



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #12
3/12/09

DATE: March 4, 2009
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RKX*
Cathy Conlon, Subdivision Supervisor
Ralph Wilson, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Subdivision Regulation Amendment
PURPOSE: Generally amend the Subdivision Regulations to extend the standard validity period for a determination of adequate public facilities for certain developments and to extend the standard preliminary plan validity period.

SUBDIVISION REGULATION AMENDMENT: 09-01
INTRODUCED BY: Council President at the request of the County Executive
INTRODUCED DATE: February 10, 2009
PLANNING BOARD REVIEW: March 12, 2009
COUNCIL PUBLIC HEARING: March 17, 2009; 1:30pm

STAFF RECOMMENDATION

Staff recommends approval of SRA 09-1 to extend the validity period for Adequate Public Facilities and Preliminary Plans with revisions to:

- 1. Sunset the APF validity period extension two years after the SRA effective date;**
- 2. Place the preliminary plan validity period extension under Section 50-35(h) instead of Section 50-20; and**
- 3. Sunset the preliminary plan validity period extension two years after the SRA effective date**
- 4. Extend maximum time limit from 10 years to 12 years**

Staff is in favor of the proposed limited time-frame extension of the validity period for a preliminary plan and for a determination of adequate public facilities (APF). This would be an important measure for assisting developers and builders during the current economic downturn. 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.

Validity Period Extensions

As introduced, the SRA provides a two-year extension of the APF validity period with no limit on the duration of this provision. As previously noted, ***a time limit should be included that terminates the regulation two years after the effective date of the subdivision regulation amendment.***

The SRA also includes ***a provision for a two year validity period extension of a preliminary plan.*** Two issues: First, the proposed provision is located in the wrong section of the subdivision regulations. The provision should be placed under 50-35(h) of the subdivision code, instead of Section 50-20(c). Second, as with the APF validity period extension, the automatic ***preliminary plan extension should sunset two years after the effective date of the subject legislation.***

Staff has revised the SRA to include our recommendations. Other revisions have been made to clarify the overall intent of SRA 09-01.

BACKGROUND/ANALYSIS

County Executive Leggett requested introduction of SRA 09-01 as one of four legislative proposals to implement an economic plan designed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn.

Existing Requirements

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 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. An approved preliminary plan for a single phase project remains 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 expires, 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 remains valid for the period of time established in a phasing schedule approved by the Planning Board. The validity period for each phase must 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.

Analysis of Proposed Legislation

As introduced, the proposed legislation extends all currently valid adequate public facilities reviews for an additional 2 years. It also modifies the time limits for adequate public facilities review for new plans to no less than 7 and no more than 10 years, as determined by the Planning Board at the time of subdivision. Staff supports the 2 year extension for all currently valid approvals, but recommends changes to the proposed language to limit its applicability. For new plans, staff supports increasing the time limits of the validity period for the adequate public facilities review by 2 years, but only for a limited period. We recommend changes to the proposed language to sunset the regulation two years after the effective date of the proposed legislation. We also recommend that the maximum time permitted for the validity of a new adequate public facilities review be modified to 12 years during the effective dates of this legislation. This would provide the same time benefit to larger, multi-phase plans that increasing the minimum time limit provides for smaller, one-phase plans.

The legislation also extends the validity period of all currently valid preliminary plans for 2 years. Staff supports this extension, but recommends changes to the proposed language to limit its applicability and to clarify that it also applies to the

validity period of each phase of a multi-phase project. Staff also recommends that this provision be moved to Section 35 of Chapter 50 because that is the section that specifically discusses the duration of preliminary plan validity.

CC/GR

Attachments

1. Proposed SRA No. 09-01

ATTACHMENT 1

Ordinance No. _____
Subdivision Regulation Amend. No. 09-01
Concerning: Adequate Public Facilities-
Validity Period
Revised: _____ Draft No. ____
Introduced: _____
Public Hearing: _____
Adopted: _____
Effective: _____

**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: The Council President at the Request of the County Executive

AN ACT to:

- (1) extend the validity period for a determination of adequate public facilities; and,
- (2) otherwise revise the validity periods under the subdivision regulations.

By amending

Montgomery County Code
Chapter 50, Subdivision of Land
Section 50-20(c)

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>

The County Council for Montgomery County, Maryland approves the following Act:

1 Sec. 1. Section 50-20(c)(3) is amended as follows:

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

3 * * *

4 (c) (1) Words and phrases used in this subsection have the meanings indicated in
5 Section 8-30.

6 (2) Except as provided in this subsection and Article IV of Chapter 8, the
7 Department of Permitting Services may issue a building permit only if the
8 Planning Board has made a timely determination of the adequacy of public
9 facilities to serve the proposed development under this Chapter. However,
10 the Department may issue a building permit for any proposed development
11 that is:

12 (A) exclusively residential on a lot or parcel recorded before July 25,
13 1989, or otherwise recorded in conformance with a preliminary
14 plan of subdivision approved before that date; or

15 (B) otherwise exempt from the requirement for determining adequacy
16 of public facilities before a preliminary plan of subdivision is
17 approved.

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

20 (A) For 12 years after the preliminary plan is approved for any plan
21 approved on or after July 25, 1989, but before October 19, 1999;

22 (B) For no less than [5] ~~[[7]]~~ 5 and no more than 12 years after the
23 preliminary plan is approved, as determined by the Planning Board
24 at the time of approval, for any plan approved on or after October
25 19, 1999, but before August 1, 2007; [and]

26 (C) For no less than 7 and no more than 12 years after the preliminary
27 plan is approved for any preliminary plan approved on or after
28 (effective date), but before (effective date plus 2 years); and

29 ~~[(C)]~~ (D) For no less than [5] ~~[[7]]~~ 5 and no more than 10 years after
30 the preliminary plan is approved for any preliminary plan approved
31 on or after August 1, 2007, but before (effective date) or after
32 (effective date plus two years), as determined by the Board at the

33 time of approval. [[, for any plan approved on or after August 1,
 34 2007. If an applicant requests a validity period that is longer than
 35 [5] 7 years, the applicant must submit a development schedule or
 36 phasing plan for completion of the project to the Board for its
 37 approval. At a minimum, the proposed development schedule or
 38 phasing plan must show the minimum percentage of the project
 39 that the applicant expects to complete in the first [5] 7 years after
 40 the preliminary plan is approved. To allow a validity period longer
 41 than 5 years, the Board must find that the extended validity period
 42 would promote the public interest. The Board may condition a
 43 validity period longer than [5] 7 years on adherence to the
 44 proposed development schedule or phasing plan, and may impose
 45 other transportation improvement or mitigation conditions if those
 46 conditions are needed to assure adequate levels of transportation
 47 service during the validity period.]]

48 [[For any preliminary plan that was approved between January 1, 2004
 49 and (effective date), the validity period is extended 2 years.]]

50 * * *

- 51 (4) On (effective date), the validity period of any adequate public facilities
 52 determination that was valid as of January 1, 2009, or is valid as of
 53 (effective date minus one day) is extended for 2 additional years.
- 54 (5) If an applicant requests a validity period that is longer than the minimum
 55 specified in paragraph (3), the applicant must submit a development
 56 schedule or phasing plan for completion of the project to the Board for its
 57 approval. At a minimum, the proposed development schedule or phasing
 58 plan must show the minimum percentage of the project that the applicant
 59 expects to complete in the first 5 to 7 years after the preliminary plan is
 60 approved. To allow a validity period longer than the minimum specified
 61 in paragraph (3), the Board must find that the extended validity period
 62 would promote the public interest. The Board may condition a validity

63 period longer than the minimum specified in paragraph (3) on adherence
64 to the proposed development schedule or phasing plan, and may impose
65 other transportation improvement or mitigation conditions if those
66 conditions are needed to assure adequate levels of transportation service
67 during the validity period.

68 [(4)](6) The Planning Board may extend a determination of adequate
69 public facilities for an exclusively residential subdivision beyond the
70 otherwise applicable validity period if the Department has issued building
71 permits for at least 50 percent of the entire subdivision before the
72 application for extension is filed.

73 (A) For an adequate public facilities approval granted before (effective
74 date) or on or after (effective date plus 2 years), [T]the Board may
75 approve one or more extensions if the aggregate length of all
76 extensions for the development do not exceed:

77 [(A)] (i) 2 ½ years for a subdivision with an original validity period
78 of [5][[Z]] 5 years; or

79 [(B)] (ii) 6 years for a subdivision with an original validity period
80 longer than [5][[Z]] 5 years.

81 (B) For an adequate public facilities approval granted on or after
82 (effective date) but before (effective date plus 2 years), the Board
83 may approve one or more extensions if the aggregate length of all
84 extensions for the development do not exceed:

85 (i) 2 ½ years for a subdivision with an original validity period
86 of 7 years; or

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

89 [(5)](7)

* * *

91 [(6)](8)

* * *

92

93 ~~[(7)]~~(9) Submittal and approval requirements for each extension of an
94 adequate public facilities determination.

95 (A) The applicant must submit a new development schedule or phasing
96 plan for completion of the project to the Board for approval;

97 (B) the applicant must not propose any additional development beyond
98 the amount approved in the original determination of adequate public
99 facilities;

100 (C) the Board must not require any additional public improvements or
101 other conditions beyond those required for the original preliminary plan;

102 (D) the applicant must file an application for an extension with the
103 Board before the ~~[original]~~ previously established validity period has
104 expired; and

105 (E) the Board may require the applicant to submit a traffic study to
106 help the Board decide if the extension would promote the public interest.

107
108 * * *

109 ~~[(8)]~~(10)

110 * * *

111 ~~[(9)]~~(11)

112 * * *

113 ~~[(10)]~~(12) The Planning Board may extend a determination of adequate
114 public facilities once for up to 12 more years beyond the otherwise
115 applicable validity period if the Board finds that:

116 (A) the preliminary subdivision plan for the development required a
117 significant commitment of funds by the applicant, amounting to at least
118 \$2,500,000, to comply with specified infrastructure conditions;

119 (B) the applicant has met or exceeded the required infrastructure
120 conditions during the original validity period plus any extension granted
121 under paragraph (4); and

122 (C) the applicant’s satisfaction of the required infrastructure conditions
123 provides a significant and necessary public benefit to the County by
124 implementing infrastructure goals of an applicable master or sector plan.

125 * * *

126 ~~[(11)]~~(13)

127 * * *

128 ~~[(12)]~~(14)

129 * * *

130 ~~[(13)]~~(15)

131 * * *

132 **Sec. 2. Section 50-35 is amended as follows:**

134 **50-35. Preliminary subdivision plan – Approval procedure.**

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

136 * * *

137 (2) *Duration of Validity Period*

138 (A) An approved preliminary plan for a single phase project remains
139 valid for ~~[[36]]~~60 months from its Initiation Date for any
140 preliminary plan that is approved on or after (effective date), but
141 before (effective date plus 2 years), and for 36 months from its
142 Initiation Date for any preliminary plan that is approved after
143 (effective date plus 2 years). Before the validity period expires,
144 the applicant must have secured all governmental approvals
145 necessary as condition precedent for plat recordation and final
146 record plat for all property delineated on the approved preliminary
147 plan must have been recorded among the County Land Records.

148 (B) An approved preliminary plan for a multi-phased project remains
149 valid for the period of time established in the phasing schedule
150 approved by the Planning Board. Each phase must be assigned a

151 validity period, the duration of which must be proposed by the
 152 applicant as part of an application for preliminary plan approval or
 153 an application for preliminary plan revision or amendment,
 154 reviewed by staff, and approved on a case-by-case basis by the
 155 Planning Board, after considering such factors as the size, type,
 156 and location of the project. The time allocated to a phase must not
 157 exceed ~~[[36]]~~60 months from the initiation date associated with
 158 that particular phase for any preliminary plan that is approved on
 159 or after (effective date), but before (effective date plus 2 years), or
 160 36 months from its Initiation Date for any preliminary plan that is
 161 approved after (effective date plus 2 years). The cumulative
 162 validity period of all phases may not exceed the APFO validity
 163 period which runs from the date of initial preliminary plan
 164 approval including any extensions granted under Section 50-
 165 20(c)(~~[[5]]~~7). Validation of a preliminary plan for a phase occurs
 166 upon the recordation of a final record plat for all property
 167 delineated in that particular phase of the approved preliminary
 168 plan.

169 (C) The applicant must propose a phasing schedule before the Planning
 170 Board acts on the preliminary plan or site plan, if applicable.

171 (D) On (effective date), the validity period of any preliminary plan that
 172 was valid as of January 1, 2009, or is valid as of (effective date
 173 minus one day), is extended for 2 additional years. This provision
 174 also applies to each phase of a multi-phase plan that was valid as
 175 of January 1, 2009, or is valid as of (effective date minus one day).

176
 177
 178 *Approved:*
 179

180

181 Isiah Leggett, County Executive Date

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

183

184

185 Linda M. Lauer, Clerk of the Council Date