

Ordinance No. 16-35  
Subdivision Regulation Amend. No. 09-01  
Concerning: Adequate Public Facilities-  
Preliminary subdivision plans -  
Validity Period  
Revised: 3-25-09 Draft No. 4  
Introduced: February 10, 2009  
Public Hearing: March 17, 2009  
Adopted: March 31, 2009  
Effective: April 1, 2009

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

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By: Council President at the Request of the County Executive

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**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
- [[~~(2)~~]] (3) otherwise revise the validity period for certain developments.

By amending

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

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*



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

16                    (iii) for no less than 7 and no more than 12 years after  
17                    the preliminary plan is approved, as determined by  
18                    the Planning Board at the time of approval, for any  
19                    plan approved on or after April 1, 2009, but before  
20                    April 1, 2011; and

21                    ~~[(C)]~~ (iv) ~~[[For]]~~ for no less than ~~[5]~~ ~~[[7]]~~ 5 and no  
22                    more than 10 years after the preliminary plan is  
23                    approved, as determined by the Board at the time  
24                    of approval, for any plan approved on or after  
25                    August 1, 2007, and before April 1, 2009, or on or  
26                    after April 1, 2011. ~~[[If an applicant requests a~~  
27                    validity period that is longer than ~~[5]~~ 7 years, the  
28                    applicant must submit a development schedule or  
29                    phasing plan for completion of the project to the  
30                    Board for its approval. At a minimum, the  
31                    proposed development schedule or phasing plan  
32                    must show the minimum percentage of the project  
33                    that the applicant expects to complete in the first  
34                    ~~[5]~~ 7 years after the preliminary plan is approved.  
35                    To allow a validity period longer than ~~[5]~~ 7 years,

36 the Board must find that the extended validity  
37 period would promote the public interest. The  
38 Board may condition a validity period longer than  
39 [5] 7 years on adherence to the proposed  
40 development schedule or phasing plan, and may  
41 impose other transportation improvement or  
42 mitigation conditions if those conditions are  
43 needed to assure adequate levels of transportation  
44 service during the validity period.]]

45 (B) If an applicant requests a validity period that is longer  
46 than the minimum specified in this paragraph, the  
47 applicant must submit a development schedule or phasing  
48 plan for completion of the project to the Board for its  
49 approval. At a minimum, the proposed development  
50 schedule or phasing plan must show the minimum  
51 percentage of the project that the applicant expects to  
52 complete in the first 5 or 7 years, as appropriate, after the  
53 preliminary plan is approved. To allow a validity period  
54 longer than the minimum specified in this paragraph, the  
55 Board must find that the extended validity period would  
56 promote the public interest. The Board may condition a  
57 validity period longer than the minimum specified in this  
58 paragraph on adherence to the proposed development  
59 schedule or phasing plan, and may impose other  
60 transportation improvement or mitigation conditions if

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those conditions are needed to assure adequate levels of transportation service during the validity period.

[[D)] (3A) A determination of adequate public facilities made under this Chapter is timely and remains valid:

\* \* \*

(ii) The Board must grant an application to extend the validity period established under [[D)(i) of]] this [[subsection]] paragraph for an additional 5 years if:

\* \* \*

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

(4) 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 has issued building permits for at least 50 percent of the entire subdivision before the application for extension is filed. The Board may approve one or more extensions if the aggregate length of all extensions for the development do not exceed:

(A) for a preliminary plan approved before April 1, 2009, or on or after April 1, 2011:

(i) 2½ years for a subdivision with an original validity period of [5] [[7]] 5 years; or

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~~[(B)]~~ (ii) 6 years for a subdivision with an original validity period longer than [5] ~~[[7]] 5 years; and~~  
(B) for a preliminary plan approved on or after April 1, 2009, and before April 1, 2011:  
(i) 2½ years for a subdivision with an original validity period of 7 years; or  
(ii) 6 years for a subdivision with an original validity period longer than 7 years.

\* \* \*

- (7) ~~[[Submittal and approval requirements for]]~~ For each extension of an adequate public facilities determination~~[[.]]~~;
- (A) ~~[[The]]~~ the applicant must submit a new development schedule or phasing plan for completion of the project to the Board for approval;
  - (B) the applicant must not propose any additional development beyond the amount approved in the original determination ~~[[of adequate public facilities]]~~;
  - (C) the Board must not require any additional public improvements or other conditions beyond those required for the original preliminary plan;
  - (D) the applicant must file an application for an extension with the Board before the ~~[[original]]~~ applicable validity period has expired; and

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

112 \* \* \*

113 **50-35. Preliminary subdivision plans-Approval procedure.**

114 \* \* \*

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

116 \* \* \*

117 (2) *Duration of Validity Period.*

118 (A) An approved preliminary plan for a single phase project  
 119 remains valid for ~~[[36]]~~ 60 months ~~[[from]]~~ after its  
 120 Initiation Date for any preliminary plan approved on or  
 121 after April 1, 2009, but before April 1, 2011, and for 36  
 122 months after its Initiation Date for any preliminary plan  
 123 approved on or after April 1, 2011. Before the validity  
 124 period expires, the applicant must have secured all  
 125 ~~[[governmental]]~~ government approvals necessary ~~[[as~~  
 126 condition precedent for plat recordation]] to record a plat,  
 127 and a final record plat for all property delineated on the  
 128 approved preliminary plan must have been recorded  
 129 ~~[[among]]~~ in the County land records.

130 (B) An approved preliminary plan for a multi-phase project  
 131 remains valid for the period of time ~~[[established]]~~ allowed  
 132 in the phasing schedule approved by the Planning Board.  
 133 Each phase must be assigned a validity period, the duration  
 134 of which must be proposed by the applicant as part of an

135 application for preliminary plan approval or ~~[[an~~  
 136 ~~application]]~~ for preliminary plan revision or amendment,  
 137 ~~[[reviewed by staff,]]~~ and approved on a case-by-case basis  
 138 by the Planning Board, after considering such factors as  
 139 the size, type, and location of the project. The time  
 140 allocated to ~~[[a]]~~ any phase must not exceed ~~[[36]]~~ 60  
 141 months ~~[[from]]~~ after the initiation date ~~[[associated with]]~~  
 142 for that particular phase for any preliminary plan approved  
 143 on or after April 1, 2009, but before April 1, 2011, and 36  
 144 months after the initiation date for that particular phase for  
 145 any preliminary plan approved on or after April 1, 2011.  
 146 The cumulative validity period of all phases ~~[[may]]~~ must  
 147 not exceed the APFO validity period which runs from the  
 148 date of the initial preliminary plan approval, including any  
 149 ~~[[extensions]]~~ extension granted under Section 50-20(c)(5).  
 150 ~~[[Validation of a]]~~ A preliminary plan for a phase ~~[[occurs~~  
 151 ~~upon the recordation of]]~~ is validated when a final record  
 152 plat for all property delineated in that ~~[[particular]]~~ phase  
 153 of the approved preliminary plan is recorded in the County  
 154 land records.

155 \* \* \*

156 **Sec. 2. Effective Date.** This amendment takes effect on April 1, 2009.

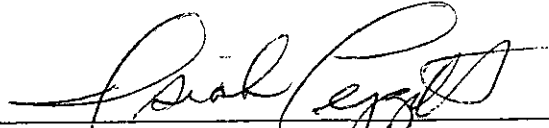
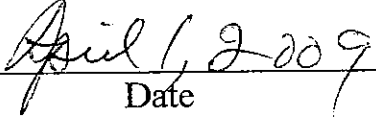
157 **Sec. 3. Automatic Extensions.**

158 (a) Notwithstanding any provision of Section 50-20(c) to the contrary, the  
 159 validity period of any determination of adequate public facilities that  
 160 was valid on March 31, 2009, or for which a timely application for an


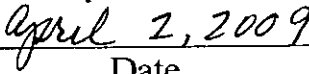
161 extension of the validity period was pending on March 31, 2009, is  
162 automatically extended for 2 years after the date when the validity  
163 period would otherwise have expired. This 2-year extension must be  
164 treated for all purposes as part of the validity period that was extended.

165 (b) Notwithstanding any provision of Section 50-35(h) to the contrary, the  
166 validity period of any preliminary subdivision plan that was valid on  
167 March 31, 2009, or for which a timely application for an extension of  
168 the validity period was pending on March 31, 2009, including any  
169 separate phase of a multi-phase plan, is automatically extended for 2  
170 years after the date when the validity period would otherwise have  
171 expired. This 2-year extension must be treated for all purposes as part  
172 of the validity period that was extended.

173 *Approved:*

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176 Isiah Leggett, County Executive Date

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

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180 \_\_\_\_\_  
180 Linda M. Lauer, Clerk of the Council Date