

CHAPTER 50
MONTGOMERY COUNTY SUBDIVISION REGULATIONS
PLANNING BOARD DRAFT
July 31, 2015

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TABLE OF CONTENTS

Article I. In General

Division 50.1. Purpose

| | |
|--|-----|
| Section 1.1. Purpose of Chapter 50 | 1-1 |
|--|-----|

Division 50.2. Interpretation and Defined Terms

| | |
|--|-----|
| Section 2.1. Rules of Interpretation | 2-1 |
| Section 2.2. Definitions | 2-2 |

Division 50.3. General Requirements

| | |
|---|-----|
| Section 3.1. Applicability of the Chapter | 3-1 |
| Section 3.2. Record Plat Required | 3-1 |
| Section 3.3. Exemptions to the Requirements of this Chapter | 3-1 |
| Section 3.4. Approving Authority | 3-3 |
| Section 3.5. Effect of Chapter on Other Ordinances | 3-3 |
| Section 3.6. Submission Procedures for Subdivision Plans | 3-3 |
| A. Subdivision of Land | 3-3 |
| B. Subdivision of Part of a Tract | 3-4 |
| C. Area within Pending Zoning Map Amendments | 3-4 |
| D. Area within Pending Master Plan | 3-4 |

Article II. Subdivision Plans

Division 50.4. Preliminary Plan

| | |
|---|------|
| Section 4.1. Filing and specifications | 4-1 |
| A. Application and Fee | 4-1 |
| B. The Drawing | 4-1 |
| C. Supporting Information | 4-2 |
| D. Application Processing | 4-5 |
| E. Hearing Date | 4-5 |
| Section 4.2. Approval procedure | 4-5 |
| A. Referral of Plan | 4-5 |
| B. Review and Recommendation | 4-6 |
| C. Planning Board Action | 4-7 |
| D. Required Findings | 4-7 |
| E. Plan Certification | 4-8 |
| F. Amendments | 4-8 |
| G. Plan Validity | 4-9 |
| H. Extension of Plan Validity Period | 4-10 |
| I. Effect of Failure to Timely Validate Plan or Secure an Extension | 4-12 |
| J. Revocation of approval | 4-12 |
| Section 4.3. Technical Review | 4-13 |
| A. Relation to Master Plan | 4-13 |
| B. Block Design | 4-13 |

- C. Lot Design 4-14
- D. Public Sites and Adequate Open Spaces 4-15
- E. Roads..... 4-17
- F. Water supply and sewage disposal facilities..... 4-22
- G. Markers and monuments 4-24
- H. Stormwater management 4-24
- I. Public utilities..... 4-25
- J. Adequate Public Facilities Ordinance (APFO) 4-25
- K. Environment 4-31
- L. Residential cluster subdivision 4-32

Division 50.5. Pre-Preliminary Submissions

- Section 5.1. Filing and Specifications 5-1
 - A. Filing..... 5-1
 - B. The Drawing..... 5-1
- Section 5.2. Approval Procedures..... 5-1
 - A. Referral 5-1
 - B. Hearing Date..... 5-1
 - C. Action on a Pre-Preliminary Submission..... 5-1

Division 50.6. Administrative Subdivision Plan

- Section 6.1. Applicability..... 6-1
 - A. Existing Places of Worship and Institutional Uses..... 6-1
 - B. Subdivision for Creation of Certain Residential Lots Located in the Agricultural Reserve Zone 6-1
 - C. Subdivision for Creation of Certain Residential Lots Located in the RE-2 and Rural Residential Zones..... 6-2
 - D. Consolidation of Existing Lots or Parts of Lots In Non-Residential Zones 6-2
- Section 6.2. Filing Requirements 6-3
 - A. Filing..... 6-3
 - B. Application Processing..... 6-3
 - C. The Drawing..... 6-3
- Section 6.3. Approval Procedures..... 6-3
 - A. Referral of Plan 6-3
 - B. Action on an Administrative Subdivision Plan 6-3
 - C. Appeal of an Administrative Subdivision Plan 6-4

Division 50.7. Minor Subdivision

- Section 7.1. Applicability..... 7-1
 - A. Minor Lot Line Adjustment..... 7-1
 - B. Conversion of an Outlot into a Lot 7-1
 - C. Consolidation 7-2
 - D. Subdivision to Reflect Ownership..... 7-2
 - E. Plat of Correction 7-3
 - F. Pre-1958 Parcels 7-4
 - G. Creation of a Lot from a Part of a Lot..... 7-4
- Section 7.2. Procedure for Platting Minor Subdivisions 7-4

Article III. Plats.

Division 50.8. Plats-Generally

Section 8.1. Filing and Specifications 8-1

- A. Application and Fee 8-1
- B. Specifications 8-1
- C. Plat Drawing..... 8-1
- D. Multiple Plats for a Single Subdivision 8-5
- E. Other Supporting Information 8-5
- F. Application Processing 8-6

Section 8.2. Approval Procedure 8-6

- A. Referral of the Plat Application 8-6
- B. Review and Recommendation 8-6
- C. Plat to Comply with Approved Preliminary Plan and Site Plan Where Required 8-6
- D. Road and Storm Drain Plans..... 8-7
- E. Final Plat..... 8-7
- F. Planning Board to Act Within 30 Days 8-7
- G. Planning Board May Hold Hearing on Any Plat 8-7
- H. Planning Board May Give Conditional Approval 8-7
- I. Signing..... 8-7

Section 8.3. Recording Procedure..... 8-7

- A. Processing of plats 8-7
- B. Recordation 8-7
- C. Indexing 8-8
- D. Effect of filing..... 8-8

Section 8.4. Abandonment of Land Dedicated for Public Use..... 8-8

Article IV. Administration.

Division 50.9. Waivers from this Chapter

Section 9.1. Authority of Planning Board..... 9-1

Section 9.2. Application 9-1

Section 9.3. Findings 9-1

Section 9.4. Conditions 9-1

Section 9.5. Procedure for Granting Waivers 9-1

- A. Referral for Recommendations 9-1
- B. The Director Must Publish a Report 9-1
- C. Resolution 9-1
- D. Non-Waiver of Other Ordinances..... 9-2

Division 50.10. Administrative Procedures

Section 10.1. Regulations..... 10-1

Section 10.2. Bonding and Surety 10-1

Section 10.3. Establishment of Adequate Public Facilities Guidelines 10-1

Section 10.4. Establishment of a Development Review Committee 10-1

Section 10.5. Establishment of Fees 10-2

Section 10.6. Enforcement of Chapter..... 10-2

- A. Notice of Violation..... 10-2
- B. Administrative Citation..... 10-2
- C. Notice of Hearing..... 10-3
- D. Civil Fine and Penalty..... 10-3
- E. Nonpayment of Fine 10-4
- F. Hearing..... 10-4
- G. Enforcement rules; Conduct of Hearing..... 10-5
- H. Stop Work Order 10-6
- I. Other Remedies 10-7
- J. Authority of the Office of the General Counsel..... 10-7
- K. Exclusive Authority 10-7

Section 10.7. Amendment of Chapter 10-7

Article I. In General

Division 50.1. Purpose

Section 1.1 Purpose of Chapter 50

This Chapter provides for the legal division and subsequent transfer of land. It requires the coordination of new transportation facilities with other existing and planned facilities, a determination of adequate public facilities and land for public use, and protection of natural resources and sensitive environmental features. The intent of this Chapter is to facilitate harmonious development and promote the health, safety and welfare of the present and future inhabitants of the Maryland-Washington Regional District within Montgomery County under the General Plan, and any other purpose enumerated in the Land Use Article.

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Division 50.2. Interpretation and Defined Terms

Section 2.1 Rules of Interpretation

The following rules of interpretation apply to this Chapter.

- A. How to Compute Periods Measured in Months. If a period of time is measured in months, the period begins and ends on the same day of a month; however, if there are not enough days in the final month for this to be possible, the period ends on the final day of the final month.
- B. How to Compute Periods Measured in Days. If this Chapter requires or allows a person to perform an act within a specific time period measured in days, the person must compute the deadline in the following manner:
 - 1. If the period follows an event, count the day after the event as the first day of the period.
 - 2. Count the remaining number of calendar days in the period; however, if the period is 7 days or fewer, omit Saturdays, Sundays and legal holidays.
 - 3. Do not count the last day if it is a Saturday, Sunday, legal holiday or if the office where the person must file a document or perform an act is not open during the regular hours of that office on that day.
- C. Requirements to Act by a Specific Date
 - 1. If the law requires or allows a person to perform an act by a specific date, but the specific date is a Saturday, Sunday or legal holiday, the person may perform the act on the next day that is not a Saturday, Sunday or legal holiday.
 - 2. Any action required to be taken within a specific time period is measured from the date of a final agency action, or, if a party seeks judicial review of the agency action, from the date the court makes a final decision.
- D. Signatures. The signature of a person may be the actual signature of the person or a mark that the person has authorized.
- E. Singular and Plural. The singular includes the plural and the plural includes the singular.
- F. Tense. The present tense includes the future tense.
- G. Use of "Or". "Or" indicates that the connected items, conditions, provisions, or events may apply singularly or in any combination.
- H. Use of "Includes". "Includes" does not limit a term to the specific examples.
- I. Title of Articles, Divisions and Sections. Titles and captions are not part of the law. They only advise the reader of the content of each Article, Division or Section.

- J. Use of “Chapter”. “Chapter” means a numbered section in the Montgomery County Code.
- K. Use of “Section”. In this Chapter, “Section” means section or subsection, as the context indicates.
- L. Use of “In Writing”. In this Chapter, written communication includes electronic communication.

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 Planning 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 Planning Board after considering the factors in this Chapter for violating a Planning Board action.

Administrative Subdivision Plan: A plan for a proposed subdivision to be prepared and submitted for Planning Director approval before the preparation of a plat.

Agricultural land: Land classified in the agricultural zone established by Division 4.2 of Chapter 59 and land in other zones containing at least 25 acres devoted to an agricultural use as defined in Chapter 59.

Applicant, Developer or Subdivider: An individual, partnership, corporation or other legal entity and its agent that undertakes the subdivision of land or the activities covered by this Chapter. The terms include all persons involved in successive stages of the project, even though such persons may change and ownership of the land may change. Each term includes the other.

B.

Block: Land area bounded by roads, other rights-of-way, unsubdivided acreage, natural barriers and any other barrier to the continuity of development.

Building restriction line: A line designating an area in which development or building is prohibited by the Planning Board.

C.

Citation: A document noting a violation of a Planning Board 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.

Commission: The Maryland-National Capital Park and Planning Commission.

County Executive: The Montgomery County Executive.

D.

Development: The act of building structures and installing site improvements, both public and private, or the resulting structures and improvements.

Development Review Committee: A review committee consisting of Planning Department staff and staff of any County, State, and Federal agency; municipality; and utility company to which a plan is referred under the requirements of the Chapter, that meets with applicants to facilitate review of the plan.

Developer: see “Applicant.”

Development rights: The potential for the improvement of a tract of land based on its zoning classification, measured in dwelling units or floor area.

Director: The Director of the Montgomery County Planning Department or such Director’s designee.

District or Regional District: The Maryland-Washington Regional District, established by the Land Use Article of the Annotated Code of Maryland.

E.

Easement: A grant or reservation by the owner of land for the use of all or a portion of the land to others, including the public, for a specific purpose or purposes. The easement must be included in the conveyance of the encumbered land. For platting under this Chapter, an easement area is included within the dimensions and areas of the lots through which the easement may run, and is not separated from the lot as in the case of a dedicated right-of-way.

Easement, slope: An easement to permit the creation and maintenance of slopes necessary to stabilize construction or to stabilize lands adjacent to construction.

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

Engineer: A professional engineer registered in Maryland.

Environmentally Sensitive Area: In this Chapter, environmentally sensitive areas are limited to: (a) slopes equal to or exceeding 25 percent, wetlands, perennial and intermittent streams, and stream buffers as defined in the latest version of the *Guidelines for Environmental Management of Development in Montgomery County*; and (b) critical habitats for threatened or endangered wildlife or plant species as defined in the Code of Md. Regulations (COMAR) 08.03.08., or for species designated by the Maryland Wildlife and Heritage Service Natural Heritage Program, Department of Natural Resources as rare, watchlist, or in need of conservation.

F.

Floodplain: (a) A relatively flat or low land area adjoining a river, stream, pond, stormwater management structure or watercourse subject to partial or complete inundation; or (b) An area subject to unusual and rapid accumulation or runoff of surface water as a result of an upstream dam failure.

Floodplain, one-hundred-year: The area along a stream, drainage course, lake or pond, which would experience inundation by stormwater runoff equivalent to that which would occur on the average of once in every 100 years after ultimate development of the watershed.

G.

H.

I.

Improvements: Required public or private infrastructure needed to support the development, including the following: roads, alleys, grading, road pavement, curbs and gutters, sidewalks, pedestrian ways or paths, bicycle infrastructure, water mains, sanitary sewer lines, water supply and sewage disposal, storm drain facilities, curb returns, sidewalk and driveway entrances in right-of-way, guard rails, retaining walls, sodding, planting, monuments, street lights and storm water management.

Improvement, public: Any improvements located on land dedicated to the public or within a dedicated right of way or public improvement easement.

J.

K.

L.

Licensed land surveyor: A land surveyor who is licensed in the State of Maryland to “practice land surveying” as such terms are defined in Maryland Business Occupations and Professions Code Ann. Section 15-101 (1995 Repl. Vol.), as amended.

Limit of disturbance line: A line designating an area in which land disturbance as defined in Chapter 19 is prohibited.

Lot: A discrete area of land that is described by a plat recorded in the land records for which a building permit can be issued.

Lot, Ownership: An area of land shown on a Subdivision Record Plat created only for the convenience of the owner under Section 7.1.D of this Chapter that reflects a deed, mortgage or lease line but does not subdivide the underlying lot.

M.

Maryland Coordinate System: The Maryland Coordinate System as defined in the Annotated Code of Maryland, Real Prop. §§ 14-401 through 14-407.

Maryland-Washington Regional District in Montgomery County: as defined by the Land Use Article of the Annotated Code of Maryland, which does not include the jurisdictional boundaries of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg and Washington Grove.

Master Plan: A plan of any portion of the general plan that may consist of maps, data, and other descriptive matter, that guides the physical development of the district or any portion of the district, including any amendments, extensions, or additions by the Commission, indicating the general locations for major roads, parks or other public spaces, public building sites, routes for public utilities, zones or other similar information. Master plan includes sector plan. See Land Use Article of the Annotated Code of Maryland.

Mid-block right-of-way: A dedicated or otherwise publicly accessible pedestrian and/or bike right-of-way within a block, which may include utilities where necessary, and from which motor vehicles are typically excluded.

Minor Subdivision: Creation of lots through the division, resubdivision or assemblage of a lot, tract or parcel of land, including minor adjustments to existing lot lines, that does not require the approval of a Preliminary Plan of subdivision. For the purpose of applying the State Growth Tier rules, a minor subdivision is separately defined in Section 4.3.F.3.a.i.

N.

Notice of Hearing: An administrative notice issued by the Director that notifies an alleged violator where and when an enforcement hearing will be held by the Planning Board or the Planning Board's designee to address an alleged violation.

Notice of Violation: A notice issued by an enforcement agent that notifies a recipient of a violation and specifies the remedial action that the recipient must take to avoid further enforcement action.

O.

Outlot: An area of land shown on a record plat that must not be occupied by a building or other structure requiring a building permit.

Owner: A person or other legal entity holding a legal title in the land, not including a mortgagee, lienor, lessee or contract purchaser.

P.

Parcel, unplatted: A contiguous area of land described only in a deed recorded in the land records and not included on a record plat.

Person: An individual, partnership, corporation, organization, other legal entity or combination thereof that owns property or otherwise has an interest in a property.

Place of Worship: A meeting area for religious practices including a church, a synagogue, a mosque, a convent, a temple or a monastery.

Planning Board: The Montgomery County Planning Board of the Maryland-National Capital Park

and Planning Commission.

Planning Board action: A final decision on a Preliminary Plan, site plan, project plan, sketch plan, water quality plan or other plan, including all associated terms, conditions, requirements and other obligations or limits, made by the Planning Board under state law and Chapters 50 and 59, including any regulations issued under State or County law. For the purposes of an enforcement action, a Planning Board action does not include a decision made by the Planning Board under Chapter 22A.

Plat: A drawing depicting some or all of an approved subdivision, prepared and submitted under this Chapter, and intended to be recorded in the land records after it has been approved by the Planning Board. A plat may consist of more than one sheet which must be numbered sequentially. See also “Record Plat.”

Preliminary Plan: A plan for a proposed subdivision prepared and submitted for Planning Board approval before the preparation of a plat.

Q.

R.

Receiving area: Land designated on the zoning map as qualified for more development than its base density through the transfer of development rights.

Record Plat: A plat of subdivision that has been recorded in the land records under the requirements of this Chapter.

Resubdivision: A change to any lot line created by a previously recorded subdivision record plat. Resubdivision includes the assembly of recorded lots or parts of previously recorded lots. A resubdivision is a subdivision.

Right of way: Land intended for the passage of people, vehicles or utilities, as shown on a record plat. Any right of way involving maintenance by a public agency must be dedicated to public use by the maker of the plat on which the right-of-way is established.

Road: Any street, highway, avenue, lane, alley, or viaduct, or any segment of any of them. Roads must be created by a subdivision plan under this Chapter and be shown on a record plat, or otherwise be deemed a road by Chapter 49.

Road, centerline of: A line established as a centerline of a road 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 centerline must be established by the Planning Board.

Road Design and Construction Code: Article 3 of Chapter 49 and any regulation which implements and amends that Article.

S.

Stop Work Order: 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 until a violation has been corrected.

Subdivider: See “Applicant.”

Subdivision (v.): The division or assemblage of a lot, tract or parcel of land into one or more lots or parcels or other divisions for the purpose, whether immediate or future, of sale or development. The definition of subdivision does not include a bona fide division of exclusively agricultural land not for development purposes. A resubdivision is a subdivision.

Subdivision (n.): The land or area subdivided.

Subdivision Regulations: Chapter 50 of the Montgomery County Code, also referred to as this Chapter.

Subdivision Staging Policy: The resolution or guidelines adopted by the County Council to determine the adequacy of public facilities and services.

T.

Tract: A contiguous area of land, including all proposed and existing rights-of-way, lots, parcels and other land dedicated or donated in fee by the owner or a predecessor in title. A tract does not include land conveyed to a government for more than nominal consideration.

U.

V.

W.

Water quality plan: A plan, including supporting documents, required as part of a water quality review under Chapter 19 for certain projects located in a special protection area.

X.

Y.

Z.

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Division 50.3. General Requirements

Section 3.1 Applicability of the Chapter

This Chapter applies to any subdivision of land within Montgomery County located within the Maryland-Washington Regional District except for a good faith division of exclusively agricultural land that is not made for development purposes.

Section 3.2 Record Plat Required

- A. Any subdivision of land must be included on a plat approved by the Planning Board and recorded in the land records before transfer of any part of the subdivided land.
- B. A building permit for the construction of a building must not be issued unless the building would be located on a lot or parcel which is shown on a plat recorded in the County Land Records.

Section 3.3 Exemptions to the Requirements of this Chapter

- 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 through action of a court of competent jurisdiction.
 - 2. Utility rights-of-way. Land used as part of an electric transmission line right-of-way or other public utility right-of-way.
 - 3. Advanced dedication or donation of master planned rights-of-way.
- B. Recordation of a plat before issuance of a building permit is not required for:
 - 1. Certain uses on agricultural land:
 - a. A dwelling unit on an unplatted parcel of agricultural land at least 25 acres in size if density and development rights are available;
 - b. Conditional uses associated with agriculture, and approved under Chapter 59, unless a subdivision is required as a condition of the approval; and
 - c. Any equestrian facility or other agricultural building on land classified in the agricultural zone (AR).
 - 2. Public transfer. A part of a lot previously shown on a record plat that was created by transfer of part of the lot for public use by reference to a recorded instrument, if the outlines and dimensions of such remainder can be determined by reference to the previously recorded plat. This provision also applies to any property that qualified for an exemption under this Section before the transfer.

3. Adjoining property. A part of a lot created by deed recorded before May 19, 1997 between owners of adjoining platted properties for the purpose of small adjustments in boundaries. This applies only to an adjustment that was less than either a total of 2,000 square feet or one percent of the combined area, if additional lots were not created and the total area of resulting ownership was not reduced below the minimum size required by this Chapter or by Chapter 59.
4. Single residential property.
 - a. One detached dwelling unit on a parcel not previously included on a record plat, or a part of a previously platted lot, which have not changed in size or shape since June 1, 1958, if a description and location of the property and proposed structure is submitted to the Planning Department before issuance of a building permit sufficient to:
 - i. locate the property on the tax maps of Montgomery County;
 - ii. show that the approval of the building permit application would not result in obstructing the future opening, extension or widening of any necessary road, or otherwise jeopardize any planned public facility;
 - iii. show that the property and use comply with the zoning ordinance, and show the setbacks and any other information needed to check compliance with regulations, including establishment of a building restriction line along any existing or proposed road sufficient to provide for future expansion or opening of such road to its ultimate width; and
 - iv. show that the approval of the permit would not adversely affect the General Plan for the physical development of the Regional District.
 - b. Reconstruction of an existing detached dwelling under Chapter 59, Section 7.7.1.
5. Telecommunications facilities. Telecommunications towers/antennas, including associated accessory structures.
6. Certain Residential Property in the City of Takoma Park. Property located in the portion of the City of Takoma Park annexed into Montgomery County on July 1, 1997 that was recorded by a deed before January 1, 1982 and remains otherwise buildable under the Prince George's County Zoning and Subdivision Regulations on June 30, 1997, if a description and locational survey drawing of the property and proposed structure is submitted to locate them on the tax map of Montgomery County.
7. Certain commercial properties adjoining state highways. An addition to a building on property zoned for commercial uses:
 - a. Adjoining a state highway;

- b. Located within a state approved Community Legacy Plan Area on October 30, 2012;
 - c. With less than 10,000 square feet of gross floor area on October 30, 2012 where subsequent building permits cumulatively allow increases in total gross floor area by less than 2,000 square feet; and
 - d. That includes a description and boundary survey drawing of the property and proposed structure at a 1 inch equals 50-foot scale or another appropriate scale as determined by the Planning Director that demonstrates that the additional floor area will not extend into any adopted Master Plan road right-of-way.
8. Certain commercial properties adjoining state highways in Rural Village Overlay Zones. An addition to, or to reconstruct or replace, a building on commercially zoned property:
- a. Adjoining a State highway;
 - b. Located in the Rural Village Overlay Zone;
 - c. With less than 10,000 square feet of existing gross floor area where later building permits cumulatively allow net increases in total gross floor area of less than 2,000 square feet;
 - d. That includes a description and boundary survey drawing of the property and proposed structure on a 1-inch-equals-50-foot scale or another appropriate scale as determined by the Planning Director showing that the additional floor area will not extend into any adopted Master Plan road right-of-way; and
 - e. that is submitted within one year after demolition or destruction of the previous building was substantially completed.

Section 3.4 Approving Authority

The Planning Board administers this Chapter.

Section 3.5 Effect of Chapter on Other Ordinances

This Chapter does not repeal or modify or otherwise affect any other ordinance, resolution, rule or regulation of the County; however, wherever this Chapter imposes more stringent requirements, the provisions of this Chapter must prevail.

Section 3.6 Submission Procedures for Subdivision Plans

- A. The Planning Board will consider subdivision of land as follows:
- 1. Except for an administrative or minor subdivision under Divisions 50.6 and 50.7, a complete Preliminary Plan application must be submitted with application form and fee.
 - 2. The plat of all or part of an approved subdivision plan must be submitted with required supporting data and documents, an application form and a plat fee.

- B. *Subdivision of Part of a Tract.* The Director may reject a subdivision plan application for part of a tract if the size and shape of the property as submitted prevent designing a plan which will meet standards established by these regulations, and require all or a larger part of the tract to be platted to meet this Chapter, Chapter 49 or other laws or regulations.
- C. *Area within Pending Zoning Map Amendments.* The Director may reject a subdivision plan if all or any part of the plan lies within the boundaries of a pending amendment to the zoning map. The plan may be resubmitted immediately after the final disposition of the pending amendment. This Subsection must not apply if any map amendment is still pending 6 months after the date of the submission of the plan.
- D. *Area within Pending Master Plan.* The Planning 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. A proposed subdivision plan deferred under this Section may be resubmitted to the Planning Board either:
 - a. After the final disposition by the District Council of the pending Master Plan or the Master Plan amendment; or
 - b. No later than 12 months from the date the Planning Board approves the public hearing draft Master Plan or Master Plan amendment, unless there is a determination by the Planning 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 a subdivision plan application may be deferred at the option of the Planning Board for a maximum of 18 months from the date the Planning Board approves the public hearing Draft Master Plan or Master Plan Amendment, but in no event beyond the period in Subsection (a).

Article II. Subdivision Plans.

Division 50.4. Preliminary Plan

Except for an administrative or minor subdivision submitted under Divisions 50.6 and 50.7, a proposed subdivision must be submitted to the Planning Board for approval in the form of a Preliminary Plan before the submission of a plat. The plan must show graphically, and supporting documents must demonstrate, the data needed for the Planning Board to make the findings required by this Article.

Section 4.1 Filing and Specifications

A. *Application and Fee*

1. The subdivider must file the Preliminary Plan with the Planning Board, together with the application form, supporting information and appropriate fee.
2. The subdivider must own the property or be authorized by the owner to file the application.
3. If property is owned or controlled by the State of Maryland, Montgomery County, or another political subdivision, government entity or agency, or Washington Metropolitan Area Transit Authority (WMATA), the subdivider must obtain authorization from the government entity, agency or WMATA to include the property as part of the subdivision.

B. *The Drawing.* The Preliminary Plan drawing must be submitted in a form required by regulations of the Planning Board. Details and information must include:

1. Scaled drawing of at least 100 feet to the inch, or as specified by the Planning Director.
2. Title block information.
3. Certificate of registered professional engineer and licensed land surveyor to affirm the accuracy of boundary lines, topographic data and other engineering or survey data.
4. Locations and names of abutting and confronting subdivisions with lot, block, and record plat number of subdivided land, and deed references for unplatted land.
5. Existing scenic easements, scenic vistas designated by the Rustic Roads Plan, or designated historic resources.
6. Vicinity location map.
7. Graphic representation of the proposed subdivision, including:
 - a. Bearings referenced to the Maryland Coordinate System, except that an application filed to correct an approved Preliminary Plan may be referenced to

the Plat Meridian used on the original approved Preliminary Plan or the Record Plat;

- b. Lot and block layout;
- c. All roads labeled as public or private with construction details. The applicable Chapter 49 design standards or typical sections for the proposed roads must be shown and proposed modifications must be listed;
- d. Location of existing and proposed utilities;
- e. Existing topography with contour intervals not greater than 5 feet;
- f. Location and width of existing and proposed pedestrian and bicycle facilities, including sidewalks, shared use paths and on-road bicycle lanes and connections to existing off-site facilities;
- g. Sites for public uses and open spaces;
- h. Location, type and width of all existing and proposed rights-of-way and easements, including roads, slopes, paths, utilities, on and off site storm drainage, and other improvements;
- i. The proposed use of all lots must be indicated on the Preliminary Plan. The Preliminary Plan must show the scaled dimensions and approximate area of each use;
- j. When the property is included in more than one zone, the lines showing the limits of each zone must be indicated; and
- k. The plan must also show all existing topography, structures and paving within 100 feet of adjoining properties.

C. *Supporting Information*

- 1. An approved Natural Resources Inventory/Forest Stand Delineation.
- 2. A preliminary forest conservation plan or forest conservation exemption.
- 3. Verification from the County and other applicable agencies showing payment of any applicable fees required in connection with the County's review process.
- 4. Concept road grade and profile. A conceptual road grade and profile plan must be prepared by a registered engineer or registered professional land surveyor according to the design criteria of Chapter 49 and indicate the percentage of tangent grades, lengths of crest and sag, vertical curves and elevations, and elevations of all intersecting roads. Direction of water flow must also be indicated. Where the topography makes the

determination of the adequacy of the road grades difficult, additional supporting information may be required.

5. Storm drainage capacity and impact analysis. The concept road grade plan must be supported by a preliminary storm drain study prepared under the County's specifications.
6. Sight distance evaluation for all proposed road intersections prepared under the criteria of the applicable State or County transportation agency.
7. Wells and septic systems. For lots located in areas where individual wells and septic systems would be installed, the Preliminary Plan must also show the following:
 - a. The proposed location of water wells for each lot and existing wells on the property and within 100 feet of the property;
 - b. A circular area with a radius of 100 feet around each well to denote clear space in which no final sewage system is to be located;
 - c. The "usable area" for sewage disposal that satisfies the Executive Regulations for on-site sewage disposal;
 - d. Any existing sewage disposal systems on the property and within 100 feet of the property;
 - e. Wetlands, rock outcrops and floodplains; and
 - f. A 10-foot zone surrounding the water service line to buildings, free and clear of any sewer lines, systems, or part thereof.
8. Phasing schedule
 - a. The Preliminary Plan approval establishes the plan validity and adequate public facilities validity periods for the entire project.
 - b. Where a project is proposed to be built out in phases that will cumulatively exceed the minimum validity periods under Sections 4.2.G.2.a and 4.3.J.5.a, the applicant must submit a recording and construction phasing schedule as part of the Preliminary Plan for approval by the Planning Board. The schedule must indicate the portions of the Preliminary Plan for which record plats and building permits will be obtained during each of the proposed phases, up to the expiration of the maximum adequate public facilities validity period under Section 4.3.J.5.a.
 - c. When applicable, the phasing schedule must identify the timing for the completion of construction and conveyance to unit owners of such things as

common open areas and recreational facilities. In addition, the phasing schedule must indicate the timing for the provision of moderate priced dwelling units, and infrastructure improvements associated with each phase. Such a phasing schedule must be designed to minimize dependence on features (other than community-wide facilities) that will be provided in subsequent phases and have minimal impact during construction on phases already built and occupied.

- d. If a phasing plan for a Preliminary Plan includes land or building space that the County has accepted for an arts or entertainment use under Section 59-C-6.2356 of the zoning ordinance in effect on October 29, 2014, approval of a site plan under Section 59-7.3.4 for the phase containing that land or building space validates all remaining phases of the Preliminary Plan and the project plan for the purpose of Section 59-D-2.7(b) of the zoning ordinance in effect on October 29, 2014.

9. Transfer of Development Rights.

- a. A Preliminary Plan for a property located in a receiving area that proposes to increase the density of the property by using transferred development rights must indicate:
 - i. the number of lots permitted for the tract by zoning without the use of density increases as allowed by Transfer Development Rights (TDR) or the Moderately Priced Dwelling Unit (MPDU) programs;
 - ii. the number of development rights to be conveyed to the receiving property;
 - iii. the number of Moderately Priced Dwelling Units to be provided as required by Chapter 25A;
 - iv. the total density, in dwelling units, of the proposed subdivision; and
 - v. the density recommended by the adopted Master Plan.
- b. A Preliminary Plan that uses transferred development rights in the Rural Residential and Residential zones must include at least two-thirds of the number of development rights permitted to be transferred to the property under the appropriate Master Plan. However, the two-thirds requirement may be reduced if the Planning Board finds the reduction is more appropriate for environmental or compatibility reasons.

10. Draft Traffic Mitigation Agreement. A Preliminary Plan application for property located in a Transportation Management District (TMD), designated under Chapter 42A, Article

It, must contain a draft Traffic Mitigation Agreement (TMAg) that meets the requirements of that Article.

D. *Application Processing*

1. The applicant must submit an initial application to the Director. The Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale. The assessment of completeness must not address the merits of the application.
2. The applicant must submit any required revisions to the Director. The Director must review the revised application for completeness within 10 days after receipt.
3. After the Director verifies that the application is complete, or if the review is not completed within 10 days after receipt, the Director will accept the application and establish a hearing date under Section 4.1.E.
4. Public notice is required under the Manual of Development Review Procedures.

E. *Hearing Date*

The Planning Board must schedule a public hearing to begin within 120 days after the date an application is accepted. The Director may postpone the public hearing by up to 30 days once without Planning Board approval. The Director or applicant may request one or more extensions beyond the original 30 days with Planning Board approval. The public hearing must be noticed by mail and on the Planning Board's agenda with the new hearing date indicated.

Section 4.2 Approval Procedure

- 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. Washington Suburban Sanitary Commission, for water and sewer service;
 2. County Department of Transportation, for roads, streets, paths, pedestrian and bicycle facilities (including bike share), parking, transit facilities and storm drainage within County-maintained rights-of-way and easements;
 3. County Department of Permitting Services, for stormwater management, sanitation, wells, septic systems, water, and sewers;
 4. Montgomery County Fire and Rescue Service, for requirements for adequate fire protection and access.
 5. State Highway Administration, for right-of-way requirements and access on state roads;

6. Any appropriate agency of the federal government;
7. Any municipality which has filed a request with the Planning Board for an opportunity to review subdivision or resubdivision plans for property located in that municipality;
8. Montgomery County Public Schools, for school site planning;
9. Any other Montgomery County Executive agency, for the adequacy of public facilities and services; and
10. Local utility providers.

B. *Review and Recommendation*

1. Timing of Review
 - a. Reviewing State and County agencies and utilities must submit initial comments to the Director before the Development Review Committee meeting.
 - b. The applicant must submit revised drawings at least 65 days before the date of the hearing to address all comments received. The Director may extend the deadline if the applicant submits a written request within 15 days after the revised drawings were due. If no written request is received or if the requested extension is not granted, the application is deemed withdrawn.
 - c. State and County agencies and utilities must each submit their final recommendations on the application at least 45 days before the date of the Planning Board hearing or request an extension.
2. Approvals from Public Agencies. The following agency approvals are needed before the Planning Board approves the Preliminary Plan:
 - a. Design of County-maintained roads. The typical section, concept road profile, intersection and site access locations, sight distances, utility location, and storm drain adequacy for improvements along County-maintained roads and paths must be approved in preliminary form by the County Department of Transportation;
 - b. Wells and septic systems. For lots with individual wells or septic systems, the well and septic plan must be approved by the County Department of Permitting Services;
 - c. Storm water management. A storm water management concept, if required under Chapter 19, must be approved by the County Department of Permitting Services;

- d. Water quality. If a water quality plan is required under Chapter 19, the Planning Board must not approve a Preliminary Plan or any extension until all requirements of Chapter 19 for plan approval are satisfied. Compliance with a required water quality plan, including any plan reviewed on a preliminary or final basis, must be made a condition of any approved Preliminary Plan; and
- e. Water and sewer service. If water and sewer is proposed to serve the property, the Planning Board must not approve a Preliminary Plan if WSSC does not concur with the proposed water and sewer service layout.

3. Director

The Director must publish a report and recommendation at least 10 days before the Planning Board hearing.

C. *Planning Board Action*

- 1. Every Preliminary Plan must be presented to the Planning Board for its review and action. The Planning Board must take one of the following actions or defer action to obtain more information:
 - a. Approve, if the plan conforms to the purposes and other requirements of this Chapter;
 - b. Approve, with any conditions or modifications necessary to bring the proposed development into compliance with all applicable requirements; or
 - c. Deny, if the plan is contrary to the purposes and other requirements of this Chapter.
- 2. All necessary improvements to support the development must be completed or assured as specified in Section 10.2.
- 3. Where a site plan is required, the approval of the Preliminary Plan must not allow clearing or grading to occur before approval of the site plan unless otherwise specified by the Planning Board.
- 4. The Planning Board action must be by resolution containing findings supporting its decision. Following approval of a Preliminary Plan by the Planning Board, no agency may require a substantial change in the plan unless allowed by the Planning Board's conditions of approval.

D. *Required Findings.* To approve a Preliminary Plan, the Planning Board must find that:

- 1. The Preliminary Plan substantially conforms to the Master Plan;
- 2. Public facilities will be adequate to support and service the area of the subdivision;

3. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads are appropriate for the subdivision given its location and the type of development or use contemplated, considering the recommendations included in the Master Plan and the applicable requirements of Chapter 59;
 4. All Forest Conservation Law, Chapter 22A requirements are satisfied;
 5. All stormwater management, water quality and floodplain requirements of Chapter 19 are satisfied; and
 6. Any other applicable Planning Board finding required under this Chapter that is specific to the property and necessary for approval of the subdivision.
- E. *Plan Certification.* Every Preliminary Plan approved by the Planning Board must be certified by the Director to confirm that the plan reflects the Planning Board's approval. Any modification of the plan conditioned by the Planning Board's approval must be included in the plan before receiving the approval stamp. The approved plan must be filed in the records of the Planning Board.
- F. Amendments
1. A major 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.
 - a. A major amendment includes any requests to change density; or make major changes to lot configuration or location, or right-of-way width or alignment; or to make a change to any condition of approval, except a change to validity period phasing as permitted in Section 4.2.F.2.
 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. A minor amendment to an approved Preliminary Plan includes any change that does not change density; make major changes to lot configuration or location, or right-of-way width or alignment; or alter the intent, objectives or requirements of the Planning Board in approving the Preliminary Plan.
 - b. The Planning Board may approve a minor Preliminary Plan Amendment on its consent agenda if the Planning Director publishes a report and recommendation on the amendment a minimum of 10 days before the Planning Board meeting. A minor amendment may also be approved by the Planning Director 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.

2. Duration.
 - a. Single-phase project.
 - i. A Preliminary Plan approved after March 31, 2009, and before April 1, 2017, remains valid for 60 months after its Initiation Date.
 - ii. A Preliminary Plan approved after March 31, 2017, remains valid for 36 months after its Initiation Date.
 - b. Multi-phase project.
 - i. An approved Preliminary Plan for a multi-phase project remains valid for the period of time allowed in the phasing schedule approved by the Planning Board.
 - ii. The applicant must propose a phasing schedule and the duration of the validity period for each phase as part of an application for Preliminary Plan approval or amendment. The Planning Board must assign each phase a validity period after considering the size, type and location of the project.
 - iii. The time allocated to any phase must be 60 months 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 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 validity period which begins on the Initiation Date of the first Preliminary Plan approval, including any extension granted under Section 4.3.J.7.
 - v. An approved Preliminary Plan for a multi-phase project that includes land or building space to be transferred to the County for an arts or entertainment use under Section 59-C-6.2356 of the zoning ordinance in

effect on October 29, 2014, is validated for all phases of the approved Preliminary Plan by recordation of a plat for all property in the phase containing the arts or entertainment use if recordation occurs within 5 years after the final approval of the Preliminary Plan. After approval, an amendment or modification to the phasing plan or the Preliminary Plan will not affect the validations, if the requirements of this Subsection have otherwise been met.

3. Validation. A Preliminary Plan or phase of a Preliminary 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 or in that phase has been recorded in the County Land Records.
4. Effect of a Preliminary Plan Amendment on Validity Period. For any action taken by the Planning Board to amend a previously approved Preliminary Plan, the Planning 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 Planning Board must consider the nature and scope of the requested amendment.

H. *Extension of Plan Validity Period*

1. Extension Request

- a. A request to extend the validity period of an approved Preliminary Plan must be received in writing by the Planning Board before the previously established validity period expires. Only the Planning Board is authorized to extend the validity period.
- b. A request to amend the validity period phasing schedule of an approved Preliminary Plan may be approved by the Planning Director if the length of the total validity period of the Preliminary Plan is not extended. The request must be received in writing by the Director before the previously established validity period of the phase expires.
- c. The written request must detail all reasons to support the extension request and include the anticipated date for by which the plan will be validated. The applicant must certify that the requested extension is the minimum additional time required to record all plats for the Preliminary Plan.

2. Effect of Timing

- a. The failure to submit a written extension request in a timely fashion voids all non-validated portions of the Preliminary Plan and, where applicable, an approved site plan.
- b. Where a Preliminary Plan has been allowed to expire due to the applicant's failure to file a timely request for extension, the Planning Board may reinstate the Preliminary Plan and establish a new validity period if practical difficulty or undue hardship is demonstrated by the applicant. The Planning Board may require the applicant to get a new APFO review and approval by the Planning Board as a prerequisite or condition of its action to extend an expired plan.

3. Grounds for Extension

- a. The Planning Board may only grant a request to extend the validity period of a Preliminary Plan if the Planning Board finds that:
 - i. delays by the government or some other party after the plan approval have prevented the applicant from meeting terms or conditions of the plan approval and validating the plan, provided such delays are not caused by the applicant; or
 - ii. the occurrence of significant, unusual and unanticipated events, beyond the applicant's control and not caused by the applicant, have substantially impaired the applicant's ability to validate the plan, and exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by the applicant to implement the terms and conditions of the plan approval in order to validate the plan) would result to the applicant if the plan were not extended.
- b. The applicant bears the burden of establishing the grounds in support of the requested extension.

4. Planning Board Considerations for Extension

- a. The Planning Board may condition the grant of an extension on a requirement that the applicant revise the plan to conform with changes to the requirements of this Chapter since the plan was approved.
- b. The Planning Board may deny the extension request if it finds that the project, as approved and conditioned, is no longer viable. The Planning Board must consider whether the project is capable of being financed, constructed, and marketed within a reasonable time frame. The Applicant must demonstrate the project's viability upon request by the Planning Board or Planning Director.

5. Planning Board Action

- a. After a public hearing for which notice was duly given, the Planning Board must determine whether a request for an extension should be granted. The requirements for noticing and conducting a public hearing must follow the requirements for a Preliminary Plan.
- b. If voting to approve an extension, the Planning Board must only grant the minimum time it deems necessary for the applicant to validate its plan.
- c. The Planning Board may only grant an extension to a Preliminary Plan within the plan's APFO validity period, unless a further extension is allowed by law.
- d. An applicant may request, and the Planning Board may approve, more than one extension.
- e. Once a phasing schedule is approved by the Planning Board as part of a Preliminary Plan approval, any revision or alteration to the schedule other than an amendment approved under Section 4.3.J.7 must be treated as a minor amendment to the Preliminary Plan. Planning Board approval of a revised phasing schedule is required to extend the total length of the validity period.

I. *Effect of Failure to Timely Validate Plan or Secure an Extension*

1. If a Preliminary Plan is not timely validated in whole or in part before the expiration of the validity period, any remaining portion of the plan expires. For multi-phased plans, the failure on the part of an applicant to timely validate a phase, in whole or in part, voids the balance of the Preliminary Plan approval for that phase and all subsequent non-validated phases.
2. In those instances where an applicant has timely validated only a portion of a plan and no extension is granted, the applicant seeking to develop only that portion of the project remains responsible for fully complying with all of the terms, conditions, and other requirements associated with the portion of the plan approval that has been implemented.
3. If a Preliminary Plan or a phase of the plan is not timely validated, any APFO determination made by the Planning Board associated with the expired portion of the Preliminary Plan also expires. In such event, the applicant loses any further rights to claim any vehicle trips associated with the expired APFO 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 approval.
4. A Preliminary Plan approval conditionally linked to a Sketch Plan or Project Plan approval under Chapter 59 expires if the Sketch Plan or Project Plan expires.

J. *Revocation of approval*

1. Approval of a Preliminary Plan may be revoked by resolution of the Planning Board at any time before the Planning Board approves the final plat covering the proposed Preliminary Plan.
2. To revoke a Preliminary Plan approval, except in response to a violation of this Chapter, the Planning Board must find that completing a portion of the plan has been rendered impractical by reason of an amendment to the General Plan, or by a conflict with a proposed public improvement or other conditions or circumstances not previously considered by the Board that make the plan contrary to public health, safety or welfare.
3. The Planning Board must give a subdivider notice and an opportunity to be heard before taking any action to revoke approval of a Preliminary Plan by sending the owner and subdivider a notice by certified mail at least 30 days before the date of the proposed action and giving the time and place of the hearing. The notice must state the reasons for the proposed revocation.

Section 4.3 Technical Review

In making the findings under Section 4.2.D. the Planning Board must review the following technical aspects of the application.

A. *Relation to Master Plan*

1. In determining whether to approve a Preliminary Plan, the Planning Board must consider the applicable Master Plan, Sector Plan, or Urban Renewal Plan. A Preliminary Plan must substantially conform to the applicable Master Plan, Sector Plan, or Urban Renewal Plan, including maps and text, unless a Site Plan is not required under Chapter 59, Article 59-7.3.4 and the Planning Board finds that events have occurred to render the relevant Master Plan, Sector Plan, or Urban Renewal Plan recommendation no longer appropriate.
 - a. A Preliminary Plan that requires a Site Plan approval under Chapter 59, Article 59-7.3.4 may exceed any dwelling unit per acre or floor area ratio (FAR) limit recommended in a Master Plan or Sector Plan as provided in Chapter 59 to permit construction of all MPDUs under Chapter 25A, or workforce housing units required under Chapter 59 or Chapter 29A.

B. *Block Design*

1. Residential blocks. The Planning Board must approve the length, width and shape of any residential block as follows:
 - a. Length. The length of a residential block must be compatible with existing development patterns and the land use goals for the area of the subdivision. The maximum length of a block is 1,600 feet.

- b. Width. Blocks must be designed with sufficient width to provide 2 tiers of lots. Exceptions to block width design may be approved by the Planning Board for blocks adjacent to heavy traffic ways, railroads, streams, drainage courses, or for land uses where it is appropriate to establish blocks with 1 tier of lots.
 - c. Pedestrian paths. The Planning Board may require paths for pedestrian access to schools, playgrounds, parks, and other public areas and through long blocks.
 - d. Multi-Unit or Apartment Blocks and Access Roads. The design and arrangement of access roads or drives within a subdivision for apartment dwellings, together with the required parking facilities and pedestrian walks, must be reviewed and approved by the Planning Board. Determination of whether interior access roads will be dedicated to public use or may be private roads will be made by the Planning Board, considering the recommendations of applicable agencies.
2. Nonresidential blocks. Blocks designed for business or industry must be a suitable length and width as determined by the Planning Board, including adequate provision for pedestrians, parking, deliveries and truck maneuvering.

C. *Lot Design*

- 1. General requirements
 - a. Lot Dimensions. Lot size, width, shape and orientation must be appropriate for the location of the subdivision, and for the type of development or use contemplated considering the recommendations of the Master Plan and the applicable requirements of Chapter 59.
 - b. 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 created by a record plat and be made available for public use through an access easement.
 - i. The Planning Board may approve a maximum of 2 lots that do not abut a public or private road if the lots will be served by a private driveway that serves no other lots without frontage.
 - ii. The Planning Board must find that access to lots with no road frontage is adequate to serve the lots for emergency vehicles, for installation of public utilities, and the lots are accessible for other public services, and are not detrimental to future subdivision of adjacent lands.
 - c. 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.

- d. Through Lots. Through lots, must not be approved except where unusual topography, orientation or the size of the subdivision permit no other feasible way to subdivide.
 - e. Alley or Pedestrian paths for Residential Lots. If a mid-block alley or pedestrian right of way is provided in a residential subdivision, the lots adjoining the alley or right of way must be increased in width sufficient 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.
1. Master Planned Sites. When a tract being subdivided includes a proposed site for a park, playground, school or other public use recommended in the applicable Master Plan, and that use is deemed necessary by the Planning Board and applicable public agency, the site for the use must be shown for dedication or acquisition on the Preliminary Plan and subsequent record plat. Land that is not dedicated may be acquired by donation, purchase, or condemnation, or reserved as provided in Section 4.3.D.5.
 2. Local recreation. The Planning Board must require platting and dedication to public use of adequate spaces for recreation wherever it is reasonable to do so considering the recommendations in the applicable Master Plan, the circumstances existing where a subdivision is located and the size and character of the subdivision. The subdivider may be required to provide what is determined by the Planning Board to be an area relevant to the recreational needs of the present and future inhabitants of the subdivision. Whenever the necessary recreational area is larger than the subdivider is required to dedicate, the balance of the needed area must be reserved for a period of 3 years pending acquisition by the appropriate agency.
 3. Area for public roads and associated utilities and storm drainage.
 - a. Roads. In its consideration of the approval of a subdivision, the Planning Board must require dedication and platting of adequate area to provide public roads and other public transportation facilities. These must be coordinated with other existing, planned, or platted roads, other features in the district or with any road plan adopted or approved as a part of the Commission's General Plan.
 - b. Rights-of-Way and Easements Other Than Roads. The Planning Board may require dedication to public use of rights-of-way or platting of easements necessary for public uses, such as pedestrian paths, equestrian trails, bicycle infrastructure (including but not limited to bikeways and bike-share facilities), water and sanitary sewer, and storm drainage facilities. The Planning Board must approve the extent, location, and width of each pedestrian path, equestrian trail, and bikeway right-of-way after considering the Master Plan.

The extent and width of water and sanitary sewer rights-of-way must be determined by the Washington Suburban Sanitary Commission in its jurisdiction. The extent and width of drainage rights-of-way must be determined by the Department of Permitting Services after receipt of drainage studies prepared by the applicant's engineer.

4. Areas not suitable for public use.
 - a. When a Preliminary Plan includes a proposed dedication of land to public use, the Planning Board must determine if the land is suitable for the intended public use. In its evaluation, the Planning Board must consider, among other relevant factors, any criteria for the intended use adopted by the receiving agency, the natural features of the site, and the extent of site preparation work. Site preparation may include excavation of rock, excessive grading, grading of steep slopes, remedial environmental measures and similar work, required to prepare the site for the public use. In evaluating the natural features of a site, the Planning Board may require the applicant to perform soil borings or to provide other detailed topographical or subsurface information not otherwise submitted under Section 4.1.B. Information provided to the Planning Board must be certified by the applicant's engineer. Factors relevant to a determination of the magnitude of site preparation work include estimated costs, acreage, agency experience with similar sites and construction industry practices.
 - b. Based on the analysis, the Planning Board may deem a site unsuitable and either refuse to approve the dedication, require the rearrangement of lots in the subdivision to provide for a suitable site, permit the applicant to pay for additional site preparation that makes the site suitable for the public use or permit the applicant to provide an alternative location offsite.
5. Reservation
 - a. Procedure. When the Planning Board has determined that a tract being subdivided includes land that is necessary for public use, but will not be acquired by donation, dedication, purchase, or condemnation when the plat is recorded, the Planning Board must determine the need to reserve the land. Reservations for 3 years or less may be required for road rights-of-way, public school and building sites, parks, playgrounds, recreational areas or other public purposes.
 - i. Referral to Agency Concerned With Acquisition. If a reservation of land appears to be in the public interest, the Planning Board must refer the plan to the public agency concerned with acquisition for consideration and report. The Planning Board may propose alternate areas for such reservation and must allow such public agency 30 days for reply. The

agency's recommendation, if affirmative, must include a map showing the boundaries and area of land to be reserved and an estimate of the time required to complete the acquisition.

- ii. Resolution. Declaration of public reservation must be by resolution of the Commission, stating the period during which the reservation is effective. Notice of the same must be carried once each in two newspapers of general circulation in the County and a plat must be recorded in the land records of the County showing in detail the land so reserved. Certified copies of the resolution must be sent to the property owner and to the agency concerned with acquisition.
 - iii. Taxes. The Planning 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.
 - iv. Preservation. During the reservation period, a person must not erect a building or structure on the reserved land. A person must not remove or destroy trees, topsoil or cover; grade; build a storm drainage structure that discharges water on the reserved land, except according to a storm drainage plan approved by the Department of Permitting Services or the Department of Transportation; or put reserved land to any use, except after written approval of the Planning Board. Nothing in this Section prohibits the owner from removing weeds or trash from reserved land or from selling the reserved land after approval of the Planning Board.
 - v. Posting. The Planning Board must post properties in reservation with an appropriate sign, warning against violation of the preservation provisions and the penalties for a violation.
- b. Expiration of plan. The expiration or revocation of approval of a Preliminary Plan must not affect a reservation if, before the expiration date, a reservation plat has been recorded in the Land Records.

E. *Roads*

1. Plan requirements.

- a. Master plan roads. Preliminary plans must include roads shown on any adopted Master Plan of Highways, in satisfaction of the Road Design and Construction Code. Where applicable, an approved plan must include recommendations of the State Highway Administration for construction and access to State roads.

- b. Continuation of roads. The subdivision must provide for continuation of any existing roads (constructed or recorded) that satisfy the Road Design and Construction Code, unless otherwise determined by the Planning Board.
 - c. Future subdivisions. A tract in a Preliminary Plan application must be divided to not preclude future road openings and further logical subdivision of adjacent land.
 - d. Alleys. The Planning Board may require alleys where they are necessary to provide access.
 - e. Railroad crossings. A Preliminary Plan involving new or existing roads crossing railroad tracks must provide an adequate right-of-way, including approach right-of-way and slope easements, for construction of an underpass or overpass unless otherwise determined by the Planning Board.
 - f. Residential roads paralleling railroads. A residential road paralleling a railroad must be located at least 160 feet from the track to provide lots with sufficient depth backing to the railroad right-of-way.
 - g. Railroad tracks. Existing railroad tracks must not be included within the rights-of-way of roads, except for crossings or rail transit lines outside the paved traveled portion of the road.
2. Design standards.
- a. Right-of-way: Area for a road on a subdivision plan must include the full width of all rights-of-way recommended for the applicable road classification in Chapter 49.
 - i. The Planning Board may approve a narrower than standard road right-of-way if the Planning Board finds that a narrower right-of-way is environmentally preferable, improves compatibility with adjoining properties or allows better use of the tract under consideration.
 - ii. In determining the width of a less than standard right-of-way, the Planning Board must consider:
 - (a) the amount of traffic expected to use the proposed roads;
 - (b) the maximum road right-of-way or improvement required for the proposed land use; and
 - (c) the increased traffic, travel lane, and right-of-way requirements which would be created by maximum use and development of land using the road.

- b. Slope easement. When required for construction or road maintenance, an easement for a 2:1 slope must be established along both sides of each road right-of-way for public use. The easement must be determined in coordination with the road grade approved under these regulations.
- c. New roads, sidewalks, etc. The roads, alleys, bicycle facilities, sidewalks and pedestrian ways, with drainage, street trees, and other integral facilities in each new subdivision must be designed and constructed by the subdivider as required by the Road Design and Construction Code or a municipality, whichever applies.
- d. Existing 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 the provision of sidewalks and bicycle facilities as required by the Road Design and Construction Code or by a municipality, whichever applies.
- e. Private roads. Private roads must be built to the applicable structural standard, grade and typical section based on the functional classification in Chapter 49. Private roads must conform to the horizontal alignment requirements of this Chapter. The subdivider must have a registered engineer certify to the County Department of Permitting Services that each private road has been designed to meet the structural standards required by this Section. The subdivider must then certify to the Department of Permitting Services that all construction complies with the design.
- f. Mid-block pedestrian right-of-way. The minimum right-of-way must be 20 feet for a mid-block pedestrian right of way.
- g. Drainage right-of-way. The minimum right of way must be 20 feet for an enclosed drainage right-of-way unless otherwise determined by the Department of Permitting Services.
- h. Non-through roads. The Planning Board must not approve any road that does not connect to another road at its beginning and end unless a determination is made that:
 - i. a through road is infeasible due to a property's unusual shape, size, topography, environmentally sensitive areas, or the characteristics of abutting property;
 - ii. the road provides access to no more than 75 lots;

- iii. the road is properly terminated in a cul-de-sac or other turnaround; and
- iv. the road is less than 500 feet in length measured along its centerline to the nearest through street unless the Planning Board determines that a longer length is necessary because of the unusual shape, size, topography, or environmentally sensitive areas of the subdivision.

i. Intersection

- i. Roads must be laid out to intersect as nearly as possible at right angles. The Planning Board must not approve a proposed intersection of new roads at an angle of less than 70 degrees.
- ii. Proposed road intersections must be spaced as shown in the table below, as measured from the centerline of the intersections, except in an Urban Area as defined in Chapter 49. When the Planning Board finds that a greater or lesser spacing is appropriate, the Planning Board may specify a greater or lesser spacing than otherwise required after considering the recommendation of the Department of Transportation.

| Road Type | Distance Between Intersections (FT) |
|---|-------------------------------------|
| Tertiary | 200 |
| Secondary | 300 |
| Primary and Principal Secondary | 400 |
| Business District and Industrial | 300 |
| Arterial and Minor Arterial | 500 |
| Controlled Major Highway, Major Highway and Parkway | 1000 |

- iii. Corner lots at an intersection must be truncated by straight lines joining points 25 feet back from the theoretical property line intersection in each quadrant. When more or less width is needed for safe sight distance or traffic channelization, the Planning Board may specify a greater or lesser truncation than otherwise required. Any alley intersection or abrupt change in alignment in a block must have the corners truncated sufficiently for safe vehicular turning.
- j. Horizontal alignment. In all public and private primary, secondary and tertiary residential streets and culs-de-sac, the alignment must be designed so that all deflections in horizontal alignment are accomplished through segments of circular curves properly incorporated into the design. The minimum permitted centerline radii must be:

- i. Primary roads 300 feet
- ii. Secondary roads 150 feet
- iii. Tertiary roads 100 feet

The Planning Board must specify greater radii when safety requires. A tangent at least 100 feet long must be used between two reverse curves, except in a secondary or tertiary residential street.

3. Additional roadway provisions.

- a. Road names. The Planning Board must approve any road name before it is used. The Planning Board must not approve any road name which is already used, or closely resembles any road name already used, anywhere else in the County. If a new road is an extension of or in a direct line with an existing road, the Planning Board should continue the name of the existing road.
- b. Off-site Sidewalks and Bikeways. In approving a Preliminary Plan, the Planning Board may, after considering the recommendation of the Departments of Transportation and Permitting Services, require a developer to provide a reasonable amount of off-site sidewalks, bikeways or improvements. Off-site sidewalks, bikeways or improvements may be required to provide necessary connections from the proposed development to an existing sidewalk or bikeway, an existing or proposed bus or other public transit stop, or a public facility that either exists or is recommended in the area Master Plan, that the Planning Board finds will be used by residents or users of the development, or for handicapped access. The developer must not be required to obtain any right-of-way to build or improve a sidewalk or bikeway.
- c. Rustic Roads. In approving a Preliminary Plan, the Planning Board must not require improvements that are contrary to the law or Executive Regulations governing rustic roads. The Planning Board may waive any requirement of Sections 4.3.E.2.c and 4.3.E.2.d that is incompatible with the rustic road or substitute any alternative requirement that is consistent with the goals of the rustic roads law. The Planning Board may only require those improvements that retain the significant features of the road identified by the Council for preservation. If the Planning Board is otherwise directed by this Section to require improvements that are contrary to the rustic roads law or Executive Regulations, the Planning Board must consider the recommendations of the Rustic Roads Advisory Committee and evaluate the feasibility of trip reduction and alternative road improvements to the local roadway network. If the Planning Board determines that no feasible alternative exists, it may require

improvements that are necessary for traffic safety and operational requirements.

- 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 Planning Board, Department of Permitting Services, or applicable municipality.
 - f. Storm drainage. The subdivider must grade and provide drainage structures and storm sewers according to a plan approved by the Department of Transportation and Department of Permitting Services or applicable municipality in coordination with the construction of new roads.
 - g. Street lights. The subdivider must provide street lights under the standards required by the Road Design and Construction Code. The Department of Transportation may waive any requirement under this Subsection for any new subdivision that abuts a rustic road if the requirement is incompatible with the rustic road, or may substitute any alternative requirement that is consistent with the goals of the rustic roads law.
 - h. Traffic calming. The Planning Board may require any traffic calming feature under Section 49-30 as a condition of subdivision approval.
4. Platting roads. Area for roads must be shown on a record plat to the full width of the required right-of-way. A public road must be dedicated to public use. A private road must be platted as a road parcel with an access easement for the public. In the Commercial/Residential, Employment, Industrial, and Planned Unit Development zones, a private road may be platted by an easement alone if the Planning Board finds it is necessary to permit a structure that would otherwise cross a lot line created by a road parcel.

F. *Water supply and sewage disposal facilities*

- 1. General. Before approving a Preliminary Plan, the Planning Board must consider the availability of water and sewage facilities to the subdivision. The Planning Board must rely on the recommendation of the Washington Suburban Sanitary Commission and the County Department of Environmental Protection, as applicable concerning the proper type of water supply and sewerage disposal.
- 2. Requirements

- a. The applicant must install or assure installation of any required public or private water and sewage disposal systems for each lot.
 - b. Central water and sewer systems. All lots must have access to public central water and sewer facilities, and necessary private connections to such facilities, when conditions affecting the subject property result in 1 of the following determinations:
 - i. Public water and sewer connections are available to the proposed lots for existing mains;
 - ii. Existing public water and sewer mains can be extended to serve the lots; or
 - iii. The Department of Environmental Protection determines that an interim central water supply or sewage disposal facility or both must be constructed for public health and safety, pending future extension of the Washington Suburban Sanitary Commission system or other public system.
 - c. Use of County Roads and State Roads. For locations of any private connection to the public system within County or State road rights of way, necessary permits to use public roads must be obtained from the County or state as applicable.
3. Septic Tiers.
- a. The Planning Board must review any plan that includes residential lots under the Growth Tier rules as follows:
 - i. In this Subsection:
 - (a) a major subdivision is a subdivision that would create 8 or more residential building lots; and
 - (b) a minor subdivision is a subdivision that would create 7 or fewer residential building lots.
 - b. The Planning Board must not approve any subdivision that would be served by one or more septic systems on land located in the Tier I area.
 - c. The Planning Board must not approve any major subdivision that would be served by one or more septic systems on land located in the Tier II area.

- d. The Planning 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 area.
- e. The Planning 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 Planning 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. Metal property line markers, approximately 5/8-1/2 inch in diameter and 18 inches in length, or other generally accepted survey markers, must be placed in the ground at all lot corners, intersections of roads, intersections of roads and alleys with Subdivision 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 which do not include public roads, the owner must certify to the Department of Permitting Services that all property corner markers have been set by a licensed land surveyor.
2. After road grading and paving in the subdivision and grading and landscaping of adjacent lots are completed, the licensed land surveyor who prepared and signed the plat or the licensed land surveyor's successor, if so engaged by the owner, must place the markers and monuments in the ground as specified and as certified by such licensed land surveyor on the plat. Before the County or municipality accepts any road or alley established by the plat for maintenance, 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.

H. *Stormwater management.* All stormwater management requirements must satisfy Chapter 19.

- I. *Public utilities.* Pipelines, electric power and energy lines, and telecommunications lines must be underground in all subdivisions.
 1. Installation. Underground installation of new and existing utilities is required unless the Planning Board determines that it is infeasible.
 2. Completion. The Planning Board may not approve a final plat until the developer demonstrates that the applicable utility companies or public agencies are able to provide utility service to the subdivision.

- J. *Adequate Public Facilities Ordinance (APFO)*
 1. Definitions. Words and phrases used in this Subsection have the meanings indicated in Chapter 8, Section 8-30.
 2. Applicability. The Planning Board may only approve a Preliminary Plan when it finds that public facilities will be adequate to support and service the subdivision. Public facilities and services to be examined for adequacy include roads and public transportation facilities, sewer and water service, schools, police stations, firehouses, and health clinics.
 3. Exemptions. The following are exempt from the requirements of this Subsection:
 - a. Exclusively residential development on a lot or parcel recorded by plat before July 25, 1989, or otherwise recorded in conformance with a Preliminary Plan approved before that date;
 - b. Any place of worship or use associated with a place of worship that does not generate peak hour vehicle trips that exceed the limits of the Subdivision Staging Policy traffic test; and
 - c. An addition to a school associated with a place of worship that existed before July 25, 1989, regardless of peak hour vehicle trips, is exempt from the Subdivision Staging Policy traffic test.
 4. Approval procedure
 - a. Each applicant for a Preliminary Plan must submit sufficient information for the subdivision to demonstrate the expected impact on and use of public facilities and services by the subdivision.
 - b. The Planning Board must consider the recommendations of the Executive and other agencies in determining the adequacy of public facilities and services under the Subdivision Staging Policy or other applicable guidelines.
 - c. If the Planning Board finds, under criteria and standards adopted by the County Council, that additional transportation facilities or traffic mitigation measures

are necessary to ensure that public transportation facilities will be adequate to serve the subdivision and to meet the transportation goals established by a Master Plan, Sector Plan or the Subdivision Staging Policy for that portion of the County, the subdivision plan must be subject to the execution of a Traffic Mitigation Agreement (TMAg).

5. Validity Period.

- a. 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 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, as determined by the Planning Board at the time of approval, 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, as determined by the Planning Board at the time of approval, 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, as determined by the Planning Board at the time of approval, for any plan approved after July 31, 2007, and before April 1, 2009, or after March 31, 2017.
- b. If an applicant requests a validity period that is longer than the minimum specified in 5.a., the applicant must submit a development schedule or phasing plan for completion of the project to the Planning Board for its approval.
 - i. 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, whichever is the applicable minimum, after the Preliminary Plan is approved.
 - ii. To allow a validity period longer than the specified minimum, the Planning Board must find that the size or complexity of the subdivision warrant the extended validity period and would not be adverse to the public interest. The Planning Board must condition a validity period longer than the specified minimum on adherence to the proposed development schedule or phasing plan, and may impose other improvements or mitigation conditions if those conditions are needed

to assure adequate levels of transportation or school service during the validity period.

6. Validity Period – County Arts or Entertainment Use. A determination of adequate public facilities made under this Chapter is timely and remains valid:
 - a. For 10 years after the date of the conveyance of land to the County, or possession of building space by the County for an arts or entertainment use, under a Preliminary Plan for an optional method of development project approved under Section 59-C-6.2356 of the zoning ordinance in effect on October 29, 2014.
 - b. The Planning Board must grant an application to extend the validity period established under this paragraph for an additional 5 years if:
 - i. at least 20 percent of the approved development, excluding the arts or entertainment use, either separately or in combination:
 - (a) has been built;
 - (b) is under construction;
 - (c) is subject to building permits that have been issued;
 - (d) is subject to a valid lease; or
 - (e) has had a site plan approved under Section 59-7.3.4; or
 - ii. at any time during the 24 months 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
 - iii. the applicant makes a binding commitment to the County to make a contribution, as compensation for potential loss of property tax revenues, an amount equal to \$2 for each square foot of approved taxable improvements and thereafter makes the contribution within 6 months of final approval of the extension.
 - c. The validity period is extended for the duration of any government imposed moratorium, or other government action resulting in a similar effect, that would prevent the applicant from:
 - i. completing the regulatory approvals necessary for obtaining a building permit; or

- ii. obtaining a building permit.
- d. If the applicant proposes to change a use in a project that is approved under Section 59-C-6.2356 of the zoning ordinance in effect on October 29, 2014, and the new use would have the same or lesser impact as the original determination of adequate public facilities, the adequate public facilities approval for the project remains valid.

7. Extensions

- a. Application. Only the Planning Board is authorized to 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 Planning Director if the length of the total validity period is not extended.
 - i. The applicant must file an application for extension of an adequate public facilities determination or amendment of a phasing schedule before the applicable validity period, or validity period phase expires.
 - ii. The applicant must submit a new development schedule or phasing plan for completion of the project for approval.
 - iii. For each extension of an adequate public facilities determination:
 - (a) the applicant must not propose any additional development beyond the amount approved in the original determination;
 - (b) the Planning Board must not require any additional public improvements or other conditions beyond those required for the original Preliminary Plan;
 - (c) the Planning Board may require the applicant to submit a traffic study to demonstrate how the extension would not be adverse to the public interest; and
 - (d) an application may be made to extend an adequate public facilities period for a lot within a subdivision covered by a previous adequate public facilities determination if the applicant provides sufficient evidence for the Planning Board to determine the amount of previously approved development attributed to the lot.
- b. The Planning Board may approve an amendment to the new development schedule approved under paragraph 7.a.ii., if the applicant shows that financing has been secured for either:

- i. completion of at least one new building in the next stage of the amended development schedule; or
 - ii. completion of infrastructure required to serve the next stage of the amended development schedule.

- c. Exclusively Residential Subdivisions. The Planning Board may extend a determination of adequate public facilities for an exclusively residential subdivision beyond the otherwise applicable validity period if the Department of Permitting Services has issued building permits for at least 50 percent of the entire subdivision before the application for extension is filed. The Planning Board may approve one or more extensions if the aggregate length of all extensions for the development does not exceed:
 - i. 2.5 years for a subdivision with an original validity period of 7 years or less; or
 - ii. 6 years for a subdivision with an original validity period longer than 7 years.

- d. Nonresidential or Mixed-use Subdivisions.
 - i. The Planning Board may extend a determination of adequate public facilities for a Preliminary Plan for nonresidential or mixed-use development beyond the otherwise applicable validity period if:
 - (a) building permits have been issued for structures that will generate at least 40% of the total approved peak-hour vehicle trips associated with the development;
 - (b) all of the infrastructure required by the conditions of the original Preliminary Plan approval has been constructed, or payments for its construction have been made; and
 - (c) either occupancy permits have been issued, or a final building permit inspection has been passed for:
 - (1) structures that generate at least 10 percent of the total peak-hour vehicular trips associated with the project within the 4 years before an extension request is filed; or
 - (2) structures that generate at least 5 percent of the total peak-hour vehicular trips associated with the project within the 4 years before an extension request is filed, if

structures that generate at least 60 percent of the total peak-hour vehicular trips associated with the project have been built or are under construction.

- ii. For any development that consists of more than one Preliminary Plan, the requirements in 7.d.i apply to the combined project. A project consists of more than one Preliminary Plan if the properties covered by the Preliminary Plans of subdivision are contiguous and were approved at the same time.
- iii. The length of any extension of the validity period granted under paragraph 7.d.i. must be based on the approved new development schedule under paragraph 7.a.ii., but must not exceed:
 - (a) 2.5 years for a subdivision with an original validity period of 7 years or less; or
 - (b) 6 years for a subdivision with an original validity period longer than 7 years.
- iv. The extension expires if the applicant has not timely requested an extension and the development is not proceeding in accordance with the phasing plan, unless the Planning Board or Planning Director has approved a revision to the schedule or phasing plan.
- v. In addition to the extension permitted in 7.d.iii., the Planning Board may approve one or more additional extension of a determination of adequate public facilities not to exceed a total of 2.5 or 6 years, as applicable, if:
 - (a) development that generates no more than 30% of the total peak-hour vehicular trips remains to be built of either the entire approved development or the share of the development to be built by that applicant; or
 - (b) the applicant will commit to reduce the amount of unbuilt development by at least 10%, and the validity period for the amount to be reduced will expire as scheduled.
- e. The Planning Board may extend a determination of adequate public facilities once for up to 12 more years beyond the otherwise applicable validity period if the Planning Board finds that:
 - i. the Preliminary Plan for the development required a significant commitment of funds by the applicant, amounting to at least \$2.5

million, as adjusted annually pursuant to the consumer price index from April 10, 2006, to comply with specified infrastructure conditions;

- ii. the applicant has met or exceeded the required infrastructure conditions during the original validity period; and
 - iii. the applicant's satisfaction of the required infrastructure conditions provides a significant and necessary public benefit to the County by implementing infrastructure goals of an applicable Master or Sector Plan.
- f. The validity period of a finding of adequate public facilities is not automatically extended under any circumstance, including when an applicant has completed all conditions imposed by the Planning Board at the time of Preliminary Plan approval to meet adequate public facilities requirements.
- g. If a new adequate public facilities determination is required under this Subsection, the procedures in Chapter 8, Section 8-32 apply.

K. *Environment*

1. Forest Conservation. If a forest conservation plan is required under Chapter 22A, the Planning Board must not approve a Preliminary Plan or any extension until all applicable requirements of that Chapter are satisfied. Compliance with a required forest conservation plan, including any plan reviewed on a preliminary or final basis, must be made a condition of any approved Preliminary Plan.
2. Restriction of subdivision for environmental protection
 - a. Affected land.
 - i. Floodplains. The Planning Board must restrict subdivision or development of any property that is located in the "one-hundred-year floodplain" of any stream or drainage course.
 - ii. Unsafe Land. The Planning Board must restrict the subdivision or development of any land it finds to be unsafe for development because of potential for flooding or stream erosion, soils with structural limitations, unstabilized slope or fill, steep slopes, or similar environmental or topographical conditions.
 - iii. Trees, Forests, and Environmentally Sensitive Areas. The Planning Board may restrict the subdivision or development of land to protect environmentally sensitive areas, achieve the objectives of Chapter 22A

relating to conservation of tree and forest resources, and protect any rare, threatened or endangered plants or animals.

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:
 - (a) deletion or rearrangement of proposed lots, roads, utilities, and other facilities;
 - (b) the establishment of building restriction and land disturbance limit lines, and other protective measures or conditions; or
 - (c) requirement of conservation easements, deed restrictions, or covenants over portions of lots or unplatted parcels to be recorded.
- ii. Building restriction line. A building restriction line may be used to protect floodplain and other environmentally sensitive or unsafe building areas and must be shown on the plat.
- iii. Limit of disturbance line. A limit of disturbance line may be used to protect environmentally sensitive areas or unsafe land.
- iv. Floodplain or unsafe land on a lot. The Planning Board may allow a platted lot to contain floodplain or unsafe land when there is sufficient safe ground to erect a building within the required setbacks of the zoning classification. A building restriction line may be included on the plat to provide at least a 25-foot setback between any building and the unsafe areas and a greater setback where necessary to provide positive drainage between the building and unsafe area.
- v. Regulations. The Planning Board may use regulations adopted under Chapter 22A to administer this Section.
- vi. Denial of a building permit. A building permit must not be issued for a new building within any area for which building or land disturbance is restricted under this section.

L. *Residential cluster subdivision*

1. Purpose. The cluster method of subdivision is intended to promote both flexibility in lot size and variety of housing types in residential communities without changing existing densities or neighborhood character. This method of development is also intended to

encourage the preservation of existing topography, priority forests, and environmentally sensitive areas, while providing useful community green or open space. The use of this optional method of subdivision is subject to approval by the Planning Board.

2. Conditions for use. The use of the cluster method of development is subject to the following conditions and requirements:
 - a. The requirements in Chapter 59 in the applicable zone;
 - b. Except in the Rural Cluster zone or as recommended by a Master Plan in the Residential Estate-2C zone, a cluster development must be served by public water and sewer;
 - c. Open space areas preserved by 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. Land dedicated to public use for school and park sites must be counted in the tract area for the purpose of calculating density, and the resulting density may be used in development of the remaining land when this can be accomplished in compliance with the purposes of this Section.

3. Procedure for approval.
 - a. In addition to any other required information, a Preliminary Plan must be accompanied by a statement outlining the ownership and use of the common open space within the subdivision, and a plan showing the construction staging of all improvements. The staging plan must be made part of the Preliminary Plan approval and must be subject to approval by the Planning Board.
 - b. The Planning Board must determine whether the site is appropriate for cluster development and will accomplish the purposes of the cluster method of development. In making this determination, the Planning Board must consider the following:
 - i. the influence that the proposed development may have on existing or future development in nearby areas;
 - ii. the spatial relationship between the buildings and the common open space;
 - iii. the location, character, area, and dimensions of the common open space and its usefulness for the common recreational or other purposes for its intended use;

- iv. the adequacy of the staging plan;
- v. the nature of the site; and
- vi. the use and zoning of nearby land.

Division 50.5. Pre-Preliminary Submissions.

Section 5.1 Filing and Specifications

- A. *Filing.* Before a Preliminary Plan application is submitted, the subdivider may seek advice on limited aspects of a future subdivision plan from the Planning Department staff, the Development Review Committee, or Planning Board as appropriate, or seek a binding decision from the Planning Board. The Applicant must file a Pre-Preliminary submission and applicable supporting information, together with an application form and fee under Section 4.1.A.
- B. *The Drawing.* A Pre-Preliminary drawing must contain the location of the property and sufficient information concerning the issue on which advice or a decision is requested. The drawing may include, but is not be limited to:
1. the generalized layout of the subdivision;
 2. the location and classification of roads, public rights-of-way, easements, and dedications of land;
 3. the method of controlling erosion, sediment, and stormwater;
 4. the relationship to existing or planned subdivisions;
 5. the provisions for water and sewerage; and
 6. any other features or information the applicant chooses to submit.

Section 5.2 Approval Procedure

- A. *Referral.* Application processing and referral of plan must satisfy Sections 4.1.D. and 4.2.A.

B. *Hearing Date*

The Planning Board must schedule a public hearing to begin within 90 days after the date when an application is accepted. The Director may postpone the public hearing once, by up to 30 days, without Planning Board approval. The Director or applicant may request an extension beyond the original 30 days with Planning Board approval. Any extension of the public hearing must be noticed by mail and on the hearing agenda with the new public hearing date indicated.

C. *Action on a Pre-Preliminary Submission.*

1. *Advisory.*

The Development Review Committee will provide recommendations on the Pre-Preliminary Plan on the date of the scheduled committee meeting. Recommendations provided by agencies outside of the committee meeting will be transmitted to the applicant as soon as they are received.

2. Binding.
 - a. After receiving the recommendations of the public agencies and the advice of the Development Review Committee, the Planning Department staff must present the application to the Planning Board, together with its recommendations for approval, disapproval or approval with conditions. The Planning Board must act to:
 - i. Approve the Pre-Preliminary Submission;
 - ii. Disapprove it, stating in writing the reasons for disapproval; or
 - iii. Approve it, subject to such conditions or modifications as the Planning Board finds necessary. Approval of any feature of a Pre-Preliminary Submission does not limit the ability of the Planning Board to impose further conditions at the time of Preliminary Plan on features not included in the Planning Board's binding decision.
3. Modification of Preliminary Plan procedures after Pre-Preliminary Submission approval.
 - a. An application for a Preliminary Plan must be filed within 90 days after the date of mailing of the Planning Board Resolution for the Pre-Preliminary Plan, otherwise the approval will expire.
 - b. The procedures in Sections 4.1 and 4.2 are modified as follows:
 - i. The Preliminary Plan application must contain the statement of the Planning Board's action on the Pre-Preliminary application;
 - ii. In their review of the Preliminary Plan under Section 4.2., the agencies to which the Preliminary Plan is referred, and the Planning Board's staff, must not recommend changes or modifications to the binding Pre-Preliminary decision made by the Planning Board, unless requested in writing by the applicant or unless the applicant substantially changes some feature of the approved Pre-Preliminary Submission. Any conditions imposed as part of the Board's binding decision must be reviewed to determine that they have been satisfied by the Preliminary Plan, as required in the Planning Board's resolution; and
 - iii. The Planning Board, in its review of the Preliminary Plan, must consider only those features of the Preliminary Plan that are not in conformity with the conditions imposed by the Board in the Pre-Preliminary application review, plus any features not considered or acted upon in that review.

Division 50.6. Administrative Subdivision Plan

Section 6.1 Applicability

An Administrative Subdivision Plan application may be filed instead of a Preliminary Plan under the following circumstances. The Planning Director reviews the necessary technical requirements of the Administrative Subdivision Plan under Section 4.3.

- A. *Existing Places of Worship and Institutional Uses.* 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:
1. The applicable requirements for adequate public facilities, under Section 4.3.J, are satisfied before approval of the plat;
 2. Any required road dedications, or covenants for future dedications, are shown on the record plat;
 3. Plans for meeting forest conservation, stormwater management, and environmental protection requirements, if applicable, are established before approval of the plat;
 4. If located in a special protection area, all applicable special area protection requirements and guidelines are satisfied before approval of the plat;
 5. A landscaping and lighting plan including the parking lot layout is submitted for Planning Staff approval before approval of the plat; and
 6. If the property is the subject of an approved conditional use, all conditions of the conditional use approval remain in full force and effect.
- B. *Subdivision for Creation of Certain Residential Lots Located in the Agricultural Reserve (AR) Zone.* Up to 5 lots for detached houses are permitted under these procedures in the AR zone, if:
1. Written approval for a proposed well and septic area must be received from the Department of Permitting Services before approval of the plat;
 2. Any required road dedications and public utility easements along the frontage of the proposed lots must be shown on the record plat, and the applicant must provide any required improvements;
 3. The requirements for adequate public facilities, under Section 4.3.J, are satisfied before approval of the plat;
 4. A covenant must be recorded for the unplatted balance of the tract noting that density and development rights have been used for the new lots. This covenant must be noted on the record plat for the lots;

5. Lots created in the AR zone through this procedure must not exceed an average lot size of 5 acres unless approved by the Planning Board; and
 6. Forest conservation and environmental protection requirements must be satisfied before approval of the plat.
- C. *Subdivision for Creation of Certain Residential Lots.* Up to 3 lots for detached houses are permitted under these procedures in the Residential Estate-2, Rural, Rural Cluster and Rural Neighborhood Cluster zones, or one lot for a detached house created in any residential zone by platting the entirety of one existing unplatted parcel created prior to October 8, 1985, if:
1. The lots are approved for standard method development;
 2. Written approval for any proposed well and septic area must be received from the Montgomery County Department of Permitting Services, Well and Septic Section before approval of the plat;
 3. Any required road dedications and associated public utility easements must be shown on the plat and the applicant must provide any required improvements;
 4. The requirements for adequate public facilities, under Section 4.3.J, are satisfied before approval of the plat; and
 5. Forest conservation and environmental protection requirements must be satisfied before approval of the plat.
- D. *Consolidation of Existing Lots or Parts of Lots in a Non-Residential Zone.* In a non-residential zone, a lot may be created by combining existing, adjoining lots, or a lot and a part of a previously platted lot, if:
1. The lots or parts of lots are:
 - a. created by the same subdivision and any applicable conditions of the original subdivision approval, including limits on density, remain in effect; or
 - b. created by a subdivision approval without specific density limits and the new lot is limited to the density of the existing development;
 2. Any required road dedications and associated public utility easements must be shown on the plat and the applicant must provide any required improvements;
 3. Where new development is proposed, the requirements for adequate public facilities, under Section 4.3.J, are satisfied before approval of the plat;
 4. Forest conservation, stormwater management, and environmental protection requirements, if applicable, are satisfied before approval of the plat; and

5. Where located in a special protection area, all applicable special area protection requirements and guidelines are satisfied before approval of the plat.

Section 6.2 Filing Requirements

- A. *Filing.* The Applicant must file the Administrative Subdivision Plan and applicable supporting information, together with an application form and fee to satisfy Subsection 4.1.A.
- B. *Application Processing.*
 1. The applicant must submit an initial application to the Director. The Director must review the application for completeness within 5 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale. The assessment of completeness must not address the merits of the application.
 2. The applicant must resubmit a revised application within 10 days from the date of the written rejection, or the application will be automatically withdrawn. The Director must review the revised application for completeness within 5 days after receipt.
 3. The Administrative Subdivision Plan is deemed filed when the application has been accepted as complete for review.
 4. Public notice is required under the Manual of Development Review Procedures.
- C. *The Drawing.* An Administrative Subdivision Plan must contain sufficient information relevant to the aspects of the submission. The plan must include the generalized layout of the subdivision and any other features or information needed to support submission of a plat.

Section 6.3 Approval Procedures

- A. *Referral of Plan.* Immediately after accepting an application, the Director must send a copy to the Development Review Committee and other reviewing agencies for the agency's comments concerning the plan. The Development Review Committee must provide recommendations to the Director on the Administrative Subdivision Plan before the committee meeting.
- B. *Action on an Administrative Subdivision Plan.*
 1. After receiving the recommendations of the Development Review Committee and other reviewing agencies, the Director must approve or disapprove the Administrative Subdivision Plan in writing.
 2. All necessary improvements to support the development must be completed or assured as specified in Section 10.2.
 3. If correspondence is received, the Director must decide whether any comment is substantive enough to require that the plan be acted on by the Planning Board. When applicable, the Director must schedule Planning Board action on its next available

agenda. If approved, the plan will remain valid under 4.2.G, by which time a plat must be recorded.

4. The Planning 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 Planning Board approval. The Director or applicant may request an extension beyond the original 30 days with Planning Board approval. Any extension of the public hearing must be noticed by mail and on the hearing agenda with the new public hearing date indicated.

C. *Appeal of an Administrative Subdivision Plan.*

1. Appeal to the Planning Board. After the Planning Director issues a written decision on an Administrative Subdivision Plan, an applicant or party with standing may appeal the decision to the Planning Board within 30 days.
2. Hearing. The Planning Board must hold a *de novo* hearing on the appeal. The Board must adopt a written resolution explaining its decision. For purposes of judicial review, the decision of the Planning Board is the final agency action.

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, respectively, is not required for:

- A. *Minor Lot Line Adjustment.* The sale or exchange of part of a lot between owners of adjoining lots for the purpose of small adjustments in boundaries, if:
1. The total area of the adjustment does not exceed 5 percent of the combined area of the lots affected by the adjustment;
 2. No additional lots are created;
 3. The adjusted lot line is approximately parallel with the original lot line or, if it is proposed to intersect with the original line, it does not significantly change the shape of the lots involved;
 4. The owner submits a scaled drawing for review and approval by the Planning Director. The drawing may be a copy of the existing record plat and must contain the following information:
 - a. proposed lot line adjustment as a dashed line;
 - b. any buildings, driveways, or other improvements located within 15 feet of the proposed adjusted lot line;
 - c. any minimum building setback that would be altered by the minor lot line adjustment; and
 - d. the amount of lot area affected by the minor lot line adjustment;
 5. The drawing must be approved, approved with revision, or denied, in writing, within 10 days after the drawing is submitted or it is deemed approved, if requirements 1 through 3, above, are met. A record plat application must be submitted to the Planning Director within 90 days after approval or the approval is void; and
 6. Any minor lot line adjustment between properties that occurred before May 19, 1997, remains as an exemption to platting under Subsection 3.3.B.3.
- B. *Conversion of an Outlot into a Lot.* An outlot may be converted into a lot, if:
1. The outlot is not required for open space or otherwise constrained in a manner that prevents it being converted into a buildable lot;

2. There is adequate sewerage and water service to accommodate development on the lot;
 3. All applicable requirements and/or agreements under the Adequate Public Facilities Ordinance in Subsection 4.3.J and the Subdivision Staging Policy are satisfied before recording the plat;
 4. All applicable conditions or agreements applicable to the original subdivision approval creating the outlot must apply to the new lot. The conditions and agreements may include, but are not limited to, any adequate public facilities agreement, conservation easement, or building restriction lines; and
 5. If the outlot is located within a special protection area, all applicable special protection area requirements and guidelines, including the approval of a water quality plan, 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 any conditions applicable to the original subdivision remain in effect and the number of trips generated on the new lot do not exceed those permitted for the original lots. Any required right of way dedication must be provided.
 2. By consolidating an existing platted lot or part of a lot that contains a legally constructed detached house, with a piece of land created as a result of a deed, if:
 - a. the portion of land created by deed cannot itself be platted under the area and dimensional standards of the zone;
 - b. any conditions applicable to the existing lot remain in full force and effect on the new lot;
 - c. any required road dedication is provided; and
 - d. the existing platted lot was not identified as an outlot on a plat.
- D. *Subdivision to Reflect Ownership.* Plats for further subdivision of a commercial, industrial, or multi-unit residential lot may be recorded at the owner's discretion to reflect a change in ownership, deed, mortgage or lease line as follows:
1. A plat to create or delete an internal lot to reflect a deed, mortgage, or lease line within a lot intended for commercial, industrial, or multi-unit residential uses, or a mix of these uses; or create ownership lots within a previously recorded lot, if:

- a. all conditions of approval for the original subdivision that created the lot remain in effect;
 - b. the total maximum number of trips generated on all new lots or ownership lots created will not exceed the number of trips approved for the lot in the original subdivision;
 - c. all land in the original subdivision lot is included in the plat; and
 - d. any necessary cross easements, covenants, or other deed restrictions necessary to implement all the conditions of approval on the lot in the original subdivision are executed before recording the plat.
2. For ownership lots, the lot in the original subdivision is considered a single lot of record. Any ownership lot created under this Subsection is only for the convenience of the owner; an ownership lot is not:
- a. used to determine building setbacks or to establish conformance with any other law or regulation;
 - b. a bar to receiving a building permit or other approval necessary to develop or use any of the ownership lots and structures on such lots, including structures that cross an ownership line; and
 - c. a change to any condition of approval for the subdivision that created the lot in the original subdivision.
3. Ownership lots may not be used to create the outside boundaries of a private road right-of-way parcel.
- E. *Plat of Correction.* A plat of correction may be used for the following:
1. A plat to correct inaccurate or incomplete information shown on a previously recorded plat, such as drafting or dimensional errors on the drawing; failure to include a required note, dedication, easement or other restriction; incorrect or omitted signatures; or other information normally required to be shown on a recorded plat. All owners and trustees of the land affected by the correction must sign the revised plat. In addition, the plat of correction must identify the original plat that is being replaced and contain a note identifying the nature of the correction.
 2. A plat to revise easements to reflect a Planning Board action.
 3. In order to improve clarity and legibility, the owner of any lands shown on a record plat may record an exact copy of the plat, except for necessary change of scale and the addition of any other necessary elements to make the plat conform to the requirements

of this Chapter. The new plat must indicate that it is an exact copy of the original plat except for the changes made under this Subsection.

- F. *Pre-1958 Parcels.* An unplatted parcel created by deed before June 1, 1958, if the parcel is developable for only one detached house.
- G. *Creation of a Lot from a Part of a Lot.* A part of a previously recorded lot in a Residential Detached zone that was created as a result of a deed transfer of land from the lot may be converted into a lot if:
 1. the part of lot was created by deed recorded before June 1, 1958, or
 2. the part of lot contains a legally constructed detached house ; and
 3. All conditions or agreements applicable to the subdivision approval creating the original lot apply to the new lot. The conditions and agreements may include, but are not limited to, any adequate public facilities agreement, conservation easement or building restriction lines.

Section 7.2 Procedure for Platting Minor Subdivisions

The owner 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*
 1. In the case of minor subdivisions, no additional improvements beyond those required for the original subdivision are required until new development occurs.
 2. Any lot created through the minor subdivision process and any lot replatted as part of a minor lot line adjustment must satisfy all applicable zoning requirements in Chapter 59.

Article III. Plats

Division 50.8. Plats-Generally

All subdivision of land must be recorded by plat in the County Land Records. The Clerk of the Circuit Court must record plats approved under this Chapter.

Section 8.1 Filing and Specifications

All boundaries, road right-of-way lines and lot lines, plus any other pertinent lines must be shown together with sufficient data to locate each line and property corner on the ground.

A. *Application and Fee*

1. The subdivider must file the plat drawing with the Planning Board, together with the application form, supporting information and the required plat fee. Any fees required by other County agencies in connection with their review of plats must also be paid.

B. *Specifications*

1. The Plat accompanying the application for approval must satisfy Section 8.1.C. The lack of information under any item specified or inadequate information supplied by the applicant may be cited by the Planning Board as cause for disapproval of a plat.
2. The Planning Board may approve guidelines for the preparation of a Record Plat.

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 Planning Board, and must include the following items:

1. Title Block. The title block must appear in the lower right-hand corner of the sheet, and must include the following information:
 - a. The words "Subdivision Record Plat;"
 - b. Approved name of the subdivision and the section thereof, including blocks, lots, parcels, and outlots;
 - c. Election district, County and State, or name of town instead of election district, if the subdivision is in an incorporated town;
 - d. Scale of drawing;
 - e. Name of firm of licensed land surveyor who prepared the Plat and date of completion; and

- f. A description of the general purpose of the plat, including without limitation, plat of correction or resubdivision.
2. Graphic details. The plat must show the following, as applicable in each case:
- a. All property boundary lines necessary to identify the property included in the subdivision with reference to the previous conveyance by which the property was acquired. Where the subdivision is a part of such conveyance, the boundaries shown must include the last complete line touched on by the subdivision or an indicated dimension describing the remainder of the complete line. Where a subdivision includes all or parts of 2 or more conveyances, the boundaries of such separate deed descriptions must be indicated by light lines running through the subdivision, together with deed reference to each original tract or unplatted parcel;
 - b. Locations, widths and names of all road rights-of-way located in the subdivision;
 - c. Locations and widths of alley and mid-block pedestrian rights-of-way or parcels;
 - d. Existing and Proposed Encumbrances
 - i. Existing. The area and recordation reference for recorded easements or rights-of-way established for public services, conservation purposes or utilities; and other known encumbrances.
 - ii. Proposed. Sufficient dimensions to identify the location of all easements or rights-of-way to be established by the plat and, as to each such encumbrance, the general purpose, and the grantee.
 - iii. Environmental. Any conservation easement must be shown and described, in addition to any 100-year floodplain and 100-year floodplain building restriction line;
 - e. Any areas to be reserved for common use by residents of the subdivision or for general public use, with the purposes indicated;
 - f. Bearings and lengths of all block and lot lines, together with the length of radii, arcs and chords with chord bearings and central angles for all curves in the layout. A curve table must be used containing these data and referenced to the overall curves shown in the drawing.
 - i. All bearings shown on plats must be referenced to the Maryland Coordinate System and the survey must be accurately referenced to such system using conventional survey methods or other technology acceptable to the Planning Board, except that:

- (a) a plat of resubdivision requiring no Preliminary Plan approval and Plats of correction may be referenced to the Plat Meridian used on the original Record Plat.
- ii. In all cases, the meridian used must be noted alongside the north arrow, which is required to be shown on each plat;
- g. Maryland coordinate values, tied to the Maryland Coordinate system, for at least 4 corners of the plan of subdivision shown on the plat must be shown unless the survey is referenced to a Record Plat Meridian. The identification names or numbers and coordinate values for the control stations used must be shown. Coordinate values and distance dimensions on plats must be expressed in feet based on the United States Survey foot;
- h. The location and nature of existing property corner markers found that coincide with property corners held referenced on the plat must be labeled as such;
- i. Lots numbered in sequential order. In tracts containing more than one block, the blocks must be lettered in alphabetical order. In case there is a resubdivision of lots in any block, such resubdivided lots must be numbered sequentially, beginning with the number following the highest lot number in the block and the original lot lines shown dashed and original lot numbers shown dotted;
- j. Area in square feet, or other units shown on the plat, of each lot, outlot, parcel, or land dedicated to public use;
- k. Building setback lines, shown graphically with dimensions, where they exceed the minimum required in Chapter 59, and any other building restriction or limit of disturbance lines which may apply;
- l. Bearings and lengths of tie connections between all blocks and the plat boundary;
- m. Names and locations of adjoining subdivisions with lot and block numbers of immediately adjoining lots, together with plat references;
- n. Location and apparent ownership of adjoining unsubdivided property with land record reference, or County Register of Wills or equity case references;
- o. Vicinity map showing location of subdivision. In the case of a large subdivision requiring multiple plats, a key map must be included to show the location of the plat relative to the entire subdivision;
- p. Bar scale;

- q. A note stating that the lots shown will have public water and sewer, or have been approved by the Department of Permitting Services for the installation of individual water supply systems and/or individual sewerage disposal systems;
 - r. For lots developed using transferable development rights, a statement concerning the number of development rights transferred, and the following information:
 - i. the number of development rights transferred, and the serial numbers of the development rights transferred;
 - ii. liber and folio reference to the transfer of development rights easement; and
 - iii. a notation of the recordation reference of a conveyance required by Section 59-4.9.15, as amended;
 - s. File number of the Preliminary Plan and, as applicable, the file numbers of the Site Plan and Project or Sketch Plan upon which the plat is based;
 - t. Tax map reference;
 - u. A table containing the total number and area in square feet of lots, outlots or parcels included on the plat and areas dedicated to public use; and
 - v. Any other element for inclusion on the plat that is authorized by law, regulation or Planning Board guideline.
3. Surveyor Certificate. Certificate by the licensed land surveyor in a form required by the Planning 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 Planning Board, adopting the plat, establishing slope or conservation easements, building restriction lines or limit of disturbance lines that are required to be drawn or noted on the plat per the conditions of approval of the Preliminary Plan and dedicating to public use roads, streets, alleys, walks, utility and storm drainage rights of way, parks, and other areas approved for dedication to public use by the Planning Board. The owner must certify that a licensed land surveyor will be engaged to set all property corner markers under Subsection 4.3.G.
 5. Title information notice. A statement indicating that the plat does not show every matter affecting or restricting the ownership and use of the property, and does not replace an examination of title or to depict or note all matters affecting title.

6. Approval Box. An approval box in a form required by the Planning Board must be provided. The box must provide approval space for the County Planning Board and County Department of Permitting Services.
- D. *Multiple Plats for a Single Subdivision.* A plat may include only a portion of the approved Preliminary Plan if the portion covered is in substantial compliance with the approved staging schedule. The public improvements to be constructed in the area covered by the plat must be sufficient by themselves to support the development and to provide adequately for the health, safety and convenience of the present and future residents and for adequate access to contiguous areas, schools and other public sites. Any plat filed under this Subsection must show any dedication to the intersection of all roads abutting corner lots.
- E. *Other Supporting Information.* The following supporting information is also required with the plat application.
1. Documents and plans.
 - a. Copies of all resolutions of approved sketch, project, preliminary, and site plans upon which the plat is based.
 - b. Copies of any covenants, restrictions or joint-use and maintenance agreements that are in effect, or may be recorded as part of the subdivision, must be filed with the Planning Board, together with any other supporting plans or documents required under this Chapter, Chapter 22A and other applicable laws or regulations.
 - c. Copy of approved, preliminary or final forest conservation plan, as appropriate, or exemption letter.
 - d. Such other information required by the applicable resolutions of the Planning Board as a condition of approval of the Preliminary Plan, Project Plan, Sketch Plan or Site Plan or listed in the plat application form.
 2. Preliminary plans using transfer 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 not be approved until the sewer category has been reconfirmed by the County Council.
 3. Submission of digital plat data. Digital plat data in a format approved by the Director must be submitted.
 4. Plat for a Cluster Subdivision.
 - a. Any plat for a cluster subdivision must be accompanied by covenants, agreements or other documents, showing the ownership and method of

maintenance and use of areas that are declared to be open space for common use, which may limit public access. Development, construction or other rights in the open space areas must be limited to the indicated recreational or scenic uses only. Covenants or agreements must be in perpetuity and must include necessary public utility easements.

- b. Plats may be submitted in phases; however, density on any one plat may not exceed 115 percent of the allowed density of the area included on the plat.
- c. Plats must contain a statement stating that the land shown on the plat lies within an approved cluster subdivision and resubdivision that would result in the creation of additional lots is not permitted after the property is platted.
- d. Covenants or joint use and maintenance agreements affecting the common lands must be recorded simultaneously with the plat.

F. *Application Processing*

- 1. The applicant must submit a plat application to the Director. The Director must review the application for completeness within 5 days after receipt. An application is incomplete if any required element is missing. The assessment of completeness must not address the accuracy of any of the elements or the merits of the application. The Director has the authority to reject the plat application if it does not contain the required information. The rejection must be in writing and specify the deficiencies.
- 2. The applicant must resubmit a revised plat application within 10 days from the date of the written rejection, or the application will be automatically withdrawn.

Section 8.2 Approval Procedure

- A. *Referral of the Plat Application.* After accepting a plat application, the Director must begin review and send a copy to each agency that has review authority for roads, utilities, or other public services that will serve the proposed subdivision, for the agency's recommendation concerning the plat.
- B. *Review and Recommendation.* The Director and other reviewing agencies must submit final recommendation on the plat application within 90 days after the date the application is accepted.
- 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 the Preliminary Plan as approved by the Planning Board; except, the Planning Board may allow for minor modifications from the Preliminary Plan which, in its opinion, do not alter the intent of its previous approval.

2. In those situations where a Site Plan is required, the Planning Board may refuse to approve a plat until a Site Plan is approved under Section 59-7.3.4.
- D. *Road and Storm Drain Plans.* Before submitting a final plat, the applicant must obtain approval from the appropriate agency of the following plans:
1. Final grade and profile plan for roads and pedestrian paths, except where the grades of the roads have already been established.
 2. A storm drainage concept plan.
- E. *Final Plat.* The applicant must submit a final plat legibly printed in black ink on Mylar (plastic sheet) or other form approved by the Director that incorporates the recommendations of the reviewing agencies.
- F. *Planning Board to act within 30 days.* The Planning Board must act to approve or disapprove a final plat within 30 days after its submittal; otherwise, the plat will be deemed approved. The applicant may waive this requirement and consent to an extension. If the plat is disapproved, the reasons must be stated in the minutes of the Planning Board and provided to the applicant.
- G. *Planning Board may hold hearing on any plat.* The Planning Board may, upon its own motion, hold a hearing before acting upon any plat, at a time and place and with notice required by the Planning Board's Rules of Procedure.
- H. *Planning Board may give conditional approval.* In the case of a plat requiring additional supporting data, the Planning Board may give conditional approval requiring the applicant to provide the Planning Board with the supporting data.
- I. *Signing.* A plat must be signed by applicable County agencies with review authority before Planning Board action on the plat, and signed by the authorized officers of the Planning Board after the Planning 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.*
1. The Planning Staff must reproduce a sufficient number of copies of an original approved plat for applicable local agencies and the plat preparer.
 2. The official seal of the licensed land surveyor who prepared the plat must be impressed upon the original approved plat and reproductions.
- B. *Recordation.* The reproductions required by the Clerk of the Circuit Court must be transmitted with the appropriate recording fee within 7 days following completion of processing for recordation in the land records. Once recorded, the original approved plat must be filed in the

vault provided by the Commission and remain there at all times unless required by court order as an exhibit.

- C. *Indexing.* The Clerk of the Circuit Court must record the plat and enter it in the general index of the land records. All plats filed and recorded must be indexed both in the name of the subdivision and the name of the owners signing the plat.
- D. *Effect of filing.* Plats, when filed and recorded under this Chapter, constitute a part of the land records of the County and have the same effect as properly recorded deeds.

Section 8.4 Abandonment of Land Dedicated for Public Use

- A. *Land Dedicated to the County for Public Use.* When a record plat contains land dedicated to the County for public use, the dedication must be in perpetuity and must not be altered or taken for private use. However, the person who originally filed the plat, any successor in interest, or the County may petition to abandon any land dedicated under this Subsection. Abandonment of all or part of the dedicated land may be authorized by:
 - 1. the County Council under Section 49-63 if the land has been in public use; or
 - 2. the Planning Board under Section 49-68 if the land has not been in public use.
- B. *Land Dedicated to Other Public Entity.* Land dedicated to a public entity other than the County, including the Commission, may be abandoned according to procedures adopted by or applicable to that public entity.

Article IV. Administration.

Division 50.9. Waivers from this Chapter

Section 9.1 Authority of Planning Board

The Planning Board may grant a waiver from a requirement of this Chapter after making the required findings.

Section 9.2 Application

A request for a waiver must be submitted to the Planning Board in writing, stating all facts supporting approval of a waiver.

Section 9.3 Findings

- A. To grant a waiver, the Planning Board must find that:
1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;
 2. the intent of the requirement is still met; and
 3. The waiver is:
 - a. the minimum necessary to provide relief from the requirements; and
 - b. consistent with the purposes and objectives of the General Plan.

Section 9.4 Conditions

The Planning Board may condition the waiver approval.

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. Those agencies must submit any report and recommendation to the Director within 20 days after receiving the request, or the recommendation must be treated as favorable.
- B. The Director must publish a report and recommendation at least 10 days before the scheduled Planning Board hearing. A waiver request filed under this Section, may be used as grounds for a request to extend the time requirements in Sections 4.2 and 8.2.
- C. Resolution. The decision of the Planning Board must be by a resolution approved by a majority of those voting.

- D. Non-waiver of other ordinances. When granting a waiver, the Planning Board must not change any other requirement of law.

Division 50.10. Administrative Procedures

Section 10.1 Regulations.

The Planning Board may adopt regulations and necessary procedures under Method (2) to administer this Chapter.

Section 10.2 Bonding and Surety

- A. Guarantee of Completion of Improvements before Recording Final Plat
1. Before plat recordation, the Planning Board or applicable public agency must certify 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.
 2. As an alternative to the requirements of Subsection 10.2.A.1, if approved by the applicable public agency, a public improvement agreement may be executed between the applicant and the agency to ensure completion of public improvements.
 3. When the subdivider or developer is required by regulations of the Washington Suburban Sanitary Commission to record a final plat dedicating public roads in excess of a current building phase in order to obtain installation of water and sewer to the site, surety as required by the Road Design and Construction Code for road improvements for such excess platting may be delayed as approved by the applicable County agency under the approved timing sequence of the proposed development.

Section 10.3 Establishment of Adequate Public Facilities Guidelines

- A. The Council must establish by resolution, after public hearing, guidelines to determine the adequacy of public facilities and services. A Subdivision Staging Policy approved by the Council may serve this purpose if it contains those guidelines. To provide the basis for the guidelines, the Planning Board and the County Executive must provide the following information and recommendations to the Council:
1. The Planning Board must analyze current growth and the amount of additional growth that can be accommodated by public facilities and services. The Planning Board must also recommend any changes in Preliminary Plan approval criteria it deems appropriate; and
 2. The County Executive must comment on the Planning Board's analyses and recommendations and recommend criteria to determine the adequacy of public facilities.

Section 10.4 Establishment of a Development Review Committee

The Planning Board must establish a review committee consisting of Planning Department staff and staff of any County, State, and Federal agency; municipality; and utility companies to which a plan has been referred. The committee must meet with applicants and other interested persons to facilitate agency

review of the plan, and may reconcile conflicting requirements by different agencies. Each reviewing agency must designate a representative to the committee. For the purpose of plan review, the head of any participating County agency must delegate authority to a representative to speak for the agency.

Section 10.5 Establishment of Fees

The Planning Board must approve by resolution the fees necessary to cover the cost of administering this Chapter.

Section 10.6 Enforcement of Chapter

A. *Notice of Violation*

1. The Director may issue a notice of violation to a person whom the Director believes committed a violation of a Planning Board action or this Chapter. A notice of violation 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.
2. The notice of violation must contain at least the following information:
 - a. the name of the person charged;
 - b. the nature of the violation;
 - c. the place where and the approximate date when the violation occurred; and
 - d. a statement advising the alleged violator of the corrective or remedial action which must be taken and the date by which the corrective or remedial action must be completed. The corrective or remedial action may include a meeting with Commission staff to establish a compliance plan.

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 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.
2. The administrative citation must contain at least the following information:
 - a. the name and address of the person charged;
 - b. the nature of the violation;

- c. the place where and the approximate date when the violation occurred;
- d. the amount of fine assessed;
- e. where, when, and to whom the fine may be paid; and
- f. a statement advising the violator of the right to a hearing before the Planning Board or its designee.

C. *Notice of Hearing*

- 1. The Director may issue a notice of hearing to a person whom the Director believes committed a violation of a Planning Board 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.
- 2. The notice of hearing must contain at least the following information:
 - a. the name of the person charged;
 - b. the nature of the violation;
 - c. the place where and the approximate date when the violation occurred; and
 - d. a statement advising the alleged violator of the date, time, and location of the hearing before the Planning Board or its designee.

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.
- 2. The fine for each violation of a Planning Board action is the maximum allowed by the Land Use Article § 23-505 of the Maryland Code for each day that the violation continues.
- 3. Each day that a violation has not been corrected is a separate violation, and the applicable fine may continue to accrue each day until the violation is corrected without issuing a new citation each day.
- 4. In addition to any other remedy under this Article, a person who violates this Chapter, a Planning Board action, any applicable regulation or any associated agreement or restriction, may be subject to an administrative civil penalty. The administrative civil penalty must not exceed 150 percent of the estimated cost to bring the violation into compliance.

5. In setting the amount of the administrative civil penalty, the Planning Board or its designee must consider:
 - a. the willfulness of the violation;
 - b. the degree of deviation from the approved Planning Board action;
 - c. the cost of any needed corrective action or restoration;
 - d. any adverse impact on the immediate neighborhood and the larger community;
 - e. the extent to which the subject violation is part of a recurrent pattern of the same or similar violations committed by the violator;
 - f. any economic benefit that accrued to the violator or any other person as a result of the violation;
 - g. the degree of cooperation shown, or voluntary mitigation measures taken, by the violator;
 - h. the extent to which any other person contributed to the violation;
 - i. the impact, if any, on the violator's ability to perform corrective actions because of a change in ownership of the property; and
 - j. any other relevant factor.
6. The Planning Board, after a public hearing on the violation, must adopt a resolution specifying the amount of any administrative civil penalty and the Planning Board's reason to impose the penalty.

E. *Nonpayment of Fine*

1. If a person who receives an administrative citation does not pay the fine by the administrative citation's due date or file a request for hearing, a notice must be sent to the person's last known address. If the administrative citation is not satisfied within 15 days after the notice is issued, the recipient is liable for an additional fine, as specified in the notice. The additional fine must be less than twice the original fine.
2. If the fine due is not paid within 35 days from the date the notice is issued, the Planning Board may schedule and hold a hearing.

F. *Hearing*

1. A person who receives a citation imposing a civil fine may elect a hearing before the Planning Board or its designee by filing a written request for hearing with the Director. The request for a hearing must be received by the Director within 15 days after the

administrative citation was issued. The filing of a request for a hearing does not stay an administrative order to stop work, stabilize a site, or stop a violation.

2. If the Director receives a request to hold a hearing under this Article, the Director must promptly schedule a hearing, unless the requestor consents to a delay, and must issue a notice of hearing.
3. The Planning 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. The hearing officer must submit the required report and recommendation to the Planning 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.
4. After holding the hearing, the Planning Board may impose any civil fine or administrative civil penalty authorized by this Section, and also may:
 - a. suspend or revoke the plan that is the subject of a Planning Board action;
 - b. approve a compliance program that lists each remedial action that must be taken;
 - c. require the violator to post a bond or other surety to guarantee completion of a compliance program;
 - d. allow the violator to propose modifications to the plan; or
 - e. take any combination of these actions.
5. All fines, penalties, or forfeitures collected by the Planning Board under this Section must be remitted to the Planning Board and placed in the general funds available for use by the Planning Board.
6. The Planning Board may spend funds from fines and penalties for project corrections, plan enforcement, or other Planning Board purposes. The Planning Board, in its sole discretion, may spend collected fines or penalties to perform or correct some or all violations noted in an administrative citation without obligating the Planning Board, instead of the person responsible, to correct any violation.

G. *Enforcement rules; Conduct of Hearing.*

1. The Planning Board must:
 - a. adopt rules to administer and enforce this Section as a method (2) regulation, subject to Council review under Chapter 2A, Section 15; and
 - b. conduct any proceeding under this Section as provided in those rules.

H. *Stop Work Order.*

1. The enforcement agent may issue a stop-work order if the enforcement agent reasonably finds that:
 - a. a person is violating any element of a Planning Board action; and
 - b. the violation threatens or may threaten the public health, safety, or welfare.
2. A stop-work order must include the following information as applicable:
 - a. the name and address of the person charged;
 - b. the nature of the violation;
 - c. the place where and the approximate date when the violation occurred; and
 - d. a clear statement of the action that must be taken or discontinued to cure the violation, including any requirement to prepare a plan of compliance.
3. The enforcement agent must attest to the truth of the facts and allegations in the order.
4. The enforcement agent must prominently display the order near where the violation has occurred. In addition, the enforcement agent may deliver or mail a copy of the order to the last known address of the person who secured approval of the Planning Board action.
5. When a stop-work order is posted, the recipient must immediately discontinue any further work activities until the order is rescinded. A stop-work order suspends the Planning Board approval of the entire underlying plan, unless:
 - a. the Planning Board approves phasing of the project; and
 - b. the enforcement agent finds that the violation involves only:
 - i. one or more phases of a project, but not other phases of the same project; or
 - ii. activities on a single lot or parcel.

In these instances, the order may only suspend the Planning Board's approval as it relates to those phases or lots where the violation exists.

6. The recipient of a stop-work order may request a hearing to contest the validity of the order. If the enforcement agent finds that a hearing before the Planning Board is not practical in a reasonable time, the Chair or Vice-Chair of the Planning Board may review the order. A determination by the Chair or Vice-Chair has the same effect as if the Planning Board reviewed the order. The Planning Board or Chair, if applicable, must

review the order *de novo*. If the violation is corrected and a plan of compliance prepared by the recipient of the order before the hearing is confirmed by the enforcement agent, the hearing must be cancelled.

7. At the Planning Board hearing, the enforcement agent must justify to the Planning Board the grounds and reasoning to issue the order. The recipient must explain why the order should be discontinued, and may propose a plan of compliance indicating how and when the violations will be corrected. The Planning Board must decide if the order should be continued, modified or rescinded, and if a plan of compliance should be approved. The Planning Board's decision that a stop-work order must continue revokes any underlying Planning Board approvals for the entire project or any part of the project as the Planning Board specifies until the violation is corrected.
 8. A Planning Board decision to continue or modify an order may be the subject of a petition for judicial review to the Circuit Court under the rules for the review of administrative agency actions.
 9. A stop-work order must be rescinded when the Planning Board or the enforcement agent finds that all violations specified in the order have been satisfactorily corrected, which determination must not be unreasonably withheld, or the Planning Board approves a compliance plan that addresses any uncorrected violation.
- I. *Other Remedies.* The authority in this Section to issue civil fines, administrative civil penalties and impose stop work orders are in addition to any other authority of the Planning Board to enforce its actions, including seeking injunctive, declaratory, or other relief. The decision to pursue one remedy does not preclude the Planning Board from pursuing any other available remedy.
 - J. *Authority of the Office of the General Counsel.* The General Counsel of the Maryland-National Capital Park and Planning Commission may prosecute and take any other necessary legal action regarding any violation under this Section.
 - K. *Exclusive Authority.* The Planning Board or its designee has exclusive authority to enforce violations of a Planning Board action and any violations of this Chapter. The authority granted in this Chapter supersedes any other authority to enforce a Planning Board action granted to any other County or State agency.

Section 10.7 Amendment of Chapter

The procedures for amending Chapter 50 must satisfy Section 23-104 of the Land Use Article, Maryland Code and the Council Rules of Procedure. Any bill introduced to amend this Chapter expires 18 months after its introduction if it is not approved.