Section 1-20 Adequate Public Facilities

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Cross references:

Buildings, see Chapter 1-6;

Planning and development, see Chapter 1-13;

Subdivision regulations, see Chapter 1-16;

Zoning ordinance, see Chapter 1-19

Editor's note:

This article was adopted by Ord. 91-28-028, passed 10-15-1991, and was amended by Ord. 95-06-130, passed 5-16-1995, and by Ord. 98-03-205, passed 3-17-1998.

Statutory reference:

Adequate public facilities, see Md. Code Ann., Art. 66B, § 10.01

§ 1-20-1. TITLE.

This chapter shall be known and cited as the "Adequate Public Facilities Ordinance of Frederick County, Maryland."

(Ord. 98-03-205, 3-17-1998)

§ 1-20-2. AUTHORITY.

This chapter is established in accordance with the provisions of Md. Code Ann., Art. 66B.

(Ord. 98-03-205, 3-17-1998)

§ 1-20-3. JURISDICTION.

The provisions of this chapter shall apply to all unincorporated lands within the territorial limits of the county.

(Ord. 98-03-205, 3-17-1998; Ord. 09-28-532, 11-16-2009; Ord. 11-02-568, 3-1-2011)

§ 1-20-4. INTENT.

This chapter is adopted with the intent that new residential, commercial, industrial and other development take place in accordance with the Frederick County Comprehensive Plan and the Capital Improvements Program and to ensure that adequate public facilities and services are available concurrent with new development so that orderly development and growth can occur. Provision of adequate facilities will take place in cooperation with municipalities and, when possible, neighboring jurisdictions, especially when these facilities are affected by new development which falls under the requirements of this chapter. Development and adoption of municipal APF ordinances that correspond to this chapter is strongly recommended. For the purposes of this chapter, public facilities shall include, road, water, sewerage, fire and emergency medical services, and school facilities.

(Ord. 98-03-205, 3-17-1998; Ord. 09-20-524, 7-7-2009)

§ 1-20-5. DEFINITIONS.

(A) The following rules of construction shall apply to the text of the chapter.

(1) The particular will control the general.

(2) The words “shall” and “will” are always mandatory and not discretionary. The word “may” is permissive.

(3) Words used in the present tense include the future; and words used in the singular number include the plural; and the plural includes the singular; words of the masculine gender will include the feminine and the neuter gender will refer to any gender as required, unless the context plainly indicates the contrary.

(4) A building or structure includes any part thereof.

(5) The phrase “used for” includes “arranged for, designed for, intended for, maintained for, or occupied for.”

(6) The word person includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

(7) Unless it is plainly evident from the context that a different meaning is intended, a regulation which involves 2 or more items, conditions, provisions, or events connected by the conjunction “and, or,” or “either ... or,” the use of the conjunction is defined as follows:

(a) ***AND***. All the connected items, conditions, provisions, and events apply together and not separately.

(b) ***OR***. The connected items, conditions, provisions, or events apply separately or in any combination.

(c) ***EITHER*** ... ***OR.*** The connected items, conditions, provisions, or events shall apply separately but not in combination.

(8) The word “includes” does not limit a term to the specified examples, but is intended to extend the term’s meaning to all other instances or circumstances of like kind or character.

(9) When a term defined in the county subdivision regulations, zoning ordinance, or the county building code occurs in this chapter, it has the meanings specified in the subdivision regulations, zoning ordinance or building code, unless specifically defined in this chapter.

(10) The word “county” means Frederick County, Maryland. The word “state” means the State of Maryland.

(11) Throughout this chapter, all words, other than the terms specifically defined herein, have the meaning inferred from their context in this chapter or their ordinarily accepted definitions.

(B) In this chapter, the following terms are used as defined unless otherwise apparent from the context.

ADAPTIVE REUSE PROJECT. Rehabilitation or renovation of existing obsolescent or historic structure(s) from their original or most recent use to a new use.

ADEQUATE PUBLIC FACILITIES (APF). Those public facilities included in the context of this chapter which meet established minimum standards as further specified herein.

ADEQUATE PUBLIC FACILITY LETTER OF UNDERSTANDING. A letter from the Planning Commission to the developer which sets forth all terms, conditions and restrictions which must be satisfied for a finding of adequacy.

AGE-RESTRICTED COMMUNITY. A development or portion thereof which has been designated as an age-restricted community in accordance with § 1-19-10.500.10 of the Zoning Ordinance.

AMEND or ***AMENDMENT***. Any repeal, modification, or addition to a regulation; any new regulation.

APFO TEST DATE. The later of: (1) the date of plan submission, or (2) the first date upon which all necessary APFO documentation and materials have been submitted.

APPROVED DEVELOPMENT. For testing adequacy of schools under § 1-20-61(C)(2), an approved development consists of 50 dwelling units or more, with existing APFO (or equivalent) approval, and is located in the same attendance area(s) as the proposed development.

AT ONE LOCATION. All adjacent land of the applicant if:

(1) The property lines are contiguous at any point; or

(2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of- way at any point; or

(3) The property lines are separated only by other land of the applicant which is not subject to this chapter at the time of any permit, site plan, development or subdivision application by the applicant.

BACKGROUND ENROLLMENT GROWTH. The average annual impact of equated student enrollment changes during the preceding 3 years in the school attendance areas serving the proposed development with appropriate adjustments made in the determination by the Frederick County Public Schools to eliminate student enrollment changes caused solely by school redistricting.

CAPITAL BUDGET. The current and first year of the approved CIP.

CAPITAL IMPROVEMENT PROGRAM (CIP). An annual document adopted by the county indicating county capital projects having funding approval for the current fiscal year and

those capital projects which are currently planned for the following 5 year period, including the proposed means of financing the same.

COMPREHENSIVE PLAN. A composite of mapped and written text, the purpose of which is to guide the physical development of the county, and is adopted by the Board of County Commissioners and includes all changes and additions thereto made under the provisions of Md. Code Ann., Art. 66B.

CONSOLIDATED TRANSPORTATION PROGRAM (CTP). An annual document prepared by the Maryland Department of Transportation and approved by the Maryland General Assembly indicating state transportation projects which have funding approval for the current fiscal year and those projects which are planned for the following 5 year period.

DEVELOPER. An individual, partnership, corporation (or agent thereof), or other entities that undertakes the responsibility for any or all of the activities covered by this chapter and Chapters 1-16 and 1-19, particularly the designing of a subdivision plat or site development plan showing the layout of the land and the public improvements involved therein. In as much as the subdivision plat is merely a necessary means to the end of assuring a satisfactory development, the term ***DEVELOPER*** is intended to include the term ***SUBDIVIDER***, even though the personnel involved in successive stages of the project may differ.

DEVELOPER-FUNDED. Improvements or facilities which are:

(a) Required to be provided or funded by a developer as a condition of APFO approval; and

(b) Guaranteed by cash escrow, letter of credit, or other form of guarantee acceptable to the County Attorney.

DEVELOPMENT. The area of land which is subject to preliminary plan, site plan or Phase II plan approval, or expansion of existing use and which is subject to subdivision, site plan or Phase II plan review.

DIVISION OF PERMITTING AND DEVELOPMENT REVIEW (DPDR). One of two divisions within the county government that perform certain administrative functions for the Planning Commission and other functions as directed by the Board of County Commissioners.

DIVISION OF PLANNING (DOP). One of two divisions within the county government that perform certain administrative functions for the Planning Commission and other functions as directed by the Planning Commission and/or Board of County Commissioners.

FEE-IN-LIEU. A cash payment made to an agency in an amount equal to the cost of providing a service or constructing an improvement for the purpose of having the service or improvement provided or constructed by others.

FINAL PLAT. The final map, drawing or chart upon which the subdivider's plan of subdivision is presented to the Planning Commission or county staff for approval and which, if approved, will be submitted for recording among the land records for Frederick County.

FREEWAY AND EXPRESSWAY MAINLINE. The through travel lanes not involved with interchanging or intersecting movements on fully or partially access controlled highways, such as the interstate highways, US 340, and US 15.

GOVERNMENT PROJECTS. Any building, structure, or alteration thereof paid for and used by the local, state or federal government entities.

GUIDELINES. BOCC adopted guidelines titled "Guidelines for the Preparation of Traffic Impact Analyses for Development Applications."

HOUSING FOR OLDER PERSONS. Housing intended for, and solely occupied by, persons 62 years of age or older in accordance with the provisions of 42 U.S.C. § 3607(B)(2)(b), as amended.

INTERSECTION. The at-grade crossing of roadways usually controlled by a traffic signal, stop or yield signs or a roundabout.

LEVEL OF SERVICE (LOS). A standardized index of relative service provided by a transportation network element ranging from "A" to "F" with "A" representing free, unobstructed flow and "F" representing a forced flow beyond capacity of the facility, or in the case of intersections a measurement of delay where "A" represents the least delay and "F" the most, as defined in the "Highway Capacity Manual" published by the Transportation Research Board.

LOT. A contiguous area of land separated from other areas of land by separate description (including a recorded deed, a subdivision plat or record of survey map, or by metes and bounds) for purpose of sale, lease, transfer of ownership or separate use.

LOT OF RECORD. Any lot legally recorded in the land records of the county which has been the subject of subdivision approval.

MAJOR SUBDIVISION. Any original parcel which has been or is proposed to be subdivided to create 6 or more lots.

MINOR SUBDIVISION. Any original parcel which has been or is proposed to be subdivided to create 5 or fewer lots.

MORATORIUM. A moratorium or other legislation adopted by the Board of County Commissioners preventing the recordation of plats or halting a development because of inadequate water or sewer capacity.

MXD. The Mixed Use Development Floating Zone established in § 1-19-10.500 of the Frederick County Code prior to November 20, 2010.

ORIGINAL PARCEL. Shall have the meaning set forth in § 1-16-3(B) of this code.

PLANNED DEVELOPMENT EMPLOYMENT (PDE). A floating zoning district approved by the County Commissioners which allows a variety of uses and dwelling unit types in accordance with an approved plan and schedule of improvements.

PLANNED DEVELOPMENT RESIDENTIAL (PDR). A floating zoning district approved by the County Commissioners which allows a variety of uses and dwelling unit types in accordance with an approved plan and schedule of improvements.

PLANNED UNIT DEVELOPMENT (PUD). A floating zoning district approved by the County Commissioners which allows a variety of uses and dwelling unit types in accordance with an approved plan and schedule of improvements as established in § 1-19-10.700 of the Frederick County Code prior to November 20, 2010.

PRELIMINARY PLAN. The preliminary drawings and supplementary materials indicating the proposed layout of the subdivision to be submitted to the Planning Commission for its consideration.

PUBLIC SAFETY FACILITY. A unit dedicated to providing immediate and direct emergency response to fire, medical service, crime, and other community safety needs.

PUBLIC WORKS AGREEMENT. A contract between the developer and the county to complete the necessary improvements in accordance with the approved plans and specifications by a given date.

RESUBDIVISION. A further division of a previously recorded lot or lots to create additional lots.

ROADS. Public rights-of-way recognized and maintained by the state, county or municipality, including, but not limited to, pavement, drainage, traffic control devices, bridges, and culverts.

SITE DEVELOPMENT PLAN (SITE PLAN). The plan indicating the location of existing and proposed buildings, structures, paved areas, walkways, vegetative cover, landscaping and screening within a site proposed for development which is to be submitted to the Planning Commission and/or staff for approval prior to the release of building permits on the site.

STATE RATED CAPACITY (SRC). The maximum number of students, as determined by the state, that can be reasonably accommodated in a school facility without significantly hampering delivery of the given educational program.

STRUCTURAL ADEQUACY. Determination by county DPW design engineers that the pavement cross-section (or bridge design) is of sufficient depth and design to carry the increased traffic volume generated by the proposed development, including the heavy construction vehicles which will be present, without causing undue failure of the infrastructure.

SUBDIVISION. The division of a lot, tract or parcel of land into 2 or more lots, parcels, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership or for building development. It includes resubdivision and, when appropriate to the context, relates to the process of resubdividing or to the land or territory subdivided.

ZONING ADMINISTRATOR. The administrative officer in charge of zoning administration within the County Planning and Zoning Department.

(Ord. 98-03-205, 3-17-1998; Ord. 02-04-300, 3-5-2002; Ord. 03-13-336, 9-2-2003; Ord. 06-04-400, 1-17-2006; Ord. 07-21-461, 6-12-2007; Ord. 07-26-466, 8-7-2007; Ord. 08-20-496, 7-17-2008; Ord. 08-26-502, 10-14-2008; Ord. 09-19-523, 7-7-2009; Ord. 09-20-524, 7-7-2009; Ord. 10-26-561, 11-9-2010)

§ 1-20-6. GENERAL REQUIREMENTS.

(A) In planning and developing any subdivision or any development, the developer shall comply with the general principles set forth in this chapter for the provision of adequate facilities; and in every case the developer shall observe the procedure outlined in this chapter.

(B) A developer shall not avoid the intent of this chapter by submitting piecemeal applications for preliminary plats or site plans. However a developer may seek approval of only a portion of the subdivision or development, provided that the impact from all previously approved preliminaries or site plans from that development shall be considered during the APF review of each subsequent portion of the development.

(C) Except as provided in § 1-20-7, all parcels must receive APFO approval prior to site plan subdivision, or Phase II approval.

(Ord. 98-03-205, 3-17-1998; Ord. 09-20-524, 7-7-2009)

§ 1-20-7. EXEMPTIONS.

(A) Minor residential subdivisions and public safety facilities are not subject to the requirements of this chapter. Except as specifically provided in this section, all other applications for development, whether for county or municipal facilities, or private sector projects, are required to obtain APFO approval.

(B) The first 5 lots from an original parcel created by resubdivisions occurring after December 1, 1991.

(C) Any existing preliminary subdivision plat approved prior to December 1, 1991 shall be exempt from the requirements of this chapter for the following time periods as long as the preliminary approval remains valid:

(1) Residential development with valid preliminary approval:

6-100 units 3 years from December 1, 1991

101-500 units 5 years from December 1, 1991

501 + units 10 years from December 1, 1991

(2) Nonresidential development with valid preliminary approval:

0-50 acres 3 years from December 1, 1991

51-200 acres 5 years from December 1, 1991

201 + acres 10 years from December 1, 1991

(3) All plats having preliminary approval and seeking extensions of approval must comply with subdivision regulations.

(D) Any existing PUD with preliminary plat (Phase III) approval prior to the effective date of this chapter shall be exempt from the requirements of this chapter for the following time periods as long as the preliminary plat (Phase III) approval remains valid:

6-100 units 3 years from December 1, 1991

101-500 units 5 years from December 1, 1991

501 + units 10 years from December 1, 1991

(E) Developments that meet the requirements of this chapter at the time of preliminary subdivision approval do not have to comply with the provisions of this chapter at the time of site plan approval.

(F) Any project which qualifies as “housing for older persons” defined in § 1-20-5 hereof, and which meets the following criteria shall be exempt from the schools test under this chapter.

(1) If the proposed project is a PUD, PDR, PDE, or MXD that is not an adaptive reuse project, all or a portion of the project must have been designated as an Age-Restricted Community at Phase I in accordance with § 1-19-10.500.10 of the Zoning Ordinance.

(2) The proposed project must comply with the minimum age restriction, as stated in the Fair Housing Act requirements for housing for older persons, by restricting occupancy to persons

62 years of age and older and thereby maintain an exemption from the prohibition against familial status discrimination, such that children will be excluded as residents.

(3) The zoning certificate, site plan and subdivision approvals shall limit occupancy of the property to persons age 62 and older as specified by the Fair Housing Act in order to qualify as housing for older persons, as described in subsection (2) above.

(4) The proposed project shall be located in an area that will be served by both public water and sewer within a designated growth area and shall not be located within an area to be served by well or septic.

(5) The construction and development of the project must include a full program of amenities and other activities for older persons. At a minimum, the amenities must include:

(a) A trail system, walking paths, and sidewalks for pedestrian accessibility;

(b) A clubhouse/multi-purpose building(s) or equivalent space sized at 20 square feet for every dwelling unit. A minimum of 1,500 sq. ft. must be provided. The maximum square footage required shall be 20,000 square feet;

(c) Active recreational open space (for the purpose of providing amenities, including but not limited to, a swimming pool, tennis courts, chip and putt course, bocce courts, horseshoe pits, and/or similar active recreational amenities at a rate of 1/3 acre per 100 dwelling units. A minimum of 1 acre must be provided. A single large-scale amenity, such as a golf course, may not be proposed as the sole means to satisfy this requirement. Only the physical structure (i.e. footprint) of the clubhouse/multi- purpose building(s), not the parking area(s), will be considered in determining the area of active recreational open space;

(d) Passive recreational space, including but not limited to, picnic areas, gazebos, pocket parks and/or other similar passive recreational amenities; and

(e) An appropriate phasing schedule in each phase of development to meet the needs of the residents.

(6) If, due to unusual circumstances of shape and topography or other physical features or conditions of the development, or because of the nature of adjacent developments, or due to the existence of resources that will be shared with adjacent developments, or if the Age-Restricted Community (ARC) is an adaptive reuse of an existing structure or structures, extraordinary hardship will result from strict compliance with the requirements set forth in subsections (F)(5)(a) through (F)(5)(d) of this section, the Planning Commission may grant a modification of these requirements. The applicant must submit a justification statement with its request for the modification, together with evidence that the development meets the requirements stated above for the requested modification. However, the Planning Commission may not grant a modification that will have the effect of substantially altering or nullifying the intent and purpose of this section. In granting modifications, the Planning Commission may require such conditions as are deemed necessary by the Planning Commission in its sole judgment.

(7) Prior to granting APFO approval for the project, the County Planning Commission must review and approve the proposed restrictive covenants applicable to the project to ensure that the project is limited exclusively to housing for older persons ages 62 and older. The restrictive covenants must also provide that any subsequent revisions or modifications of the covenants pertaining to age limits for occupancy shall be submitted to the Planning Commission for approval prior to recordation. These revisions or modifications will require the re-approval of the Phase II plan, site plan, zoning certificate, and subdivision plat(s), as necessary.

(8) Prior to recordation of subdivision plats and issuance of building permits or the zoning certificate for the project, the restrictive covenants described above in subsection (F)(7) must be recorded in the county land records.

(9) Before any revision or modification to the project at any time in the future, whether the project is built out and occupied or not, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the schools adequacy requirements under this chapter.

(10) Any project approved under this section shall meet the requirements of the sections of this chapter requiring that roads, public water and sewerage facilities be adequate.

(Ord. 98-03-205, 3-17-1998; Ord. 02-04-300, 3-5-2002; Ord. 07-04-444, 2-20-2007; Ord. 07-21-461, 6-12-2007; Ord. 07-26-466, 8-7-2007; Ord. 08-02-478, 1-8-2008; Ord. 08-20-496, 7-17-2008; Ord. 08-26-502, 10-14-2008; Ord. 09-20-524, 7-7-2009; Ord. 10-26-561, 11-9-2010)

§ 1-20-8. APPROVAL OF SUBDIVISIONS, SITE PLANS.

(A) All major residential subdivisions, major and minor commercial/industrial subdivisions, site plans, and revised subdivisions or site plans resulting in an increase in density or intensity of use, received for approval, reapproval or extension by the Planning Commission shall meet the requirements set forth herein prior to preliminary plat or site plan approval except as provided for in § 1-20-7.

(B) Subdivision plats or site plans that do not meet the requirements for adequate public facilities in Articles III-VI herein shall not be granted preliminary subdivision or site plan approval by the Planning Commission. A conditional approval as allowed for in § 1-20-11 may be granted, provided no final approval shall be granted or lots recorded until the conditions set forth in the conditional approval have been satisfied.

(C) Prior to the signing of a preliminary plat, site plan or Phase II plan, an adequate public facilities letter of understanding shall be forwarded to the Planning Commission and to the developer.

(D) Approval of adequate public facilities as set forth in this chapter shall be valid from the date of the meeting at which approval of the preliminary subdivision or site plan approval is first granted by the Planning Commission for the following time period as long as the preliminary plan or site plan approval remains valid.

(1) *Residential subdivisions*.

6-50 units	3 years
51-100 units	4 years
101-250 units	6 years
251-500 units	8 years
501- 750 units	10 years
751-1,000 units	11 years
1,001-1,250 units	12 years
1,251-1,500 units	13 years
1,501-1,750 units	14 years
1,751 + units	15 years

(2) *Nonresidential subdivisions*. Three years, plus one year per every complete 750 daily trip increment generated during the peak day of the site, up to a maximum of 15 years.

(3) *Site plans*. For as long as the site plan approval remains valid but in no event shall it be for more than 3 years.

(4) At the request of the developer, the Planning Commission may approve a preliminary plan for a nonresidential subdivision or site plan for a nonresidential development for a time period less than that shown above, but in no case for less than 1 year.

(5) If a developer is seeking concurrent subdivision and site plan approval, the APFO testing shall be required as part of the subdivision approval. Notes shall be placed on both documents specifying approved use(s).

(E) At the request of the developer, the Planning Commission shall extend the approval of adequate public facilities beyond the time frame provided in division (D) above if the Commission finds:

(1) All conditions of approval are being met; and

(2) All unrecorded lots or unbuilt site plan structures meet the requirements for adequate school, road, water and sewerage capacity; or capacity is vested for improvements constructed for roads (§ 1-20-31(G), water (§ 1-20-41(E)), or sewer (§ 1-20-51(E)).

(F) The Planning Commission may grant APFO approval for time frames beyond those specified in division (D) if preexisting conditions of rezoning or other required phasing limitations, such as those provided in § 1-20-10, warrant such action.

(G) If the preliminary plat or site plan approval expires or is voided prior to the recording of all lots, the unrecorded lots or in the case of site plans, unconstructed portion of the development, shall meet the requirements of this chapter prior to again obtaining preliminary subdivision or site plan approval.

(H) A developer seeking preliminary subdivision or site plan approval of a development must comply with the county subdivision regulations and zoning ordinance.

(I) Prior to recordation of final plats all Health Department and county requirements must be met.

(J) For all developments which were exempt from this chapter or for which APFO approval was granted, the subdivision lots must be recorded, or where no subdivision is required, substantial construction pursuant to the site plan must be commenced in order to remain exempt from future APFO testing.

(K) (1) The developer may request that the time of approval for adequate public facilities for a development be extended if a moratorium has been imposed.

(2) The Planning Commission shall grant the extension if the developer establishes each of the following:

(a) The Board of County Commissioners imposed a moratorium;

(b) The development had APFO approval at the time the moratorium was imposed;

(c) The division of utilities and solid waste management certifies that water and sewer capacity is adequate to serve the development or such portion as required.

(3) The duration of the extension of the time of the APFO approval shall be the longer of:

(a) The length of time remaining for the APFO approval at the time the moratorium was imposed; or

(b) One year.

(4) Retesting of public facilities, other than water or sewer facilities, shall not be required.

(5) The developer must make this request within six months after the moratorium expires.

(Ord. 98-03-205, 3-17-1998; Ord. 00-19-261, 7-11-2000; Ord. 02-05-301, 3-5-2002; Ord. 03-13-336, 9-2-2003; Ord. 09-19-523, 7-7-2009; Ord. 09-20-524, 7-7-2009; Ord. 10-26-561, 11-9-2010)

§ 1-20-9. APPROVAL OF PLANNED DEVELOPMENTS.

(A) All Planned Development Phase II plans or amended Phase II plans resulting in an increase in density or intensity of use shall meet the requirements of this chapter prior to approval. A phasing plan indicating the density and rate of development in accordance with the availability of adequate public facilities shall also be approved as part of the Phase II plan approval.

(B) Planned Development Phase II plans that do not meet the requirements for adequate public facilities in Articles III-VI herein, shall not be approved except as a conditional approval as allowed for in § 1-20-11(A) or (B). Final plat approval may be granted and lots recorded as the conditions set forth in the conditional approval are met.

(C) An Adequate Public Facilities Letter of Understanding shall be forwarded by the Planning Commission to the developer. Prior to final signature and approval of the Planned Development Phase II plan, the Adequate Public Facilities Letter of Understanding shall be approved and signed by both the developer and Planning Commission.

(D) Approval of adequate public facilities for planned developments shall be valid for the length of time of the original Phase II plan approval. The Planned Development Phase II APFO validity time period shall be the greater time of the validity periods determined per § 1-20-8(D)(1) and § 1-20-8(D)(2).

(E) If the Planned Development Phase II approval expires, is voided, or if the Planned Development Phase II plan is amended such that the density or intensity of use is increased, then the unrecorded or undeveloped portion of the development shall meet the requirements of this chapter prior to again obtaining Phase II approval.

(F) All planned developments seeking Phase II approval must comply with all applicable regulations, including the county subdivision regulations and zoning ordinance.

(G) Prior to recordation of final plats for a planned development, all applicable state and local requirements must be met including but not limited to the Health Department, Division of Utilities and Solid Waste Management, Division of Permitting and Development Review, and Division of Public Works requirements.

(Ord. 10-26-561, 11-9-2010)

§ 1-20-10. APPROVAL OF MIXED USE DEVELOPMENTS (MXDS) AND PLANNED UNIT DEVELOPMENTS (PUDS).

(A) All MXD plans, PUD Phase II plans, or amended Phase II plans resulting in an increase in density or intensity of use, shall meet the requirements of this chapter prior to MXD plan or PUD Phase II plan approval or reapproval. A phasing plan indicating the density and rate of development in accordance with the availability of adequate public facilities shall also be approved as part of the MXD plan or PUD Phase II approval or reapproval.

(B) All PUDs with existing Phase II approval as of December 1, 1991, shall meet the requirements of this chapter prior to preliminary plat (Phase III) or site plan approval or reapproval. A phasing plan indicating the density and rate of development in accordance with the availability of adequate public facilities shall also be approved as part of the preliminary plat or site plan approval.

(C) MXD or PUD Phase II preliminary plans or site plans that do not meet the requirements for adequate public facilities in Articles III-VI herein, shall not be approved except as a conditional approval as allowed for in § 1-20-11 (A) or (B). Final plat approval may be granted and lots recorded as the conditions set forth in the conditional approval are met.

(D) Prior to the signing of the Phase II, or preliminary plat, an adequate public facilities letter of understanding shall be forwarded by the Planning Commission to the developer.

(E) Approval of adequate public facilities for PUDs shall be valid for the length of time of the original Phase II plan approval. The preliminary plan (Phase III) APFO approval shall be based on the number of units approved on the Phase II plan. MXD approval time shall be based upon the number of units and size (acreage) of the preliminary plan.

(F) If the Phase II or preliminary plat (Phase III) approval expires, is voided or is amended such that the density or intensity of use is increased, then the unrecorded or undeveloped portion of the development shall meet the requirements of this chapter prior to again obtaining Phase II or preliminary plat (Phase III) approval.

(G) All MXD or PUD developments seeking Phase II, preliminary subdivision (Phase III) or site plan approval must comply with the county subdivision regulations and zoning ordinance.

(H) Prior to recordation of final plats all Health Department and Department of Public Works requirements must be met.

(Ord. 98-03-205, 3-17-1998; Ord. 00-19-261, 7-11-2000; Ord. 06-08-404, 4-4-2006; Ord. 10-26-561, 11-9-2010)

§ 1-20-11. CONDITIONAL APPROVAL.

(A) Conditional site plan, or preliminary plat, approval may be granted to a development that does not have adequate public facilities at the time of Planning Commission consideration, provided that the developer agrees to provide the necessary improvements to make the facility adequate as allowed for in § 1-20-12. If the developer improvements will not result in adequate capacity, conditional approval shall not be granted, and preliminary plat and site plan approval shall be denied.

(B) If any conditions of a Phase II or preliminary plat approval have not been met, then approval shall not be granted to a final subdivision plat.

(C) If conditional site plan approval has been granted, a building permit shall not be issued until the conditions have been satisfied, or the facilities have been determined to be adequate.

(Ord. 98-03-205, 3-17-1998; Ord. 00-19-261, 7-11-2000; Ord. 06-08-404, 4-4-2006; Ord. 09-20-524, 7-7-2009; Ord. 10-26-561, 11-9-2010)

§ 1-20-12. DEVELOPER OPTION.

The developer shall have the option to provide the public facility improvements necessary to support the proposed development and to ensure adequacy of public facilities set forth in this chapter or wait for public facilities to become adequate by improvements made pursuant to the CIP or other sources. A county, state or municipal agency may participate in the improvements.

(Ord. 98-03-205, 3-17-1998; Ord. 10-26-561, 11-9-2010)

§ 1-20-13. ESCROW FUNDS FOR ROAD IMPROVEMENTS.

(A) In lieu of either providing the public facility improvements or waiting for public facilities to become adequate as provided in § 1-20-12, the developer of a limited impact development (as defined below) shall have the option of contributing money to an escrow account as set forth in this section, provided the Planning Commission determines that the developer has fulfilled each of the requirements of this section.

(B) The amount of money the developer shall be required to place in the escrow account shall be the proportionate share of costs of making the improvements required to satisfy the roads adequacy requirements in § 1-20-31. This proportionate share shall be based on an equitable allocation or portion of traffic trips in the peak hour, and in the critical direction or movement, that the proposed development is estimated to cause, when measured against the additional capacity that the proposed improvement is creating. In arriving at the equitable allocation or portion, the Planning Commission shall consider the traffic impact of the development as it relates to the entire road improvement being proposed. The Planning Commission shall determine the equitable allocation based on the procedures outlined in the guidelines. The proposed road improvement may upon the request of the applicant be designed to create more new capacity than that which is required for the development to satisfy the adequacy requirements in § 1-20-31, if the Planning Commission determines that the road link or intersection to be improved will require greater improvement to handle additional future development consistent with the County Comprehensive Plan. Once a road improvement is approved for a particular road link or intersection and an escrow account is established, subsequent applicants shall either contribute to the escrow fund an equitable allocation of the approved road improvement, until such time that the account is closed by the county, or build the approved road improvement.

(C) The Planning Commission shall approve the escrow request if the Planning Commission determines that it would not be equitable to impose the entire cost of the required improvements on the developer because of the limited impact that the proposed development would have on the roads in question and if the Planning Commission finds that the development

would not have a substantial adverse impact on traffic. A limited impact development is a development that is projected to lower the level of service of a roadway element by no more than 10% of one level of service. Additionally, the Planning Commission may approve a special fee-in-lieu payment escrow request, as determined by the state or county, which shall not be subject to proportionate share requirements, if the constructed improvements necessary to establish adequacy are practically infeasible due to circumstances beyond the control of the applicant but which may be feasible if constructed as a public project or by others. No escrow request shall be approved for a road improvement that the Planning Commission determines is infeasible or unreasonable to construct. In determining whether a development has a limited impact, the Planning Commission shall consider the general requirement in § 1-20-6(B) that the developer not avoid the intent of this chapter by submitting piecemeal applications and may deny an escrow request for a piecemeal application.

(D) Once an escrow is established, any non- exempt developer generating more than 5 trips during the peak hour of the adjacent street, as defined in § 1-20-5, having an impact on the improvement project shall be required to pay its proportionate share into the escrow account or, if applicable, make the road improvements as provided in § 1-20-12 to gain adequate public facilities approval to allow development to proceed.

(E) The escrow account shall be maintained by the county in an interest bearing account and shall be used solely for road improvements benefitting the property as determined by the Board of County Commissioners. While in most cases the escrow payments will be explicitly allocated to specific improvements at certain locations, escrow funds may be reallocated for any transportation improvements within the same link or intersection, as outlined in the guidelines, so long as the transportation improvements provide an identifiable benefit to the roadway links or intersections affected by the development. If, after 10 years from the date of the first escrow account contribution, the Board of County Commissioners determines that there is no reasonable probability of implementing the transportation improvements described above in the next 6 years, the escrow account may be closed. The funds in the account may be transferred to another escrow account within the same planning region, at the discretion of the Planning Commission, for the purpose of constructing other unbuilt escrow account projects. If the money paid into an escrow account for road improvements exceeds actual costs, the applicant may seek a refund. Any application for refund must be filed with the Director of Finance within 1 year of the time at which the funds become available for refund.

(F) If the Planning Commission approves an escrow fund for road improvements under this section and the development meets all other requirements, then the Planning Commission shall grant to the development conditional site plan, preliminary plat or Phase II plan approval.

(G) If a developer constructs road improvements for which an escrow account has been established pursuant to this section, the funds in the escrow account shall be made available to the developer to defray the construction costs of the improvements minus that developer's proportionate share of the improvement.

(H) A county, state or municipal government agency may participate in the construction of or reimbursement for road improvements for which an escrow account has been established.

(Ord. 95-06-130, 5-16-1995; Ord. 98-03-205, 3-17-1998; Ord. 08-03-479, 1-8-2008; Ord. 09-20-524, 7-7-2009; Ord. 10-26-561, 11-9-2010)

§§ 1-20-14 – 1-20-19. RESERVED.

ARTICLE II: ADMINISTRATION

Section

1-20-20 Administrative agency designated

1-20-21 Referral to other agencies/public comment

1-20-22 Appeals

1-20-23 Amendments

1-20-24 Fees

§ 1-20-20. ADMINISTRATIVE AGENCY DESIGNATED.

The Adequate Public Facilities Ordinance shall be administered by the Division of Permitting and Development Review (DPDR). All applications, maps, and documents relative to subdivision, PUD, MXD, PDR, or PDE Phase II or site plan approval and subject to the provisions of this chapter shall be submitted to DPDR which will review all information and present the relevant information and its recommendations to the Planning Commission. Final determination of adequacy shall be the responsibility of the Planning Commission.

(Ord. 98-03-205, 3-17-1998; Ord. 09-20-524, 7-7-2009; Ord. 10-26-561, 11-9-2010)

§ 1-20-21. REFERRAL TO OTHER AGENCIES/PUBLIC COMMENT.

(A) DPDR may refer the subdivision, site and development plans to any county agency or any other agency it deems appropriate for its review, comments and/or recommendations pertaining to the adequacy of public facilities; and these recommendations shall be considered by the Planning Commission in making its decision. Where a development impacts municipal facilities, that municipality shall be referred a copy of the Phase II, subdivision, site or development plan for review and comment.

(B) The Planning Commission shall accept public comments and consider these comments as part of the record in its decision making process.

(Ord. 98-03-205, 3-17-1998; Ord. 09-20-524, 7-7-2009)

§ 1-20-22. APPEALS.

(A) Any person aggrieved by any action of the Planning Commission pursuant to this chapter may appeal to the Circuit Court pursuant to Maryland Rules, Title 7, Chapter 200. The decision of the Circuit Court may be appealed to the Court of Special Appeals, or, upon certiorari, to the Court of Appeals of Maryland in accordance with Maryland Rules.

(B) The Board of County Commissioners may file a responsive pleading and be a party to or take an appeal to the Circuit Court of the county, to the Court of Special Appeals of Maryland, or, upon certiorari, to the Court of Appeals of Maryland of any decision made under this chapter.

(Ord. 98-03-205, 3-17-1998)

§ 1-20-23. AMENDMENTS.

(A) The Board of County Commissioners may amend the provisions of this chapter if the Board determines that any such amendment will be in the best interest of the citizens of the county and consistent with the general intent of this chapter. Proposals for an amendment may be initiated by resolution by the Board of County Commissioners.

(B) Proposed amendments shall be filed with DPDR and referred to all municipalities within the county having adequate public facility ordinances for review and comment. The comments received from the municipalities shall be referred to the Planning Commission and County Commissioners for their consideration. The Planning Commission shall hold a public hearing on the proposed amendments and shall submit its recommendations or proposals to the Board of County Commissioners within 32 days of the public hearing. The Board of County Commissioners shall hold a public hearing on the proposed amendment and shall render a decision within 60 days of the public hearing.

(C) Notice of the time and place of the public hearing, together with a summary of the proposed amendment, shall be published in at least 1 newspaper of general circulation in the county once each week for 2 successive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.

(Ord. 98-03-205, 3-17-1998; Ord. 07-08-448, § 6, 4-3-2007; Ord. 09-20-524, 7-7-2009)

§ 1-20-24. FEES.

The Board of County Commissioners shall have the authority to establish by resolution fees for APF related services specified in this chapter, but in no event shall the fee charged be more than the costs incurred by the county.

(Ord. 98-03-205, 3-17-1998)

§§ 1-20-25 – 1-20-29. RESERVED.

ARTICLE III: ROADS

Section

1-20-30 Thresholds

1-20-31 Determination of adequacy

§ 1-20-30. THRESHOLDS.

(A) Except where an APFO escrow account (§ 1-20-13(D)) has already been established, this article does not apply to developments which are expected to generate 25 or less total vehicle trips during the highest daily peak hour of the adjacent street traffic and 50 or less trips during the peak hour of the site's generated traffic, as defined by the most recent edition of the Institute of Transportation Engineers (ITE) "Trip Generation Manual," or the Frederick County Guidelines for the use category determined by DPDR. Site generated trips are the sum of all peak hour traffic trips in and out of the proposed site.

(B) In determining whether a proposed development exceeds the thresholds described in § 1-20-30(A), all land at one location within the county under common ownership or control by a developer shall be included. A developer shall not purposefully avoid the intent of this section by submitting piecemeal applications for Phase II plans, preliminary plats or site plans. However, a developer may seek approval of only a portion of a subdivision or development, even if the site would generate less trips than the threshholds in this section, provided that upon seeking approval of the remaining subdivision or development which generates trips greater than the thresholds, including that approved previously under this subsection, the development shall comply with the requirements of this section.

(C) The reuse of all or a majority of certain existing commercial buildings, may be exempt from road adequacy testing if approved by the Planning Commission based on the following requirements and considerations:

(1) The net increase in trip generation, relative to the previous approved use, shall be 25 or less trips in the peak hours of the adjacent street;

(2) The previous use was not vacated for the express purpose of allowing the redevelopment application being considered for approval;

(3) The reuse would not be detrimental to the quality of the neighborhood;

(4) The building is completely or mostly vacant at time of Planning Commission hearing and consideration is given to the length of time it has been unoccupied.

(Ord. 09-20-524, 7-7-2009)

§ 1-20-31. DETERMINATION OF ADEQUACY.

(A) For development applications meeting or exceeding the thresholds outlined in § 1-20-30, a traffic impact analysis (TIA) shall be prepared. The portion of existing road(s) required to be adequate shall be determined by DPDR, based on the completed and signed Notice of Intent to Develop (NID), as required in the guidelines, and either a pre-study conference or documented correspondence between the county and the developer. The DPDR shall use the guidelines to adopt a reasonable study area based on sound traffic engineering knowledge of the site and the surrounding area. Any disputes regarding study area or scope, whether raised prior to or after the adoption of a study area, shall be resolved by the Planning Commission.

(1) All freeway and expressway mainlines shall be exempt from the requirements herein.

(2) All other roads and interchanges in the county shall be subject to the requirements herein.

(B) The TIA shall be prepared for the design hours, which are defined as the peak hours which will be most affected by the proposed development; i.e., any combination of a.m., mid-day, p.m., evening, weekend peak hour of the adjacent street, or peak hour of the generation by the land use as determined by DPDR. The TIA shall include, but not be limited to:

(1) Vehicle trip generation by the proposed development and traffic expected to be generated by approved development in the study area as outlined in the guidelines and as determined by DPDR. The latest edition of the ITE "Trip Generation Manual" shall be used unless specifically applicable rates are identified in or permitted by the guidelines;

(2) LOS capacity analysis of all required roadway corridors, intersections and links for existing conditions and specified intermediate and future conditions with and without the proposed development as delineated in the guidelines;

(3) In cases where traffic safety is identified as an issue by DPDR, reported traffic crashes for the last 3 years for which data is available;

(4) Transportation improvements currently fully funded for construction in the most recent CIP or CTP by or before the year of expected completion of the project or project phase, assuming the project buildout criteria in § 1-20-8;

(5) Other improvements approved and permitted by the county, state or a municipality, or under construction, with a certification by that agency that construction is likely to be completed concurrent with the opening of the development project; and

(6) Any other information that may reasonably be required by DPDR to effectively evaluate the road network or application.

(C) All TIA's shall use the analysis procedures and methodologies set forth in the guidelines.

(D) Using methodologies specified in the guidelines, the following level of service criteria shall be met to determine road adequacy.

(1) Signalized intersections and roundabouts located within designated growth boundaries in the County Comprehensive Plan shall be considered adequate if a LOS "D" or better is maintained. Signalized Intersections and roundabouts located outside of these areas shall be considered adequate if a LOS "B" or better is maintained.

(2) All other roadway and ramp links, unsignalized intersections and corridors when required by DPDR based on sound traffic engineering principles shall be determined to be acceptable if a LOS "D" or better is maintained or mitigation is provided in accordance with the guidelines.

(3) For land uses resulting in seasonal or irregularly scheduled special events or activities, which will generate relatively large amounts of traffic, generally not impacting the peak hour of the adjacent streets, adequacy may be determined by review of a traffic management plan (TMP), if required by DPDR. The projected number of vehicle trips for each special event, the classification and character of the roads which will be utilized to transport vehicles to and from the event, and the number of days per year the event will be held, shall be considered. The TMP shall be in accordance with the guidelines and supplement the specific standards set forth in subsections (B) and (C) above, as determined by the Planning Commission. In the event the facility would also contain permanent regular uses, in addition to special events, the regular peak period uses of the facility must be reviewed and comply with all parts of this article.

(E) As specified in the guidelines, certain master plan bicycle and/or pedestrian facilities, as well as any sidewalks, shall be constructed or improved, or a fee-in-lieu of improvement provided, if approved by the county and if the facility is either non-existent or deemed inadequate by DPDR.

(F) If the road facilities are determined to be inadequate to accommodate the traffic flow projected by the TIA, the preliminary plan, Phase II or site plan approval shall be denied, except as provided for in § 1-20-11.

(G) Road improvements necessary to mitigate inadequacies shall be determined by the Planning Commission after reviewing the entire record, including the TIA, road rating system, TMP, safety considerations and Maryland State Highway Administration comments; and improvements may be provided by the developer as prescribed in § 1-20-12.

(H) If one or more of the following criteria are met, the Planning Commission may approve a development if the development mitigates only those trips that will be generated by the development:

(1) The development is located within a priority redevelopment area as provided for in the countywide Comprehensive Plan, including any corridor or community plans;

(2) The development impacts road(s) which would need to be built to a greater capacity than the master plan recommendation and which cannot reasonably be improved due to physical, historical or natural environmental constraints, as determined by DPDR;

(3) The majority of the development is located within a transit oriented development overlay zone/district;

(4) The improvement(s) necessary to achieve full adequacy is denied approval by the state, county, city or a municipality, whereby the Planning Commission may consider alternatives that would be acceptable to the controlling agency so long as the Planning Commission receives written confirmation from that agency, along with DPDR concurrence; or

(5) An interchange ramp terminal (weave, merge or diverge point) that is part of the development's study area is inadequate solely due to the volume on the mainline or the number of through lanes.

(I) If construction of APFO road improvements for a development is completed within the approval period of the preliminary plan, Phase II plan or site plan, and within the APFO approval period, the APFO road approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO roadway testing unless there is an increase in site trips or a significant redistribution of site traffic because of a change in land use or increase in site density, as defined in the guidelines.

(Ord. 98-03-205, 3-17-1998; Ord. 01-13-287, 6, 6-12-2001; Ord. 06-04-400, 1-17-2006; Ord. 08-03-479, 1-8-2008; Ord. 09-20-524, 7-7-2009)

§§ 1-20-32 – 1-20-39. RESERVED.

ARTICLE IV: PUBLIC WATER SUPPLY

Section

1-20-40 Thresholds

1-20-41 Determination of adequacy

§ 1-20-40. THRESHOLDS.

This article does not apply to any development served by individual private wells.

(Ord. 98-03-205, 3-17-1998)

§ 1-20-41. DETERMINATION OF ADEQUACY.

(A) A public or private community water system shall be considered adequate if, given existing connections, future connections from buildings under construction, recorded lots for which allocations have been made and multi-year tap agreements:

(1) The source facilities, storage tanks and local pumping stations have sufficient available capacity to provide maximum day demand to the proposed development and meet peak hour demand in addition to fire flow; and

(2) The distribution system is capable of providing normal required pressure as well as minimal residual pressure to the proposed development. It should be noted that water taps are not guaranteed for the project until such taps are purchased or a multi- year tap agreement has been executed between the county and developer.

(B) A public or private community water system may also be considered adequate if improvements to or construction of facilities necessary to comply with standards established in subsection (A) are scheduled in the first 2 years of the CIP. However, where improvements to or construction of facilities necessary to comply with subsection (A) are in the first 2 years of the CIP and are developer-funded, no other proposed development may utilize the capacity created by the developer-funded improvements or facilities to determine adequacy under this article until the improvements or facilities are completed, subject to subsection (E) of this section. If only a portion of the improvements or facilities in the first 2 years of the CIP are developer-funded, that portion of the improvements or facilities may not be used to determine adequacy of any other proposed developments until the improvements or facilities are completed, subject to subsection (E).

(C) If a public or private water system is found to be inadequate, site plan, PUD, MXD, PDR, or PDE Phase II or preliminary subdivision approval shall be denied except as provided for in § 1-20-11.

(D) Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in § 1-20-12.

(E) Upon completion of construction of APFO public or private community water improvements for a development, the APFO water approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO water testing unless the density or intensity of the development increases.

(Ord. 98-03-205, 3-17-1998; Ord. 00-19-261, 7-11-2000; Ord. 06-04-400, 1-17-2006; Ord. 10-26-561, 11-9-2010)

§§ 1-20-42 – 1-20-49. RESERVED.

ARTICLE V: SEWERAGE FACILITIES

Section

1-20-50 Thresholds

1-20-51 Determination of adequacy

§ 1-20-50. THRESHOLDS.

This article does not apply to development served by private septic systems.

(Ord. 98-03-205, 3-17-1998)

§ 1-20-51. DETERMINATION OF ADEQUACY.

(A) The sewerage system shall be considered adequate if, given existing connections, future connections from buildings under construction, recorded lots for which allocations have been made and multi-year tap agreements, the systems designed to serve the proposed development are sufficient to accommodate ultimate peak flows. It should be noted that sewer taps are not guaranteed for the project until such taps are purchased or a multi-year tap agreement has been executed between the county and developer.

(B) The sewerage system may also be considered adequate if improvements to or construction of facilities necessary to comply with standards established in subsection (A) are scheduled in the first 2 years of the CIP. However, where improvements to or construction of facilities necessary to comply with subsection (A) are in the first 2 years of the CIP and are developer-funded, no other development may utilize the capacity created by the new or improved facilities to determine adequacy under this article until the improvements or facilities are completed, subject to subsection (E) of this section. If only a portion of the improvements or facilities in the first 2 years of the CIP are developer-funded, then that portion of the improvements or facilities may not be used by any other development to determine adequacy under this article until the improvements or facilities are completed, subject to subsection (E).

(C) If a sewerage system is found to be inadequate, site plan, PUD, MXD, PDR, or PDE Phase II or preliminary subdivision approval shall be denied except as provided for in § 1-20-11.

(D) Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in § 1-20-12.

(E) Upon completion of construction of APFO sewerage system improvements for a development, the APFO sewerage approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO sewerage system testing unless the density or intensity of the development increases.

(Ord. 98-03-205, 3-17-1998; Ord. 00-19-261, 7-11-2000; Ord. 06-04-400, 1-17-2006; Ord. 10-26-561, 11-9-2010)

§§ 1-20-52 – 1-20-59. RESERVED.

ARTICLE VI: SCHOOLS

Section

1-20-60 Thresholds

1-20-61 Determination of adequacy

§ 1-20-60. THRESHOLDS.

This article applies only to residential development.

(Ord. 98-03-205, 3-17-1998; Ord. 06-04-400, 1-17-2006)

§ 1-20-61. DETERMINATION OF ADEQUACY.

(A) Scope. All public elementary, middle and high schools serving the proposed subdivision shall be adequate.

(B) APFO test data.

(1) The Frederick County Public Schools will publish actual enrollment data for the last school day of September, December, March and June and the state rated capacity for each elementary and secondary school. Adequacy of every elementary, middle and high school serving the proposed development shall be determined as of the APFO test date, using the most recent quarterly enrollment data published by the Frederick County Public Schools. If approval has not been received from the Planning Commission within 6 months of the APFO test date, the most recent quarterly school enrollment data must be utilized by the Commission for APFO review unless a delay occurs not attributable to the applicant.

(2) Pupil generation rates shall be determined using the formulas adopted by the Frederick County Public Schools and shall reflect the characteristics of the school attendance area within which the proposed development is located. Pupil yield from the proposed development shall be pro-rated over the number of years for which APFO approval is sought. State rated capacities and pupil generation rates approved for use by the Frederick County Public Schools shall be used in all calculations.

(C) *Adequacy testing.* Schools shall be considered adequate if the enrollment for each school serving the development is less than 100% of state-rated capacity during the entire period for which APFO approval is granted by the Planning Commission. School adequacy shall be determined based on:

(1) Background enrollment growth, extrapolated over the number of years for which APFO approval is requested;

(2) Projected enrollment growth, including pupils anticipated to be generated by "approved developments", as defined in § 1-20-5(B);

(3) Pupils anticipated to be generated by the proposed development using pupil generation rates adopted by the Frederick County Public Schools;

(4) Actual capacity expected to be provided by new schools and school additions scheduled for construction in the first 2 years of the CIP (provided that the CIP project and the proposed development are located within the same school attendance boundaries, including areas where redistricting boundaries have been approved) after taking the factors listed above in (C)(1), (2) and (3) into account; and

(5) Other enrollment data, trends and factors, including phasing in of new school capacity, that may impact the capacity of the schools serving the proposed development, as determined by the BOE or its designee.

(D) *Procedure.* County staff shall send a written request to the BOE or its designee, requesting a school adequacy test, and specifying: (1) the number of years for which the development should be tested; (2) the number and types of residential units to be tested; and (3) data concerning the approved developments in the school attendance areas that should be factored into the test. The BOE or its designee shall forward its school adequacy test results to county staff for presentation to the Planning Commission. After consideration of the school adequacy test results at a public meeting, the Planning Commission shall determine whether the proposed development meets the school adequacy requirements in this Article VI.

(E) Request to redistrict. If a school is not adequate as defined in § 1-20-61(C) and an adjoining school district at the same level is at least 20% below state rated capacity, then the applicant may request the Frederick County Board of Education (BOE) to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in § 1-20-61(C), then the schools shall be considered adequate.

(F) *Denial.* If a school is not adequate and the BOE has not approved a specific redistricting plan that would result in the school meeting the standards established in § 1-20-61(C), then the preliminary subdivision, PUD, MXD, PDR or PDE Phase II or site plan approval shall be denied, except as allowed for in § 1-20-11.

(G) *Mitigation.* Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in § 1-20-12.

(H) *New school or addition.* If a new school or school addition is required to be wholly or partially funded by a developer in order for a proposed development to obtain APFO approval under § 1-20-12 of this article, and if the new school or school addition is approved by the BOE:

(1) The portion of the school capacity funded by the developer and required for APFO approval for the development may not be utilized by any other development to obtain APFO approval until the expiration of the APFO approval period for the development that funded the school improvements.

(2) Upon the completion of construction of the new school or school addition, the development that funded the school improvements shall not be subject to further APFO testing for the school level at which the developer-funded improvements were provided (elementary, middle or high school) unless the density or intensity of the development increases.

(I) *School renovations.*

(1) For the purposes of determining adequacy under this section, the available capacity of a school which is completely or partially closed for renovation shall be the percentage of the school state- rated capacity available and certified for use by the Board of Education or designated FCPS staff. One hundred percent of the available state-rated capacity of the school under renovation shall be considered to be available 6 months prior to the expected renovation completion date as certified by the Board of Education or designated FCPS facilities staff.

(2) For the purposes of determining adequacy under this section, the available capacity of a school which is being utilized to serve students from another school which is under renovation shall be the percentage of the school state-rated capacity available and certified for use by the Board of Education or designated FCPS staff. One hundred percent of the available state-rated capacity of the school shall be considered to be available 6 months prior to the expected renovation completion date as certified by the Board of Education or designated FCPS facilities staff.

(J) Multifamily residential developments.

(1) A multifamily residential development may retain its APFO school adequacy approval if the multifamily residential development satisfies both of the following requirements:

(a) The Planning Commission has previously granted both site plan and APFO approvals for the multifamily residential development; and

(b) Prior to expiration of APFO approval, the developer has recorded in the land records a plat of the multifamily residential development property that includes a note indicating the following information, on which the Planning Commission approval was based:

(i) The number and type of multifamily dwelling units approved, and

(ii) The total number of students projected to be generated by the multifamily residential development.

(2) The County Attorney's office must approve the language of the plat note described in subsection (J)(1)(b) prior to plat recordation.

(3) The Planning Commission may approve a change in the number and type of multifamily dwelling units, so long as the total number of students projected to be generated by the revised multifamily residential development does not exceed the total number of students stated in the plat note described in subsection (J)(1)(b).

(4) Recordation of a plat in accordance with this subsection shall not prevent site plan expiration.

(Ord. 98-03-205, 3-17-1998; Ord. 00-19-261, 7-11-2000; Ord. 06-04-400, 1-17-2006; Ord. 08-14-490, 6-3-2008; Ord. 09-19-523, 7-7-2009; Ord. 10-26-561, 11-9-2010)

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