

Subdivision Regulations Rewrite



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Introduction

A comprehensive revision of Chapter 50, the Subdivision Regulations has been contemplated since the start of the Planning Department's efforts to revise the zoning ordinance. We knew at that time changes would be needed based on how the zoning ordinance changed. We also recognized that, even in the absence of a zoning ordinance revision, it was time to review and update provisions of the subdivision ordinance that hadn't been comprehensively looked at for more than 50 years.

The general objectives in rewriting the Subdivision Regulations were:

- Modernize and clarify existing language
- Improve organization and ease of reference
- Codify current interpretations
- Ensure consistency with new provisions of the zoning ordinance
- Improve the efficiency of review

To meet these objectives, the organization and layout of the revised regulations has significantly changed and the language of most provisions has been updated. For the most part, the updated language clarifies but does not change the existing requirements; however, some changes in the requirements have been made.

The revised Chapter 50 reorganizes the existing Article and Section format to one that contains Articles, Divisions and Sections. This document provides an outline of the provisions contained in each new Division, and which sections of the existing ordinance that they came from. It also summarizes the changes made to the provisions in each Division and discusses the most significant.

Article I. In General

This Article contains general provisions and requirements.

Division 50.1. Purpose

- Combined previous purpose list (Sec. 50-2) into a consolidated purpose statement that retains the important elements.

Division 50.2. Defined Terms

- Added new section of rules for interpretation of the Chapter.

- Modified the list of defined terms (Sec. 50-1) by clarifying existing language, removing terms that duplicate the zoning ordinance definitions or that are not specifically used in the Chapter, and adding new terms as needed.

Division 50.3. General Requirements

- Retained previous requirements for applicability (Sec. 50-3), approving authority (Sec. 50-4), and impacts to other ordinances (Sec. 50-5) with only minor language updates.
- Placed emphasis on the fact that subdivisions of land must be recorded by plat prior to land transfer (Sec. 50-8) and issuance of building permits (Sec. 50-20) by moving existing provisions to a new section.
- Modified the language of the existing exceptions to platting requirements (Sec. 50-9) provisions for clarification. The section is now broken into subsections covering the types of land transfers that can be done without a record plat, and uses that can receive building permits without being located on a record lot.
- Moved existing provisions for submission of subdivision plans (Sec. 50-23) to a new section under this Division and modified the existing language for clarification.
- Building permit language moved to Ch. 8 (50-22 and 50-32).

Significant changes made in this Division include:

- Prohibiting the issuance of a building permit for a dwelling unit on unplatted parcels of agricultural land that are less than 25 acres in size.
The current exception applies to “land that is and will remain part of a farm, as defined in this chapter, but that is used concurrently for a related use that requires a building permit.” A farm is defined as “a tract of land, with or without associated buildings, that is devoted to agriculture”, as it is defined in the chapter. In the agricultural zone (AR), a problem is created by the existing language because it can be interpreted to permit construction of a dwelling on a tract of land less than 25 acres in size which violates the density requirement of the zone.
- Permitting construction of one detached dwelling unit on a part of a previously platted lot that has not change in size or shape since June 1, 1958, as anticipated by the new zoning ordinance.
- Permitting the reconstruction of any existing detached dwelling under the new zoning ordinance.

Article II. Subdivision Plans

Article II now contains provisions for the different types of subdivision plans, instead of the record plat provisions. This change was made because it reflects the actual order of the process. The types of plans covered in the article are preliminary plans, pre-preliminary submissions, simplified subdivision plans, and minor subdivisions. Simplified subdivision plans are a new plan type.

Division 50.4. Preliminary Plan

- More clearly separated the plan drawing requirements from the requirements for supporting information (Sec. 50-34)
- Modified and updated the provisions for review and approval of preliminary plans, including provisions for plan validity (Sec. 50-35), to clarify and provide better organization.
- Modified the general standard for review of lot dimensions to include consideration of the applicable requirements of Chapter 59 in addition to the recommendations of the applicable master plan.
- Retained the requirement that all lots abut a road, but the road can now be either public or private.
- Continue to permit a maximum of two lots without public or private road frontage on a shared driveway, but added the requirement that the two lots include any existing lots to codify our current interpretation of the existing section.

- Language of the current requirements for providing public sites and open space areas (Secs. 50-30 and 50-31) has been modified for clarity, but not significantly changed except that the language covering objection to required dedication was deleted because it's not needed; the applicant can make their case as part of review, and after decision, can file an appeal.
- Eliminated road design standards that are out of date such as: planning secondary streets to discourage use by nonlocal traffic; local bypasses around shopping centers; parallel streets with lots backing to major thoroughfares; and short culs-de-sac having terminal lots backing to major thoroughfares.
- Added provision that a subdivision with only one non-through road providing access must be limited to a maximum of 75 lots.
- Added minimum standard intersection spacing requirements for all road types, but retained the provision that the Planning Board may specify different spacing than the standard.
- The septic tier language was moved into the Water supply and sewage disposal facilities sections (50-24, 50-27)
- The requirement that public utilities be placed underground (50-40) was modified to apply to all subdivisions rather than basing it on the number of buildings, but language was added that allows the Planning Board to grant an exemption if it finds that underground placement is infeasible.
- Modified requirements for environmental review (Sec. 50-32) to clarify that a Forest Conservation Plan approval is required as part of approval of a preliminary plan.
- Modified the provisions for residential cluster subdivision (50-39) to eliminate language that is out of date and no longer necessary.

Significant changes made in this Division include:

- Added application processing and hearing schedule that conform with the new zoning ordinance requirements for site plan; including the requirement that a hearing date be established within 120 days of the acceptance of the application, with provisions for requesting extensions.
- Added new requirements for the timing of agency plan review so that the 120 day hearing schedule can be met.
- Added new provisions to explicitly state which public agency approvals are needed before the Planning Board may take action on a preliminary plan, and moved the review for conformance with the State's Sustainable Growth and Agricultural Preservation Act of 2012 (Sec. 50-35(e)) to the new technical review section.
- Added a list of specific findings that the Planning Board must make in order to approve a preliminary plan. The findings generally codify the findings made currently in Board resolutions, with additional language added to include a finding about the adequacy of roads.
- Removed sediment control provisions that are now covered by Chapter 19 (Sec. 50-35(j)). These included requirements that a preliminary plan approval be conditioned upon execution of an erosion and sediment control plan approved by the Board after consideration of recommendations from the Montgomery Soil Conservation District, that the permit for clearing and grading issued by the Department of Permitting Services (DPS) be in conformance with this plan, and that the Board could revoke a preliminary plan approval if a developer proceeded to clear and grade a site without a DPS permit.
- Review standards that form the basis for Planning Board findings (Secs. 50-24, 50-25, 50-26, 50-27, 50-28, 50-29, 50-30, 50-31, 50-32, parts of 50-35, 50-39, and 50-40) are now consolidated in a new Technical Review section.

Issue: The draft retains the existing provision that the Planning Board may find "that events have occurred to render the relevant master plan, sector plan, or urban renewal plan recommendation no longer appropriate." The County Council discussed, but rejected a similar provision for the master plan finding that is now required for site plans by the new zoning ordinance. Thus, the Planning Board will not be able to find that a master plan recommendation is no longer appropriate for projects that

require both preliminary and site plan approval. Nonetheless, staff recommends retaining the provision in the subdivision regulations for the projects that only need preliminary plan review. In staff's opinion, the provision is needed because the development standards that apply to a preliminary plan that doesn't go to site plan will not be as flexible as those for a site plan.

- Modified the provisions for resubdivision by limiting the zones in which it applies to R-40, R-60, R-90, R-200, and RE-1 zones, specifying that the criteria only apply to single family detached residential uses, and reducing the review criteria from the existing seven to the three specified in state law: lot area, alignment, and frontage. Staff is requesting that the Planning Board provide guidance on whether the review criteria should be expanded to include frontage, alignment, lot area, lot width, and buildable area, or whether the resubdivision review should be eliminated entirely.
- Added new provisions for creating private roads to address what has become a common desire for their use. The provisions include:
 - Private roads created by subdivision must be platted in right of way parcels that are separate from adjoining lots to maintain the Board's ability to ensure adequate space for road related uses within subdivisions.
 - Private road right of way parcels, like a dedicated public right of way, must be platted to the full width of the right of way recommended for the applicable road classification in Chapter 49; however, the Planning Board may approve a narrower than standard right of way for either type of road under certain circumstances.

The existing provisions for road right of way apply exclusively to public roads and require that all roads be dedicated to the width specified by the applicable master plan or to the width specified by Chapter 49 for roads that are not included in the master plan. The only discretion currently granted to the Planning Board is for tertiary roads where the Board has the authority to determine when they may be used, and when they can be narrowed for environmental or compatibility reasons. In staff's opinion, the Board needs the flexibility to consider in all instances, whether a narrower right of way is desirable and will not be detrimental to the function of the road. The basic criteria for the Board's determination of right of way adequacy has not changed (Sec. 50-30(c)).
 - Private roads must be built to the applicable structural standard, grade, and typical section based on the functional classification of the road in Chapter 49.

This is a change from the existing requirement that private roads only be built to meet the structural standards of a tertiary road. This standard may have been adequate in the past when the use of private roads was limited to RE-2C and RNC residential subdivisions and townhouse developments, but now all types of roads are being created as private roads. As such, the roads need to be built to all applicable standards to ensure that they function as needed. The existing requirement that a registered engineer certify to the Department of Permitting Services (DPS) that the private road has been designed, and will be built to adequate standards has been retained, but this will need further discussion. DPS has stated that they don't have the authority to review private roads in any way, and that they do not currently ask for any certifications for private roads. If we are going to continue to allow private roads, we need to ensure that they are adequate, so this is a major issue that needs to be resolved. However, the requirement needs to be included regardless of who is ultimately tasked with the review.
- The Adequate Public Facilities Ordinance (50-20(c), 50-24(g), 50-35(k)) was clarified to state that ancillary uses associated with religious institutions, such as schools, day care facilities, and clinics, that generate peak hour trips are not exempted from adequate public facilities requirements.
- The extension criteria for mixed use project in the Adequate Public Facilities Ordinance (50-20(c), 50-24(g), 50-35(k)) was modified to be based on the number of vehicle trips generated.

Division 50.5. Pre-Preliminary Submission

- Retains the basic concepts of the Pre-Preliminary Plan (50-33 and 50-33A), but is reorganized and revised to clarify both filing and approval procedures
- Modified language under approval procedures to clearly distinguish between advice only and binding decisions for the Planning Board
- Retains 90 day requirement to file a Preliminary Plan to retain approval of a binding decision

Division 50.6. Simplified Subdivision Plan

Entirely new section, created to allow for administrative approvals of simple, straight-forward subdivisions:

- Proposed language establishes applicability, filing requirements, and approval procedures
- Two minor subdivisions, previously included in 50-35A, were moved here with the idea that pre-preliminary plans, by themselves, should not establish entitlements
- Would apply to existing places of worship and institutional uses (50-35A), creation of certain residential lots located in the Agricultural Reserve Zone (50-35A), and creation of certain residential lots located in the RE-2 and Rural Residential Zones
- Plan would go to DRC for agency and/or community comment
- Director could approve or disapprove the plan in writing, or if applicable, could schedule the plan for Planning Board hearing
- Plan would follow procedures established for the Preliminary Plan if scheduled with the Planning Board

Division 50.7. Minor Subdivisions

Applicability

Procedure for Platting

- Although the language and organization of this section (50-35A) was revised significantly, it retains many of the previous concepts
- Reorganized into two main sections, applicability and procedures for platting
- 8 proposed minor subdivisions:
 - Minor lot line adjustment;
 - Conversion of an outlot into a lot
 - Consolidation
 - Subdivision to reflect ownership
 - Plat of correction
 - Pre-1958 Parcels
 - Combining a lot and adjoining property
 - Creation of a Lot from a Part of a Lot
- Procedures for platting remains unchanged

Significant changes made in this Division include:

- Moved the minor subdivisions for creating private institutional lots and creating lots in the agricultural zone to the Simplified Subdivision Plan process.
- Deleted the minor subdivision that permitted platting of a parcel containing an existing dwelling under the zoning standards in effect when the dwelling was constructed because the new zoning ordinance no longer includes the provision to allow it. The provision was removed in favor of the more general permissions to reconstruct existing dwellings in Section 7.7.1.

Article III. Plats

All of the provisions for plats have now been consolidated into this Article.

Division 50.8. Plats-Generally

- Significant reorganization and revisions to the platting Article, primarily to update the language and accurately and more clearly reflect the current practice and procedures for filing, reviewing, and recording of plats.
- Eliminated previous Secs. 50-10, 50-13, 50-18, 50-19 – antiquated language
- Eliminated previous Sec. 50-7, but combined the requirements for the county clerk to accept plats to another section in a new Article covering plats
- Eliminated previous Sec. 50-11 requiring the area of dedications to public use to be shown in square feet, this requirement was added under new filing and specifications section for plats
- Eliminated Secs. 50-16 and 50-17 regarding copies of plats previously filed and the effect of doing so on instruments previously recorded (deeds, mortgages, etc.), incorporated into new minor subdivision – plat of correction to replace an old plat
- Sec. 50-9 Exceptions to Platting Requirements were separated and moved to two new locations
- Record Plat Required
- Exceptions to the Requirements of the Chapter
- Sections 50-7 Recording-generally, and 50-8 Same-Filing and approval of plats, were combined and simplified into new general purpose statement under plats
- Sections 50-36 Record plats – Specifications and supporting data, and 50-37 Record plats – Procedure for approval and recording, were reorganized and revised significantly into a new section, which more clearly separated the plan drawing requirements from the requirements for supporting information
- Approval procedure provisions of Section 50-37 reorganized significantly and revised antiquated language.
- Recording procedure covered by Sections 50-12, 50-14, and 50-37 was significantly reorganized and revised antiquated language.
- Revised and simplified language for abandonment of land dedicated for public use Sec. 50-15.

Significant changes made in this Division include:

- Added application processing and hearing schedule that conform with the new zoning ordinance requirements for site plan; including the requirement that a hearing date be established within 120 days of the acceptance of the application, with provisions for requesting extensions.

Article IV. Administration

This Article now contains all administrative functions of the Chapter.

Division 50.9. Waivers from this Chapter

- Changed the authority of the Board to modernize the language and remove the antiquated sections regarding large scale development and moderate price development variations (previous §§50-38(a)2 and 3) because they are no longer used and likely were enacted for specific projects that have long since been developed.
- Retained the application process.
- The Planning Board’s ability to condition a waiver remains.

- The procedure was modified to change the timing for comments from Development Review Committee agencies from 30 days to 20 days. This change is necessary to fit within the overall 120 day approval timing.

Significant changes made in this Division include:

- Modified the findings to make them tangible and more easily applied to a specific project. The modification specifies that the unique circumstances and practical difficulties are with the plan (not that they exist and prevent full compliance with the chapter, which is harder to argue) and that application of specific requirements of the chapter are not needed as long as the intent of the requirements are achieved.

Division 50.10. Administrative Procedures

- Maintained the Board's ability to adopt regulations to administer the chapter.
- Retained the ability to establish adequate public facility guidelines through a subdivision staging policy.
- Retained the ability to establish a Development Review Committee composed of agencies to facilitate plan review and updated the name.
- Retained the ability to establish fees to cover administrative costs of the Chapter.
- Retained the enforcement provisions of the Chapter.
- Removed redundancies on how to amend the Chapter by citing to the applicable County and State laws that govern the process.

Significant changes made in this Division include:

- Expanded the Board's ability to require bonding and surety for all improvements, including private streets. Retained the ability to have a public improvement agreement but removed the detailed procedural process to simplify the provision and allow policy to set the procedure.