

**MONTGOMERY COUNTY CODE**  
**Chapter 50**

**Chapter 50. SUBDIVISION OF LAND.**

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## **Chapter 50**

### **Article I. In General**

#### **Division 50.1. Purpose**

##### **Section 50.1.1. 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. The intent of this Chapter is to protect natural resources and sensitive environmental features, 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.

#### **Division 50.2. Defined Terms**

##### **Section 50.2.1. 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 required 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 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 this 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 single or in any combination.
- H. Use of “Includes”. “Includes” does not limit a term to the specific examples.
- I. Use of “Chapter”. Chapter means a numbered section in the Montgomery County Code.

### **Section 50.2.2. Definitions**

All terms used in this Chapter that are defined in Chapter 59 or Chapter 49 have the same meaning as the definition 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 50.5.3.F 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 Section for violating a Planning Board Action.

*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 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*: The lots contained within an 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 restricted by the Planning Board for environmental protection.

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.

*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 commercial or industrial 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 critical habitats for wildlife or plant species, slopes over 25% or over 15% with highly erodible soils, wetlands, perennial and intermittent streams, and stream valley buffers as defined in the *Guidelines for Environmental Management of Development in Montgomery County*.

F.

G.

*General Plan:* A comprehensive framework for guiding the physical development and managing limited resources in Montgomery County, Maryland. It is a policy document whose concepts are general in nature. As the County's longest-range and most visionary document, it provides a broad image of how the County will evolve in the future and establishes a frame of reference for

decisions to make that vision become reality.

H.

I.

*Improvements:* Required infrastructure needed to support the development including, but not limited to, the following: roads, alleys, grading, road pavement, curbs and gutters, sidewalks, pedestrian ways or paths, 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 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 restricting land disturbance as defined in Chapter 19.

*Lot:* An individual lot or parcel that is described by a Subdivision Record 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 50.8.1.A.4 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:* Comprehensive amendments to the General Plan that provide detailed and specific land use and zoning recommendations for specific areas of the County.

*Mid-block pedestrian right of way:* A dedicated or publicly owned right-of-way within a block intended primarily for pedestrians, which may include utilities where necessary, and from which motor vehicles are 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 before the submittal of a record plat application.

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.

*One-hundred-year floodplain:* 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 one hundred years after total ultimate development of the watershed.

*Outlot:* A piece of land shown on a record plat but which is not to be occupied by a building or otherwise considered as a buildable lot. A building permit must not be issued on any land so designated until the outlot is converted to a lot in accordance with the procedures contained in this Chapter.

*Owner:* A person or corporation holding a legal title in the land, but not including a contract purchaser.

P.

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

*Person:* An individual, partnership, corporation, organization, other entity, or combination thereof that owns property or otherwise has an interest or responsibility for property that is the subject of a Planning Board action.

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

*Plan:* "See Preliminary Plan."

*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. 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 “Subdivision Record Plat”.

*Preliminary Plan:* A plan for a proposed subdivision to be prepared and submitted for approval before the preparation of a plat.

Q.

R.

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

*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 as separate and distinct from the abutting lots or parcels. 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, 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 that Article.

S.

*Special Protection Area:* A geographic area where existing water resources or other environmental features are of high quality or unusually sensitive, and proposed land uses would threaten the quality or preservation of those resources or features in the absence of special water quality protection measures which are closely coordinated with appropriate land use controls.

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

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

T.

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

*Turnaround:* The termination of a public road in the approximate shape of a “T”, built to allow vehicles to reverse direction using a 3-point turn.

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, intended to measure and control the effect that development will have on water resources or other environmental features located in a special protection area.

X.

Y.

Z.

### **Division 50.3. General Requirements**

#### **Section 50.3.1. 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 50.3.2. Record Plat Required**

- A. Any subdivision of land must be included on a plat approved by the Planning Board and recorded before sale 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 50.3.3. Exceptions to the Requirements of this Chapter**

- A. An approved Preliminary Plan and recording of a subdivision 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.
- 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.
    - b. Conditional uses associated with agriculture, and approved under Chapter 59, unless a subdivision is required as a condition of the approval.
    - c. Any equestrian facility building on land classified in the agricultural zone (AR).
  2. Public taking. Part(s) of lots previously shown on a record plat that changed in size or shape by transfer of a 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 unplatted parcels that qualified for an exception under this Section before the transfer.
  3. Adjoining properties. Part(s) of lots 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 adjustments that were 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 lot. One detached house dwelling unit, on a parcel, not previously included on a record plat, that has not changed in size or shape since June 1, 1958, if a description and location of the parcel and proposed structure is submitted to the Planning Department sufficient to:
    - a. locate the parcel on the tax maps of Montgomery County;
    - b. 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;

- c. show that the parcel 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
  - d. show that the approval of the permit would not adversely affect the General Plan for the physical development of the Regional District.
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 which 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 locational survey drawing of the property and proposed structure at a 1 inch equals 50-foot scale that demonstrates that the additional floor area will not extend into any adopted master plan road right-of-way.

#### **Division 50.4. Administration**

##### **Section 50.4.1. Approving Authority**

The Planning Board administers this Chapter.

##### **Section 50.4.2. 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 50.4.3. Submission Procedures for Subdivision Plans**

- A. *Steps.* The Planning Board will consider subdivision of land as follows:
1. Except for a simplified or minor subdivision under Divisions 50.7 and 50.8, a complete Preliminary Plan application must be submitted with application form and fee. A Preliminary Plan is not required for a simplified or minor subdivision under Divisions 50.7 and 50.8.
  2. The final plat of all or part of an approved subdivision plan must be submitted with required supporting data and documents, application form, and 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, the Road Design and Construction Code 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 and conflicts with the proposals of a pending 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 period 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 50.5. Preliminary Plan**

Every proposed subdivision must be submitted to the Planning Board for approval in the form of a Preliminary Plan before the submission of a subdivision plat. The plan must include all maps and data needed for the Planning Board to make the findings required by this Article.

**Section 50.5.1. 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, the County, or other political subdivision, government entity or agency, or the 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 as may be required by regulations of the Planning Board. Details and information must include:

1. Scale drawing of 100 feet to the inch, or other scale which may vary due to the size of the development;
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;
5. Existing scenic or historic areas;
6. Vicinity location map; and
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;
- 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 sidewalks;
- 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. On-site sidewalks and connections to existing off-site sidewalks;
- j. 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 except one-family dwellings. The proposed use must be permitted in the zone;
- k. When the property is included in more than one zone, the lines showing the limits of each zone must be indicated; and
- l. The plan must also show all existing topography, structures, and paving within 100 feet on adjoining properties.

C. *Supporting Information*

- 1. An approved Natural Resources Inventory/Forest Stand Delineation.
- 2. A receipt from the County and other applicable agencies showing payment of any applicable fees required in connection with the County's review process.
- 3. Road Grades. Road grades shown to indicate the percentage of tangent grades, the length of crest and sag vertical curves and elevations, and in addition, elevations of all intersecting roads. Direction of water flow must also be indicated. The plan must be supported by a preliminary storm drain study prepared in accordance with the County's. Where the topography makes the determination of the adequacy of the road grades difficult, the registered surveyor or registered engineer submitting the grades is required to prove the desirability and adequacy of the proposed development of the subdivision layout with plans, profiles, or designs and certifications.
- 4. 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.
5. Phasing schedule
- a. The Preliminary Plan approval establishes the validity period for the entire project.
  - b. Where a project is proposed to be built out in phases cumulatively exceeding the validity period, 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 adequate public facilities validity period.
  - 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. For projects that require site plan review, the applicant may submit a modified phasing schedule, detailing the information required in Subsection 50.5.1.C.4.c, if the implementation of the phasing schedule will be within the validity period established in the Preliminary Plan.

- 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.
6. Transfer of Development Rights.
- a. A preliminary plan for a property located in a receiving area which proposes to increase the density of the property by using development rights must indicate:
    - i. the number of lots permitted for the tract by zoning without the use of TDR or the MPDU density increase;
    - ii. the number of development rights to be conveyed to the receiving property;
    - iii. the total density, in dwelling units, of the proposed subdivision;
    - iv. the number of moderately priced dwelling units to be provided as required by Chapter 25A; 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.
7. Draft Traffic Mitigation Agreement. A preliminary plan application for property located in a transportation management district, designated under Chapter 42A, Article II, must contain a draft traffic mitigation agreement 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, the Director will accept the application and establish a hearing date under Section 50.5.1.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 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.

**Section 50.5.2. Approval Procedure**

- A. *Referral of Plan.* After accepting an application, the Director must send a copy to the Development Review Committee and other reviewing agencies for the agency's recommendation concerning the plan. If the application will require the installation or maintenance of utilities, roads, or other public services, the Director must send copies to:
1. Washington Suburban Sanitary Commission, for water and sewer service;
  2. County Department of Transportation, for roads, streets, paths, and storm drainage;
  3. County Department of Permitting Services, for 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 before the Development Review Committee meeting.
  - b. The applicant must submit revised drawings to address the comments a minimum of 65 days before the date of the hearing. 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 an extension is not granted, the application is deemed withdrawn.
  - c. State and County agencies and utilities must submit a final recommendation on the application a minimum of 45 days before the date of the Planning Board hearing.
2. Approvals from Public Agencies. The following agency approvals are needed before the Planning Board approves the preliminary plan:
  - a. Road grade and road profile. The road and pedestrian path grades, road profile, storm drain adequacy, and sight distance 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 plan must be approved by the Department of Permitting Services;
  - c. Storm water management. A storm water management concept, if required under Chapter 19, must be approved by the 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 or any extension until WSSC provides preliminary approval of the water and sewer service layout. Compliance with the conceptually approved layout must be made a condition of any approved Preliminary Plan.
3. Director

The Director must publish a report and recommendation a minimum of 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 contrary to the purposes and other requirements of these regulations.
  2. A Preliminary Plan amendment may be acted on by the Planning Board on their Consent Agenda as provided for in the Planning Department's Development Review Manual.
  3. Where a site plan is required, the approval of the Preliminary Plan must specify that no clearing or grading can occur before approval of the site plan unless otherwise specified.
  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 specified in 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 size, width, shape, orientation, and density of the lots are appropriate for the location of the subdivision and for the type of development or use contemplated, taking into account the recommendations included in the master plan and the applicable requirements of Chapter 59;
  4. All requirements of the Forest Conservation Law, Chapter 22A are satisfied;
  5. All stormwater management and water quality 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.* Following each Planning Board meeting, every Preliminary Plan which has been approved or conditionally approved must be certified by the Director to confirm that the drawings reflect the Planning Board's approval. Any modification approved by the Planning Board will require the applicant to revise the plan before receiving the approval stamp. The approved plan will be filed in the records of the Planning Board.

**F. Plan Validity**

1. Initiation Date. The 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 of Validity Period.
  - a. Single-phase project.
    - i. A Preliminary Plan approved after March 31, 2009, and before April 1, 2015, remains valid for 60 months after its Initiation Date.
    - ii. A Preliminary Plan approved after March 31, 2015, remains valid for 36 months after its Initiation Date.
    - iii. In order for an applicant to validate the plan before the validity period expires, the applicant must have secured all government approvals necessary to record a plat, and the plat for all property delineated on the approved Preliminary Plan must have been recorded in the County Land Records.
  - 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 on a case-by-case basis after considering the size, type, and location of the project.
    - iii. The time allocated to any phase must not exceed 60 months after the initiation date for that particular phase for any Preliminary Plan approved after March 31, 2009, but before April 1, 2015, and 36 months after the initiation date for that particular phase for any Preliminary Plan approved after March 31, 2015.
    - iv. The cumulative validity period of all phases must not exceed the APFO validity period which begins on the Initiation Date of the first

Preliminary Plan approval, including any extension granted under Section 50.5.3.F.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 a plat for all property delineated on the plan or in that phase is 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.
- G. *Extension of Validity Period*
- 1. Extension Request
    - a. A request to extend the validity period of an approved Preliminary Plan that does not contain a phasing schedule must be submitted in writing and received by the Planning Board before the previously established validity period expires.
    - b. The written request must detail all reasons to support the extension request and must include a declaration that states the anticipated date for validating the plan. 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. The Planning Board may require the applicant to secure a new APFO review and approval by the Planning Board as a prerequisite or condition of its action to extend an expired plan. Only the Planning Board is authorized to extend the validity period.
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 performing 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 applicable laws or regulations 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 its staff.
5. Planning Board Action
- a. The Planning Board must determine whether a request for an extension should be granted after a public hearing for which notice was duly given. 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 not grant more time than it deems necessary for the applicant to validate its plan.
- c. The Planning Board must not grant an extension to a Preliminary Plan which has the effect of carrying the plan's validity period beyond any established APFO validity period, unless allowed by law.
- d. An applicant may request, and the Planning Board may approve, one or more extensions.
- 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 50.5.3.F.7 a must not be treated as a request for extension, but rather as an amendment or revision to the Preliminary Plan. Planning Board approval of a revised phasing schedule may have the effect of extending the validity period.

H. *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 phases not yet validated.
- 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 the project plan approval expires if the project plan expires.

I. *Revocation of approval*

1. Approval of a Preliminary Plan may be revoked by resolution of the Planning Board at any time before Planning Board approves the final plat covering the proposed preliminary plan.
2. To revoke a Preliminary Plan approval, the Planning Board must find that any 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 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 5 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 50.5.3. Technical Review**

#### *A. Relation to Master Plan*

1. In determining the acceptability of a Preliminary Plan submitted under this Chapter, 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 the Planning Board finds that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate.

#### *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 maximum length of a block is 1600 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, multi-unit or apartment, commercial or industrial areas, schools, churches, or other land uses 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, upon recommendation 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, taking into account 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 to public use or have acquired the status of a public road under Chapter 49. A private road must be made available for public use through an access easement.
  - i. The Planning Board may approve a maximum of 2 lots, including existing lots, on a private driveway and that do not abut a public or private road.
  - ii. These requirements apply only upon a finding by the Planning Board that access 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.

2. Resubdivision.

- a. **Applicability.** This Section only applies to proposed lots in the R-40, R-60, R-90, R-200, and RE-1 zones intended for detached houses and that are resubdivided from any lot, outlot, or parcel previously recorded on a plat.
  - b. **Finding.** The proposed lot(s) must be of the same character as to frontage, size, width at the front building line, and buildable area as other lots within the existing neighborhood. The narrow strip (pipe stem) of a flag lot must not be included in the lot size or buildable area for this analysis.
  - c. **Neighborhood.** For the purposes of this Section, the neighborhood includes at least all abutting and confronting lots within the same zone, and any other lots in the same zone needed to conduct a meaningful analysis.
- D. *Public Sites and Adequate Open Spaces.* A Preliminary Plan must provide 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 as 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.
  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, taking into account the recommendations included in the applicable master plan, the circumstances existing where the subdivision is located, and the size and character of the subdivision. Whenever the required recreational area involves more than a reasonable area of land, 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. The balance of such required area must be reserved for a period of 3 years pending acquisition by the appropriate agency.
  3. **Area for roads, utilities, and storm drainage.**
    - a. **Roads**
      - i. In its consideration of the approval of a subdivision, the Planning Board must require adequate area to provide roads and other 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.
      - ii. Roads must be dedicated to public use or platted as a private road parcel with a public access easement. Dedication or platting must be to

the full width of all recommended rights-of-way for all roads, including widening of any existing road, determined to be necessary and proper to accommodate the maximum development of the subject property in its present zone or a denser use shown on any adopted master plan.

- iii. In determining the rights-of-way to be dedicated, the Planning Board must relate the area of dedication to:
    - (a) The total size of the subdivision;
    - (b) The maximum road right-of-way or improvement required for that category of land use as established in the road code of the applicable jurisdiction; and
    - (c) The increased traffic, lane and right-of-way requirements which would be created by maximum utilization and development of the subject property in its present zone or a denser use shown on any adopted master plan.
  - iv. Dedication of roads must be to the full extent of the required right-of-way in each case, except those roads in 50.7.3.E.1.b.vii where dedication must be required for adequate traffic access.
  - v. When required for construction or road maintenance, an easement for a 2:1 slope must be established along both sides of each road dedicated to public use. The easement must be determined in coordination with the road grade approved under these regulations.
- 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 such public uses as pedestrian paths, equestrian trails, bikeways, 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 reviewing 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 Washington Suburban Sanitary Commission and the Department of Permitting Services after receipt of drainage studies prepared by the applicant's engineer.
4. Objection to required dedication. In the event that the applicant objects to the dedication required by the Planning Board, the applicant must file written objection within 20 days of the mailing of the Planning Board's resolution. The objection must detail what area is objected to and specific reason for such objection. The applicant

must supply competent and relevant evidence to sustain the grounds for objection. Any objection to dedication for which evidence is not adduced, must be considered to be waived by the applicant.

5. Areas not suitable for public use. Whenever a Preliminary Plan includes a proposed dedication of land to public use that the Planning Board finds is not required or not suitable for public use, the Planning Board may either refuse to approve the dedication, require the rearrangement of lots in the subdivision to provide for an acceptable site for public use, or permit the applicant to pay for additional site preparation that makes the site suitable for public use.
  - a. In determining the suitability of a site for public use, the Planning Board must consider, among other relevant factors, any criteria for the intended use adopted by the receiving agency, and the natural features of the site. In its evaluation of 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 50.5.1.B. Information provided to the Planning Board must be certified by the applicant's engineer.
  - b. The Planning Board may determine a site is unsuitable because of natural features if site preparation work for the intended public use will require significant excavation of rock, excessive grading or the grading of steep slopes, remedial environmental measures, or similar work. Factors relevant to a determination of the magnitude of site preparation work or developer cost sharing include estimated costs, acreage, agency experience with similar sites, and construction industry practices. If it appears from analysis of the Preliminary Plan that unusual and abnormally excessive grading will result from the proposed development that the Planning Board finds can be lessened by rearrangement of the subdivision, it may require such rearrangement.
6. Reservation
  - a. Procedure. Where 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 a period not to exceed 3 years 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 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 the unplatted parcel 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 Washington Suburban Sanitary Commission; 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 by the Commission.

E. *Improvements*

1. Roads

- a. Plan requirements.

- i. Master plan roads. Preliminary plans and plats must include roads shown on any adopted master plan of highways, in satisfaction of the Road Design and Construction Code, and where applicable must include recommendations of the State Highway Administration for construction and access to state roads.
  - ii. General Layout. Roads must, to the extent practicable, be laid out to encourage preservation of open spaces, tree cover, recreation areas, scenic vistas and outstanding natural topography, while providing convenient access to property and circulation through the subdivision.
  - iii. Continuation of roads. The subdivision must provide for continuation of any existing roads (constructed or recorded) to satisfy the Road Design and Construction Code, unless otherwise determined by the Planning Board.
  - iv. Future subdivisions. A tract in a preliminary plan application must be divided to not preclude future opening of roads and further logical subdivision of adjacent land.
  - v. Alleys. The Planning Board may require alleys where they are necessary to provide access.
  - vi. Private Roads. Private roads must be located within a right-of-way parcel that is separate from any adjoining lot or parcel, and not included in any other lot or parcel.
  - vii. Railroad crossings. A preliminary plan involving new or existing roads crossing railroad tracks must provide 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.
  - viii. Residential roads paralleling railroads. A residential road paralleling a railroad must be at a distance from the track sufficient to provide lots with a minimum of 160 feet depth backing to the railroad right-of-way.
  - ix. Railroad tracks. Existing railroad tracks must not be included within the rights-of-way of roads, except for crossings or rail transit lines outside paved traveled portion of the road.
- b. Design standards.
- i. Construction of new roads, sidewalks, etc. The roads, alleys, sidewalks and pedestrian ways, with drainage, street trees, and other integral



facilities in each new subdivision must be constructed by the subdivider as specified in the Road Design and Construction Code, including right-of-way width, or required by a municipality, whichever applies.

- ii. Existing Roads. In the case of a preliminary plan or simplified preliminary plan containing lots fronting on an existing state, county or municipally maintained road, the subdivider must provide, in addition to any required dedication for widening the existing right-of-way, reasonable improvement to the road in front of the subdivision, including the provision of sidewalks, necessary to serve the needs of the subdivision for access and traffic as required by the Road Design and Construction Code or required by a municipality, whichever applies.
- iii. Private roads. Private roads must be built to the applicable structural standard and typical section, including right-of-way width, based on the functional classification in Chapter 49. Private roads must conform to the horizontal alignment requirements in Section 50.5.1.E.1.b.vi. The builder 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 builder must then certify to the Department of Permitting Services that all construction complies with the design.
- iv. Mid-block pedestrian and drainage rights-of-way. The minimum right-of-way must be 20 feet for a mid-block pedestrian right of way and 10 feet (plus an additional 10 feet during the period of original construction) for an enclosed drainage right-of-way.
- iv. Culs-de-sac and turnarounds. The Planning Board must not approve any cul-de-sac or turnaround unless their use would produce an improved road layout because of the unusual shape, size, topography, or environmentally sensitive areas of the subdivision. A road that would end in a cul-de-sac or turnaround must not be longer than 500 feet, measured on its centerline to the nearest through road, unless, the Planning Board approves a greater length because of property shape, size, topography, large lot size, or improved road alignment.
- v. Intersection
  - (a) 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.

- (b) Proposed road intersections with an arterial or major highway must be spaced no closer together than 600 feet except in an Urban Area, as defined in Chapter 49. In any case where the Planning Board finds that a lesser spacing is appropriate, the Planning Board may specify a lesser spacing than otherwise required.
  - (c) 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. In any case where 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.
- vi. 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:
- (a) Primary streets . . . . . 300 feet
  - (b) Secondary streets . . . . . 150 feet
  - (c) Tertiary streets . . . . . 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.
- vii. Road rights-of-way. The Planning Board may approve a narrower than standard road right-of-way or private road parcel if the Planning Board finds that:
- (a) a narrower right-of-way or private road parcel is environmentally preferable and either improves compatibility with adjoining properties or allows better use of the tract under consideration; or
  - (b) limits on development at that site would not allow the applicant to build the required number of MPDUs on site.

- c. 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.
- d. Off-site Sidewalks and Bikeways. In approving a Preliminary Plan or site plan, the Planning Board may, with the consent 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.
- e. 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. 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 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 must, after considering the recommendations of the Rustic Roads Advisory Committee, require only those improvements that do not change the significant features of the road identified by the Council for preservation. The Planning Board may waive any requirement of Subsections b.i and b.ii that is incompatible with the rustic road or substitute any alternative requirement that is consistent with the goals of the rustic roads law.
- f. 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 simplified preliminary plan until the grade has been approved under this Chapter.
- g. Pedestrian paths. Where a pedestrian path is included in a preliminary plan or simplified preliminary plan, the subdivider must grade and construct the path according to the plan approved by the Planning Board, Department of Permitting Services, or the applicable municipality.

- h. Storm drainage. The subdivider must grade and provide drainage structures and storm sewers according to a plan approved by the Department of Permitting Services or the applicable municipality in coordination with the construction of new roads.
  - i. Street lights. The subdivider must provide street lights under the standards required by the Road Design and Construction Code, the Department of Permitting Services 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.
  - j. Traffic calming. The Planning Board may require any traffic calming feature, as defined in Section 49-30, as a condition of subdivision approval.
2. Water supply and sewage disposal facilities.
- a. Plan Requirements. Before approving a preliminary plan, the Planning Board must consider the availability of water and sewage facilities to the subdivision. The Planning Board must base its determination of the proper type of water supply and sewage disposal required upon the recommendation of the Washington Suburban Sanitary Commission and the Department of Environmental Protection, as applicable.
  - b. Design Standards
    - i. The applicant must install or assure installation of any required public or private water and sewage disposal systems for each lot.
    - ii. Central water and sewer systems. All lots must be supplied with 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:
      - (a) Public water and sewer connections are available to the proposed lots for existing mains;
      - (b) Existing public water and sewer mains can be extended to serve the lots; or
      - (c) Determination has been made by the Department of Environmental Protection 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.

- iii. 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.
- c. Septic Tiers.
- i. The Planning Board must review any plan that includes residential lots under the Growth Tier rules as follows:
    - (a) In this Subsection:
      - (1) a major subdivision is a subdivision that would create 8 or more residential building lots; and
      - (2) a minor subdivision is a subdivision that would create 7 or fewer residential building lots.
  - ii. 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.
  - iii. 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.
  - iv. 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.
  - v. 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.
  - vi. 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.
  - vii. The official map displaying the Growth Tier areas as allowed under the Maryland Sustainable Growth and Agricultural Preservation Act of 2012 is on the Planning Department website. The Council may amend the official map either by:
    - (a) adopting Tiers in a General Plan Amendment; or
    - (b) an amendment under Section 50.11.6.

The latest version of the map may be accessed from the MNCPPC website at [www.montgomeryplanning.org](http://www.montgomeryplanning.org).

3. Markers and monuments
  - a. Permanent reference monuments must be placed as required by the Planning Board. Such permanent reference monuments must be stone or concrete at least 36 inches in length and 6 inches square with suitable center point and must be set flush with the ground.
  - b. Metal property line markers, approximately three-quarters of an inch in diameter and 24 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.
  - c. After road grading and paving in the subdivision and grading and landscaping of adjacent lots are complete, 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.
4. Stormwater management. All stormwater management requirements must satisfy Chapter 19.
5. Public utilities. Pipelines, electric power and energy transmission and distribution lines, and telecommunications lines must be underground in all subdivisions.
  - a. Installation. Underground installation of new and existing utilities is required unless the Planning Board or the applicable utility company determines that it is infeasible.

- b. Completion. The Planning Board may not approve a final plat until the developer demonstrates that the applicable utility companies or public agencies will provide utility lines to serve the subdivision.

F. *Adequate Public Facilities Ordinance (APFO)*

- 1. Definitions. Words and phrases used in this Subsection have the meanings indicated in Section 8-30.
- 2. Applicability

The Planning Board must not approve a Preliminary Plan unless the Planning Board 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 Section:
  - 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, residence for religious staff, parish hall, school, or day care associated with a place of worship that does not generate peak hour vehicle trips is exempt from the traffic test; and
  - c. Additions to schools associated with a place of worship that existed before July 25, 1989, regardless of peak hour vehicle trips, is exempt from the 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. For a proposed subdivision located in a Transportation Management District designated under Chapter 42A, Article II, if the Planning Board finds, under criteria and standards adopted by the County Council, that additional transportation facilities or traffic alleviation measures are necessary to ensure

that public transportation facilities will be adequate to serve the subdivision, the subdivision plan must be subject to the execution of a traffic mitigation agreement.

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, 2015; 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, 2015.
- 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 may grant an application to extend the validity period established under this paragraph for an additional 5 years if:
    - i. at least 20% 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% 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. For each extension of an adequate public facilities determination:
  - i. the applicant must file an application for an extension with the Planning Board before the applicable validity period has expired;
  - ii. the applicant must submit a new development schedule or phasing plan for completion of the project to the Planning Board for approval;
  - iii. the applicant must not propose any additional development beyond the amount approved in the original determination;
  - iv. the Planning Board must not require any additional public improvements or other conditions beyond those required for the original Preliminary Plan; and
  - v. the Planning Board may require the applicant to submit a traffic study to demonstrate how the extension would promote the public interest.
- 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 development is not proceeding in accordance with the phasing plan unless the Planning Board 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 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 \$2,500,000 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 Section 8-32 apply.

**G. 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 requirements of that law for plan approval 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 and to achieve the objectives of Chapter 22A relating to conservation of tree and forest resources. Specific measures may also be required to 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 Simplified Preliminary 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.

If the Planning Board finds that other measures authorized by law are inadequate to provide short or long-term natural resource protection, the Planning Board may delete proposed lots.

- 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 part of a lot. The Planning Board may permit floodplain or unsafe land to be platted as a part of a lot in which there is sufficient safe ground to erect a building within the required setbacks of the zoning classification. In the event that such land is platted as a part of a buildable lot, a building restriction line must 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. Removal of building restriction line or limit of disturbance line. A building restriction line or limit of disturbance line, if included on a plat, may be removed by the recording of a new plat approved by the Planning Board if it finds that a subsequent change in conditions warrants the removal.
  - 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.
  - vii. Regulations. The Planning Board may use regulations adopted under Chapter 22A to administer this Section or adopt additional regulations under Method (2) and any other State law applicable to its rulemaking.
3. Sediment control. All Preliminary Plans and extensions of previously approved plans must provide for erosion and sediment control, as required by all applicable laws and regulations governing sediment control.
- a. A person must not clear or grade land before recording plats, without a permit from the Department of Permitting Services. The Department may issue the permit subject to any temporary easements and other conditions the Department finds necessary to inspect and enforce the performance of the erosion and sediment control measures.

- b. In the event the subdivider proceeds to clear and grade before recording any plats, without satisfying the conditions specified under paragraph 3.i, the Planning Board may revoke the approval of the Preliminary Plan or extension of a previously approved plan.

H. *Residential cluster subdivision*

1. Purpose. The cluster method of subdivision is intended to promote both flexibility and variety of housing types in residential communities without changing the existing per acre dwelling densities or the character of the neighborhood. This method of development is also intended to encourage the preservation of existing topography and environmentally sensitive areas, and to promote forest conservation under Chapter 22A 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 RC zone or as recommended by a master plan in the RE-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 and use of those areas; and
  - d. Land dedicated to public use for school and park sites may be counted in the tract area for the purpose of calculating density, if development of the remaining land 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, method of maintenance and use of the common open space within the subdivision, and a plan showing the sequential staging of construction of all improvements. The staging plan must be made an integral part of the Preliminary Plan 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 50.6. Pre-Preliminary Plan Submissions.**

### **Section 50.6.1. Filing and Specifications**

- A. *Filing.* Before the submission of a Preliminary Plan application, the, subdivider may submit a Pre-Preliminary Plan to seek advice from the planning staff, the development review committee, or the Planning Board, as appropriate, or seek a binding decision from the Planning Board. The Applicant must file the Pre-Preliminary Plan and applicable supporting information, together with an application form and fee as detailed in 50.7.1.A.
- B. *The Drawing.* A Pre-Preliminary Plan must contain sufficient information relevant to the aspects of the submission on which advice or a decision is requested before preparation and submission of a Preliminary Plan application. The plan may include, but will 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;
  6. a resubdivision analysis; and
  7. any other features or information the applicant chooses to submit.

### **Section 50.6.2. Approval Procedure**



A. *Referral of Plan.* Application processing and timing of review are in 50.7.1.D. and 50.7.2.A.

B. *Hearing Date*

The Planning Board must schedule a public hearing to begin within 90 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 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 Plan.*

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 staff of the Planning Board 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 Plan;
- 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 Plan 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 Pre-Preliminary Plan.

3. *Modification of Preliminary Plan procedures.*

- 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. When a Pre-Preliminary Plan application has been approved, or approved with conditions, the procedures required in Sections 50.5.1 and 50.5.2 must be modified as follows:

- i. The Preliminary Plan application must contain the statement of the Planning Board's action on the Pre-Preliminary Plan application;
- ii. In their review of the Preliminary Plan under 50.7.2., the agencies to which the Preliminary Plan is referred, and the Planning Board's staff, must not recommend changes or modifications in the Pre-Preliminary Plan conditions imposed by the Planning Board, unless requested in writing by the applicant or unless the applicant substantially changes some feature of the approved Pre-Preliminary Plan. The purpose of review for these conditions is 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 which are not in conformity with the conditions it imposed in the Pre-Preliminary Plan application review, plus any features not considered or acted upon in that review.

## **Division 50.7. Simplified Preliminary Plan**

### **Section 50.7.1. Applicability**

A Simplified Preliminary Plan application may be filed instead of a Preliminary Plan before submission of a plat in the instances below. The necessary requirements are reviewed under Section 50.5.3.

- A. *Existing Places of Worship and Institutional Uses.* A lot may be created if a Simplified Preliminary Plan is approved by the Director for existing facilities such as: places of worship, private schools, country clubs, private institutions, and similar uses located on unplatted parcels, provided:
  1. The requirements for adequate public facilities, under Section 50.5.3.F, are satisfied before approval of the plat;
  2. Any required road dedications are shown on the record plat;
  3. Forest conservation, stormwater management, and environmental protection requirements, if applicable, are satisfied before approval of the plat;
  4. If located in a special protection area, as shown on the approved and adopted master plan, all applicable special area protection requirements and guidelines, including the approval of a water quality plan, 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 a Simplified Preliminary Plan is submitted and approved by either the Planning Board or Director, provided:
1. Written approval for a 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;
  2. Any required road dedications along the frontage of the proposed lots must be shown on the record plat;
  3. The requirements for adequate public facilities, under Section 50.7.3.F, are satisfied before approval of the plat, and the applicant must provide any required public improvements;
  4. A covenant must be recorded for the balance of the property noting that density and development rights have been used for the new lots. Reference to 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 in size unless approved by the Planning Board in the review of a Simplified Preliminary Plan;
  6. Forest conservation and environmental protection requirements must be satisfied before approval of the plat; and
  7. 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 at a public hearing.
- C. *Subdivision for Creation of Certain Residential Lots Located in the RE-2 and Rural Residential Zones.* Up to 3 lots for detached houses are permitted in the RE-2, R, RC and RNC zones if a Simplified Preliminary Plan is submitted and approved by the Director, provided:
1. Lots may only be 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 along the frontage of the proposed lots must be shown on the plat;

4. The requirements for adequate public facilities, under Section 50.5.3.F, are satisfied before approval of the plat, and the applicant must provide any required public improvements;
5. Forest conservation and environmental protection requirements must be satisfied before approval of the plat; and
6. 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 at a public hearing.

#### **Section 50.7.2. Filing Requirements**

- A. *Filing.* The Applicant must file the Simplified Preliminary Plan and applicable supporting information, together with an application form and fee to satisfy Subsection 50.5.1.A.
- B. *Application Processing.*
  1. The Simplified Preliminary Plan is deemed filed when the application has been accepted as complete for review by the staff of the Planning Board. The staff has the authority to reject the application within 5 days of its receipt if staff finds that it does not contain the required information. The rejection must be in writing and specify the deficiencies.
  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.
  3. Public notice is required under the Manual of Development Review Procedures.
- C. *The drawing.* A Simplified Preliminary 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 50.7.3. 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.
- B. *Action on a Simplified Preliminary Plan.* After receiving the recommendations of the Development Review Committee and other reviewing agencies, the Director will act in writing on the Simplified Preliminary Plan; or when applicable in Sections 50.7.1.B and 50.7.1.C or at the Director's discretion, schedule Planning Board action on its next available agenda. If approved, the plan will remain valid as provided under 50.5.2.F, by which time a plat for the subdivision must be recorded.

**Division 50.8. Minor Subdivision****Section 50.8.1. Applicability**

The submission of a Preliminary Plan, under Section 50.5.1 and Section 50.5.2, 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 physical 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 business days after the drawing is submitted or it is deemed approved, if requirements i through iii, above, are met. A complete record plat application must be submitted to Planning Director within 90 days after approval or the approval is no longer valid; and
  6. Any minor lot line adjustment between properties that occurred before May 19, 1997, remains as an exception to platting under Subsection 50.3.2.A.4.
- 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 the property, which may be either public service and/or approved private septic system/private well;

3. All applicable requirements and/or agreements under the Adequate Public Facilities Ordinance in Subsection 50.5.3.F 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 will also 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, as shown on an approved and adopted master plan, all applicable special protection area requirements and guidelines, including the approval of a water quality plan, are satisfied before recording the plat.
- C. *Consolidation.* Consolidating 2 or more lots into a single lot or consolidating lots and an outlot into a single lot, if any conditions applicable to the original subdivision remain in full force and effect and the number of trips generated on the new lot do not exceed those permitted for the original lots.
- D. *Subdivision to Reflect Ownership.* Further subdivision of a lot intended for a commercial, industrial, or multi-unit residential use to reflect a change in ownership, deed, mortgage or lease line may be processed as follows:
1. A plat to create or delete internal lots to reflect a deed, mortgage, or lease line within a lot intended for commercial, industrial, or multi-unit residential 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; 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 subdivision 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; and
  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. *Combining a Lot and Adjoining Property.* Except in the AR zone, an existing platted lot, or part of a lot that contains a legally constructed detached house, and a piece of land created as a result of a deed may be consolidated, provided:
1. in a Residential Detached zone, the partition of land created by deed cannot itself be platted under the area and dimensional standards of the zone;
  2. any conditions applicable to the existing lot remain in full force and effect on the new lot;
  3. any required road dedication is provided; and
  4. the subject lot was not identified as an outlot on a plat.

- H. *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 will 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 50.8.2. Procedure for Platting Minor Subdivisions**

The owner of a property that satisfies the requirements for a minor subdivision under Section 50.8.1 may submit an application for record plat for approval under Section 50.9.2 and Section 50.9.3.

A. *Additional considerations*

1. In the case of minor subdivisions no additional public improvements beyond those required for the original subdivision are required until an application for a building permit is submitted.
2. Minor subdivision approvals are not subject to the resubdivision criteria of Section 50.5.3.C.2.
3. 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.
4. Lots created under the minor subdivision provisions of Sections 50.8.1.A and 50.8.1.H may not be used to establish a precedent for a resubdivision that may be filed for other properties located in the same block, subdivision, or neighborhood.

**Article III. Plats**

**Division 50.9. Plats-Generally**

All subdivision of land must be recorded by plat in the County Land Records. The Clerk of the Circuit Court for the County must receive and record the plat once the requirements of the succeeding Sections of this Chapter have been met.

**Section 50.9.1. Filing and Specifications**

All boundaries, road lines and lot lines, plus any other pertinent lines must be shown together with sufficient data, accurately calculated, to locate each line and property corner and to locate them on the ground, as required by the Planning Board.

A. *Application and Fee*



1. The subdivider must file the subdivision plat drawing with the Planning Board, together with the application form, supporting information, and the required plat fee.

B. *Specifications*

1. The plat drawing submitted with the application must be an 18-inch by 24-inch sheet, including a margin of one-half inch outside ruled border lines. After staff review, the plat must be legibly printed in black ink upon mylar or Director approved equivalent and submitted for Planning Board action and signature.
2. The Plat accompanying the application for approval must contain the graphic and descriptive items described in Section 50.9.1.C. The lack of information under any item specified or improper information supplied by the applicant may be cited by the Planning Board as cause for disapproval of a Plat.
3. The Planning Board may promulgate guidelines for the preparation of a Record Plat.

C. *Plat Drawing.* The Plat 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 plat.
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. Exact locations, widths and names of all road rights-of-way or parcels 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. Limits of all recorded easements established or rights-of-way provided for public services, conservation purposes, or utilities in the subdivision, and recordation reference.
    - 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. The most restrictive conservation easement must be shown and described, in addition to any 100-year floodplain and 100-year floodplain building restriction line;
  - e. Accurate outlines of any areas to be reserved for common use by residents of the subdivision or for general public use, with the purposes indicated;
  - f. Accurate 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. Coordinate values 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.

In addition, the identification names or numbers and coordinate values for the control stations used must be shown on the plat. Coordinate values and distance dimensions on plats must be expressed in feet based on the U.S. Survey foot;

- h. The location and nature of existing property corner markers found that coincide with property corners referenced on the plat must be designated;
- 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 of each lot, outlot, parcel, land dedicated to public use, or other unit shown on the plat;
- k. Building setback lines, shown graphically with dimensions, where they exceed the required minimum specified in Chapter 59, and any other building restriction or limit of disturbance lines which may apply;
- l. Accurate 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 reference;
- o. Vicinity map showing location of subdivision. In addition, 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 setting forth 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 TDR 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 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 acceptable to 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 approved 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 50.5.3.E.3.
  5. Title information notice. A statement indicating that the Subdivision Record Plat is not intended to show every matter affecting or restricting the ownership and use of the property, and is not intended to 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 the 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 include, or show existing dedication to, the intersection of all roads abutting corner lots.

E. *Other Supporting Data.*

1. Road grade and profile plans.
  - a. County Roads. Complete road and mid-block pedestrian path profile plans acceptable to the applicable County agency must accompany each plat submitted to the Planning Board, except in cases where the grades of the roads have already been established.
  - b. Private Roads. For private roads, complete road profile plans, in a form required by the Planning Board, must be submitted to the Planning Board for approval. Road grades must be determined by the Planning Board.
  - c. State and Municipal Roads. For state and municipal roads, complete road profile plans, approved by the applicable state or municipal agency, must be submitted to the Planning Board.
2. Storm drainage plan. Before the Planning Board approves a plat, the subdivider must furnish a storm drainage concept plan approved by the appropriate County agency.
3. 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 submitted to the Planning Board with the application for approval of the plat, 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 either enumerated in the applicable resolutions of the Planning Board as a condition of approval of the Preliminary Plan, project plan or site plan or listed in the plat application form.
4. Preliminary plans using TDRs. For areas which have been designated in sewer category 3 by virtue of an approved Preliminary Plan that utilizes TDRs, a new plat not using the

requisite number of TDRs may not be approved until the sewer category has been reconfirmed by the County Council.

5. Submission of digital plat data. Digital plat data in a format approved by the Director must be submitted for updating the GIS property layer.
6. 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 lies within an approved cluster development, and subdivision or resubdivision 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 50.9.2. 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, that 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. *Final Plat.* The applicant must submit a final plat on mylar or other form designated by the Director that incorporates the recommendations of the reviewing agencies.
- E. *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 in writing to the applicant.
- F. *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 any notice the Planning Board designates.
- G. *Planning Board may give conditional approval.* In the case of a plat requiring supporting data, the Planning Board may give conditional approval requiring the applicant to provide the Planning Board with the supporting data.
- H. *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 has acted to approve the plat, or in cases of conditional approval, when the conditions have been complied with to the satisfaction of the Planning Board.

### **Section 50.9.3 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 index 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 force and effect as to notice as is given to properly recorded deeds.

#### **Section 50.9.4. Abandonment of Land Dedicated for Public Use**

- A. When a record plat contains land dedicated 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 Section. Abandonment of all or part of the dedicated land may be authorized:
  1. by the Council under Section 49-63 if the land has been in public use; or
  2. by the Planning Board under Section 49-68 if the land has not been in public use.

### **Division 50.10. Waivers from this Chapter**

#### **Section 50.10.1. Authority of Planning Board**

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

#### **Section 50.10.2. Application**

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

#### **Section 50.10.3. Findings**

- A. To grant a waiver, the Planning Board must find that:
  1. due to unique circumstances of a plan, the application of specific requirements are not needed to ensure the public health, safety, and general welfare;
  2. the intent of the Chapter is still met; and
  3. The waiver is:



- a. the minimum necessary to provide relief from the requirements;
- b. consistent with the purposes and objectives of the General Plan; and
- c. not adverse to the public interest.

#### **Section 50.10.4. Conditions**

The Planning Board may condition the waiver approval.

#### **Section 50.10.5. 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 a minimum of 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 50.5.2 and 50.9.2.
- C. Resolution. The decision of the Planning Board must be incorporated in a resolution adopted 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 50.11. Administrative Procedures**

##### **Section 50.11.1. Bonding and Surety**

- A. Guarantee of Completion of Improvements before Recording Final Plat
  - 1. Before plat recordation, the applicable public agency or utility company must certify that the subdivider has obtained permits and bonds, or provided other surety required by applicable laws and regulations that ensure completion of all required improvements on the land covered by the plat being recorded.
  - 2. As an alternative to the requirements of Subsection 50.11.1.A.1, when 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 50.11.2. 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 50.11.3. 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, or to 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 50.11.4. Establishment of Fees**

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

**Section 50.11.5. 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% 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 which specifies 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, 35 days from the date the notice is issued, the fine due is not paid, 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 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 of 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 50.11.6. 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.