,2009
180	Linda M. L	auer, Clerk of the Council Date