



Subdivision Regulation Amendment (SRA) No. 13-01, Validity period extensions: APF & Preliminary Subdivision Plans



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Completed: 02/28/13

Description

SRA 13-01 would extend the standard validity period for a determination of adequate public facilities under the subdivision regulations from 5 to 7 years. The amendment would also extend by 2 years the validity period of any preliminary subdivision plan already approved or that is approved in the next 2 years. SRA 13-01 follows the process established under SRAs 09-01 and 11-01 adopted by the District Council in 2009 and 2011, respectively.

Summary

Staff recommends approval as introduced of SRA 13-01 to extend the validity period for Adequate Public Facilities (APF) and Preliminary Plans.

SRA 13-01 would continue the previously adopted extension of the standard minimum validity period for a determination of adequate public facilities under the subdivision regulations from 5 to 7 years and the standard minimum validity period of a preliminary subdivision plan from 3 to 5 years. SRA 11-01 (Ordinance 17-04—see Attachment 2), adopted by the County Council on March 15, 2011, provided these same extensions with a sunset two years after the effective date of the legislation, which would end on April 1, 2013. SRA 13-01 extends the previously adopted legislation for two more years.

The subject SRA also grants an additional 2-year automatic extension of all previously granted preliminary plan and APF approvals that remain valid as of April 1, 2013. SRA 11-01 also provided these same extensions.

Staff is in favor of the proposed limited time-frame extension of the minimum validity periods for preliminary plans and determinations of adequate public facilities, and of the additional automatic 2-year extensions for currently valid plans. As with the extensions adopted by the County Council in 2009 and 2011, this would be an important measure for assisting developers and builders during the current economic recovery period. Given the difficulty of obtaining financing coupled with the market slowdown, developers with approved plans would otherwise have to apply for extensions for which they might not be found eligible (economic feasibility is not considered a valid reason) or they might have to build or pay for costly infrastructure or pay for a new traffic study to obtain an APF extension. The SRA allows developers and builders to avoid these extra steps and costs as the economy and lending market recover.

It should be noted also that, in general, the SRA could allow un-built square footage in the pipeline to affect a smaller project's ability to move forward. One case in point includes the Great Seneca Science Corridor (GSSC) Sector Plan where Stage 1 FAR is closed for new commercial approvals. As such, extending the validity of commercial projects that were approved in Stage 1 means that GSSC will continue to stay closed for new commercial approvals for the foreseeable future.

Background/Analysis

In Montgomery County, proposed development is tested for the adequacy of public facilities that will serve that development. Typically, the testing occurs at the time of the Planning Board's review of a preliminary plan of subdivision. Chapter 50 of the Montgomery County Code addresses the testing for adequate public facilities, as does the Growth Policy resolution adopted by the County Council now every four years (previously it occurred every two years).

When the Planning Board finds that public facilities are adequate to support a subdivision, the finding has a limited validity period. Prior to July 25, 1989, there were no time limits on a finding of adequate public facilities. From July 25, 1989 until October 19, 1999, the time limit was 12 years. Beginning October 19, 1999, the time limits were changed to no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision. Beginning August 1, 2007, the time limits were changed to no less than 5 and no more than 10 years, as determined by the Planning Board at the time of subdivision.

Section 20 of Chapter 50 contains the language setting the time limits of a finding for adequate public facilities by the Planning Board. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the validity period for a finding of adequate public facilities. All building permits for a development must be issued within these time limits, or a new test for adequate public facilities must be done.

Chapter 50 also establishes time limits for the validity of the Planning Board's approval of a preliminary plan of subdivision. Prior to the temporary extension granted under Ordinance No. 16-35, an approved preliminary plan for a single phase project remained valid for 3 years from its Initiation Date, which is 30 days from the date of mailing of the Planning Board's written opinion. Before the validity period expired, a final record plat for all property delineated on the approved preliminary plan must have been recorded among the County Land Records. An approved preliminary plan for a multi-phase project remained valid for the period of time established in a phasing schedule approved by the Planning Board. The validity period for each phase could not exceed 3 years from the Initiation Date of the preliminary plan. Validation of a preliminary plan for a phase occurs upon the recordation of a final record plat for all property delineated in that particular phase of the approved preliminary plan.

Section 35 of Chapter 50 contains the language setting the time limits for the preliminary plan validity period. It also contains the language that determines the conditions under which the Planning Board may grant an extension of the preliminary plan validity.

As introduced in SRA 13-01 (consistent with the language as adopted in Ordinance Nos. 16-35 and 17-04), the proposed legislation would extend the standard validity period for a determination of adequate public facilities under the subdivision regulations from a minimum of 5 years and maximum of 10, to 7 and 12 years, respectively. The standard validity period of a preliminary subdivision plan would be extended from 3 to 5 years. Finally, the validity periods for all currently approved and valid preliminary

subdivision plans and APF determinations would be automatically extended by 2 years. Staff supports these proposed measures during the current economic recovery period.

Attachments

1. SRA No. 13-01
2. Ordinance No. 17-04

ATTACHMENT 1

Subdivision Regulation Amendment No.: 13-01
Concerning: Adequate Public Facilities –
Preliminary Subdivision Plans –
Validity Period
Draft No. & Date: 1 – 1/29/13
Introduced: February 5, 2013
Public Hearing:
Adopted:
Effective:
Ordinance No:

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

By: Councilmembers Floreen and Ervin, Council President Navarro, Council Vice President Rice, and Councilmembers Berliner, Leventhal, and Reimer

AN AMENDMENT to:

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

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Sections 50-20 and 50-35

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

ORDINANCE

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

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

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

3 * * *

4 (c) * * *

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

7 (i) for 12 years after the preliminary plan is approved
8 for any plan approved on or after July 25, 1989,
9 but before October 19, 1999;

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

15 (iii) for no less than 7 and no more than 12 years after
16 the preliminary plan is approved, as determined by
17 the Planning Board at the time of approval, for any
18 plan approved on or after April 1, 2009, but before
19 April 1, [2013] 2015; and

20 (iv) for no less than 5 and no more than 10 years after
21 the preliminary plan is approved, as determined by
22 the Board at the time of approval, for any plan
23 approved on or after August 1, 2007, and before
24 April 1, 2009, or on or after April 1, [2013] 2015.

25 * * *

26 (4) The Planning Board may extend a determination of adequate

27 public facilities for an exclusively residential subdivision
28 beyond the otherwise applicable validity period if the
29 Department has issued building permits for at least 50 percent
30 of the entire subdivision before the application for extension is
31 filed. The Board may approve one or more extensions if the
32 aggregate length of all extensions for the development does not
33 exceed:

34 (A) for a preliminary plan approved before April 1, 2009, or
35 on or after April 1, [2013] 2015:

36 (i) 2½ years for a subdivision with an original validity
37 period of 5 years; or

38 (ii) 6 years for a subdivision with an original validity
39 period longer than 5 years; and

40 (B) for a preliminary plan approved on or after April 1, 2009,
41 and before April 1, [2013] 2015:

42 (i) 2½ years for a subdivision with an original validity
43 period of 7 years; or

44 (ii) 6 years for a subdivision with an original validity
45 period longer than 7 years.

46 * * *

47 **50-35. Preliminary subdivision plan-Approval procedure.**

48 * * *

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

50 * * *

51 (2) *Duration of Validity Period.*

52 (A) An approved preliminary plan for a single phase project

53 remains valid for 60 months after its Initiation Date for any
54 preliminary plan approved on or after April 1, 2009, but
55 before April 1, [2013] 2015, and for 36 months after its
56 Initiation Date for any preliminary plan approved on or
57 after April 1, [2013] 2015. Before the validity period
58 expires, the applicant must have secured all government
59 approvals necessary to record a plat, and a final record plat
60 for all property delineated on the approved preliminary
61 plan must have been recorded in the County land records.

62 (B) An approved preliminary plan for a multi-phase project
63 remains valid for the period of time allowed in the phasing
64 schedule approved by the Planning Board. The Planning
65 Board must assign each phase a validity period on a case-
66 by-case basis, the duration of which the applicant must
67 propose as part of an application for preliminary plan
68 approval, revision, or amendment, after considering such
69 factors as the size, type, and location of the project. The
70 time allocated to any phase must not exceed 60 months
71 after the initiation date for that particular phase for any
72 preliminary plan approved on or after April 1, 2009, but
73 before April 1, [2013] 2015, and 36 months after the
74 initiation date for that particular phase for any preliminary
75 plan approved on or after April 1, [2013] 2015. The
76 cumulative validity period of all phases must not exceed
77 the APFO validity period which begins on the date of the
78 initial preliminary plan approval, including any extension

79 granted under Section 50-20(c)(5). A preliminary plan for
80 a phase is validated when a final record plat for all
81 property delineated in that phase of the approved
82 preliminary plan is recorded in the County land records.

83 * * *

84 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2013.

85 **Sec. 3. Automatic Extensions.**

86 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the
87 validity period of any determination of adequate public facilities that
88 was valid on March 31, 2009, or for which a timely application for an
89 extension of the validity period was pending on March 31, 2009, is
90 automatically extended for 6 years after the date when the validity
91 period would otherwise have expired. This 6-year extension includes
92 any extension granted automatically by any previous subdivision
93 amendment and must be treated for all purposes as part of the validity
94 period that was extended.

95 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
96 validity period of any preliminary subdivision plan that was valid on
97 March 31, 2009, or for which a timely application for an extension of
98 the validity period was pending on March 31, 2009, including any
99 separate phase of a multi-phase plan, is automatically extended for 6
100 years after the date when the validity period would otherwise have
101 expired. This 6-year extension includes any extension granted
102 automatically by any previous subdivision amendment and must be
103 treated for all purposes as part of the validity period that was extended.

104 (c) Notwithstanding any provision of Section 50-20(c) to the contrary, the

105 validity period of any determination of adequate public facilities that
106 was valid on March 31, 2013, or for which a timely application for an
107 extension of the validity period was pending on March 31, 2013, is
108 automatically extended for 2 years after the date when the validity
109 period would otherwise have expired. This 2-year extension must be
110 treated for all purposes as part of the validity period that was extended.

111 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
112 validity period of any preliminary subdivision plan that was valid on
113 March 31, 2013, or for which a timely application for an extension of
114 the validity period was pending on March 31, 2013, including any
115 separate phase of a multi-phase plan, is automatically extended for 2
116 years after the date when the validity period would otherwise have
117 expired. This 2-year extension must be treated for all purposes as part
118 of the validity period that was extended.

119 *Approved:*

120
121 _____
Isiah Leggett, County Executive

Date

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

123
124 _____
Linda M. Lauer, Clerk of the Council

Date

Ordinance No: 17-04
Subdivision Regulation Amend. No. 11-01
Concerning: Adequate Public Facilities -
Preliminary Subdivision Plans
- Validity Period
Revised: 1/7/11; Draft No. 2
Introduced: January 18, 2011
Public Hearing: March 1, 2011
Adopted: March 15, 2011
Effective: April 1, 2011

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

By: Council President Ervin, Councilmember Floreen, Council Vice President Berliner, and
Councilmembers Leventhal, Navarro, and Riemer

AN AMENDMENT to:

- (1) extend the validity period for a determination of adequate public facilities for certain developments;
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[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

OPINION

Subdivision Regulation Amendment 11-01 was introduced on January 18, 2011 at the request of Council President Ervin, Councilmember Floreen, Council Vice President Berliner, and Councilmembers Leventhal, Navarro, and Riemer to temporarily extend the validity period of a finding of adequate public facilities and an approval of a preliminary plan of subdivision by the Planning Board.

The Council held a public hearing on March 1, 2011 to receive testimony concerning the proposed amendment. The Council's Planning, Housing, and Economic Development Committee considered this SRA at a worksession on March 7, 2011 and recommended that it be enacted as introduced.

The District Council reviewed Subdivision Regulation Amendment 11-01 at a worksession held on March 15, 2011 and enacted the Amendment as recommended by the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this Amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 11-01 will be approved.

ORDINANCE

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

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

50-20. Limits on issuance of building permits.

* * *

(c) * * *

(3) (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 on or after July 25, 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 on or after October 19, 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 on or after April 1, 2009, but before April 1, [2011] 2013; and

(iv) for no less than 5 and no more than 10 years after the preliminary plan is approved, as determined by the Board at the time of approval, for any plan approved on or after August 1, 2007, and before April 1, 2009, or on or after April 1, [2011] 2013.

* * *

(4) The Planning Board may extend a determination of adequate public facilities for an exclusively residential subdivision

28 beyond the otherwise applicable validity period if the
29 Department has issued building permits for at least 50 percent
30 of the entire subdivision before the application for extension is
31 filed. The Board may approve one or more extensions if the
32 aggregate length of all extensions for the development ~~[[do]]~~
33 does not exceed:

34 (A) for a preliminary plan approved before April 1, 2009, or
35 on or after April 1, [2011] 2013:

36 (i) 2½ years for a subdivision with an original validity
37 period of 5 years; or

38 (ii) 6 years for a subdivision with an original validity
39 period longer than 5 years; and

40 (B) for a preliminary plan approved on or after April 1, 2009,
41 and before April 1, [2011] 2013:

42 (i) 2½ years for a subdivision with an original validity
43 period of 7 years; or

44 (ii) 6 years for a subdivision with an original validity
45 period longer than 7 years.

46 * * *

47 **50-35. Preliminary subdivision plan-Approval procedure.**

48 * * *

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

50 * * *

51 (2) *Duration of Validity Period.*

52 (A) An approved preliminary plan for a single phase project
53 remains valid for 60 months after its Initiation Date for any
54 preliminary plan approved on or after April 1, 2009, but

55 before April 1, [2011] 2013, and for 36 months after its
56 Initiation Date for any preliminary plan approved on or
57 after April 1, [2011] 2013. Before the validity period
58 expires, the applicant must have secured all government
59 approvals necessary to record a plat, and a final record plat
60 for all property delineated on the approved preliminary
61 plan must have been recorded in the County land records.

62 (B) An approved preliminary plan for a multi-phase project
63 remains valid for the period of time allowed in the phasing
64 schedule approved by the Planning Board. [Each phase
65 must be assigned] The Planning Board must assign each
66 phase a validity period on a case-by-case basis, the
67 duration of which [must be proposed by] the applicant
68 must propose as part of an application for preliminary plan
69 approval, [or for preliminary plan] revision, or amendment,
70 [and approved on a case-by-case basis by the Planning
71 Board,] after considering such factors as the size, type, and
72 location of the project. The time allocated to any phase
73 must not exceed 60 months after the initiation date for that
74 particular phase for any preliminary plan approved on or
75 after April 1, 2009, but before April 1, [2011] 2013, and
76 36 months after the initiation date for that particular phase
77 for any preliminary plan approved on or after April 1,
78 [2011] 2013. The cumulative validity period of all phases
79 must not exceed the APFO validity period which [runs
80 from] begins on the date of the initial preliminary plan
81 approval, including any extension granted under Section

82 50-20(c)(5). A preliminary plan for a phase is validated
83 when a final record plat for all property delineated in that
84 phase of the approved preliminary plan is recorded in the
85 County land records.

86 * * *

87 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2011.

88 **Sec. 3. Automatic Extensions.**

89 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the
90 validity period of any determination of adequate public facilities that
91 was valid on March 31, 2009, or for which a timely application for an
92 extension of the validity period was pending on March 31, 2009, is
93 automatically extended for 4 years after the date when the validity
94 period would otherwise have expired. This 4-year extension includes
95 any extension granted automatically by Ordinance 16-35 and must be
96 treated for all purposes as part of the validity period that was extended.

97 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the
98 validity period of any preliminary subdivision plan that was valid on
99 March 31, 2009, or for which a timely application for an extension of
100 the validity period was pending on March 31, 2009, including any
101 separate phase of a multi-phase plan, is automatically extended for 4
102 years after the date when the validity period would otherwise have
103 expired. This 4-year extension includes any extension granted
104 automatically by Ordinance 16-35 and must be treated for all purposes
105 as part of the validity period that was extended.

106 (c) Notwithstanding any provision of Section 50-20(c) to the contrary, the
107 validity period of any determination of adequate public facilities that
108 was valid on March 31, 2011, or for which a timely application for an

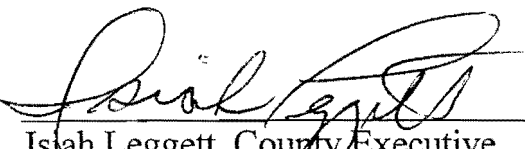
109 extension of the validity period was pending on March 31, 2011, is
110 automatically extended for 2 years after the date when the validity
111 period would otherwise have expired. This 2-year extension must be
112 treated for all purposes as part of the validity period that was extended.

113 (d) Notwithstanding any provision of Section 50-35(h) to the contrary, the
114 validity period of any preliminary subdivision plan that was valid on
115 March 31, 2011, or for which a timely application for an extension of
116 the validity period was pending on March 31, 2011, including any
117 separate phase of a multi-phase plan, is automatically extended for 2
118 years after the date when the validity period would otherwise have
119 expired. This 2-year extension must be treated for all purposes as part
120 of the validity period that was extended.

121

122 *Approved:*

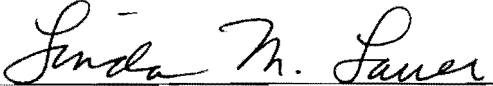
123

124 
125 Isiah Leggett, County Executive

March 24, 2011
Date

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

127

128 
129 Linda M. Lauer, Clerk of the Council

March 28, 2011
Date