

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**2002 Legislative Session**Bill No. CB-67-2002

Chapter No. _____

Proposed and Presented by Council Member Dernoga

Introduced by _____

Co-Sponsors _____

Date of Introduction _____

SUBDIVISION BILL

1 AN ACT concerning

2 Adequate School Facilities

3 For the purpose of amending the provisions for determining school facilities adequacy at the time
 4 of preliminary plat of subdivision and at building permit where the record plat has been recorded
 5 for more than six (6) years.

6 BY repealing and reenacting with amendments:

7 **SUBTITLE 24. SUBDIVISIONS.**

8 Sections 24-101 and 24-122.02,

9 The Prince George's County Code

10 (1999 Edition, 2001 Supplement).

11 **SECTION 1.** BE IT ENACTED by the County Council of Prince George's County,
 12 Maryland, that Sections 24-101 and 24-122.02 of the Prince George's County Code be and the
 13 same are hereby repealed and reenacted with the following amendments:

14 **SUBTITLE 24. SUBDIVISIONS.**15 **DIVISION 1. GENERAL PROVISIONS.**16 **Subdivision 1. Definitions.**17 **Sec. 24-101. Definitions.**

18 (a) Definitions in Subtitle 27 of this Code (the Zoning Ordinance) shall apply to this
 19 Subtitle and shall be supplemented by the definitions in Subsection (b) of this Section.

20 (b) The following terms used in this Subtitle are defined as follows:

(1) **Acreage:** A measure of land commonly used to mean land that is not the subject of a recorded subdivision plat.

(2) **Afforestation:** The establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

(3) **Concept Study, Stormwater Management:** A generalized, conceptual plan to show the proper disposal of stormwater, pursuant to the procedures and standards set forth in Subtitles 4 and 23 of this Code, as administered by the Department of Environmental Resources.

(4) **Day:** When not otherwise specified, in computing time a day shall mean a working day when seven or less days are specified, and a calendar day when more than seven days are mentioned.

(5) **Forest Stand Delineation:** A detailed accounting of woody vegetation, prepared in document form, as required by the Prince George's County Woodland Conservation and Tree Preservation Policy Document, and as explained in the M-NCPPC publication "A Technical Manual for Woodland Conservation with Development in Prince George's County," as amended from time to time.

[(6) **Funded School:** A new elementary, middle, or high school, or an addition to an existing school, in a school cluster in which a subdivision is tested and for which County construction funds are shown in the first two years of the County's adopted and effective Capital Improvement Program (CIP).]

[(7)] (6) **Highly Erodible Soils:** All soils having an erodibility (K) factor of 0.35 or greater as provided in the U.S. Department of Agriculture Soil Conservation Service Technical Note Conservation Planning 1-78 and as may be amended.

[(8)] (7) **Nontidal Wetland:** An area which is:

(A) Inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances supports a prevalence of vegetation typically adapted for life in saturated soil conditions; commonly known as hydrophytic vegetation; or

(B) Identified as a nontidal "wetland" in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published in 1989 and as amended.

1 [(9)] (8) **Outlot:** A piece or parcel of land that remains within a subdivision but
 2 which does not meet the minimum requirements of the Zoning Ordinance for a buildable lot and
 3 is, therefore, not usable as a legal building site.

4 [(10)] (9) **Outparcel:** A parcel of land designated on a subdivision plat which does
 5 not meet the requirements of this Subtitle for adequate public facilities and is, therefore, not
 6 usable as a legal building site.

7 [(11)] (10) **Patuxent River Primary Management Area Preservation Area:** A
 8 buffer established or preserved along perennial streams within the Patuxent River watershed
 9 excluding the area within the Chesapeake Bay Critical Area Overlay Zones, which as a minimum
 10 includes:

11 (A) All perennial streams and a minimum of 50 feet of preserved or established
 12 vegetation on the side of each bank;

13 (B) The one hundred (100) year floodplain;

14 (C) All wetlands adjacent to the perennial stream or the one hundred (100) year
 15 floodplain;

16 (D) All areas having slopes of twenty-five percent (25%) or greater abutting or
 17 adjoining the perennial stream, the one hundred (100) year floodplain or stream-side wetlands;

18 (E) All areas having highly erodible soils on slopes of fifteen percent (15%) or
 19 greater abutting the perennial stream, the one hundred (100) year floodplain or stream-side
 20 wetlands;

21 (F) Specific areas of rare or sensitive wildlife habitat, as determined by the
 22 Planning Board.

23 [(12)] (11) **Perennial Stream:** A stream that maintains flowing water in its channel
 24 except during extremely dry periods of the year. For the purpose of this Subtitle, all streams
 25 which have a watershed area of fifty (50) acres or greater shall be considered perennial streams;
 26 however, perennial streams may have watershed of less than fifty (50) acres.

27 [(13)] (12) **Planning Director:** That person responsible for the functions of the Prince
 28 George's County Planning Department of the Maryland-National Capital Park and Planning
 29 Commission.

1 [(14)] **(13) Public Facilities:** Facilities and services such as, but not limited to, water,
 2 sewerage, transportation (i.e., streets, transit), schools, libraries, recreation, police protection,
 3 fire, and emergency service.

4 [(15)] **(14) Public Facilities Agreement:** An agreement wherein an applicant for a
 5 subdivision promises to provide required public improvements. Such agreement, however, does
 6 not replace bonding requirements of public agencies other than the Planning Board in connection
 7 with building, grading, street construction and the like.

8 [(16)] **(15) Pupil Yield Factor:** The estimated number of elementary, middle, and
 9 high school students per dwelling unit, as determined by the Planning Board, from information
 10 provided by the Superintendent of the Prince George's County Public Schools.

11 [(17)] **(16) Reforestation:** The establishment of a forest through artificial
 12 reproduction or natural regeneration.

13 [(18)] **(17) Regional District:** That area within which the Maryland-National Capital
 14 Park and Planning Commission exercises planning jurisdiction, as described in Article 28 of the
 15 Annotated Code of Maryland.

16 **(18) School Facilities Agreement:** A formal, executed agreement between the
 17 County Executive and the County Council and an applicant or applicants for a preliminary plan
 18 or plans of subdivision or an applicant for a building permit where the record plat has been
 19 recorded for more than six years. The agreement includes a commitment to construct or to
 20 secure funding for all or part of a school in a schedule of fee payments to advance capacity.
 21 Such agreement is negotiated by the County Executive and approved by the County Council at a
 22 regularly scheduled meeting.

23 **(19) School Regulations:** The "Adequate Public Facilities Regulations for Schools,"
 24 as adopted and amended by the County Council on a yearly basis to be effective in January of
 25 each calendar year.

26 **(20) Tree Conservation Plan:** A site map that delineates tree save areas and text that
 27 details the requirements, penalties, or mitigation negotiated during the development and/or
 28 permit review process.

DIVISION 3. REQUIREMENTS: PLANNING, DESIGN AND PUBLIC FACILITIES.

Sec. 24-122.02. School Facilities Tests.

(a) At the time of a preliminary plat of subdivision, the Planning Board shall apply an adequacy of school facilities test in accordance with this Subsection.

(1) The test shall be applied to a proposed subdivision as it affects school clusters, which are groupings of elementary, middle, and high schools, which would be impacted by the subdivision.

(2) A subdivision meets the test, unless otherwise provided below, if the number of students generated by the proposed subdivision at each stage will not exceed one hundred five percent (105%) of the state rated capacity, as adjusted by the School Regulations, to include the capacity of new schools and additions funded with State construction dollars in the County's adopted and effective Capital Improvement Program (CIP), which are programmed for the purpose of relief of overcrowding and not as replacement seats, of the affected elementary, middle, and high school clusters, as determined by the Planning Board.

(3) The number of elementary, middle, and high school students generated by the proposed subdivision at each stage of the proposed subdivision shall be determined in accordance with the pupil yield factors, as defined in Section 24-101(b), for each dwelling unit type as determined by the Planning Board from historical information provided by the Superintendent of the Prince George's County Public Schools.

(4) The Planning Board shall determine:

(A) The school cluster or clusters impacted by the subdivision.

(B) The actual enrollment, which is the number of elementary, middle, and high school students, as reported by the Superintendent of the Prince George's County Public Schools as of September 30 of the prior year, and as calculated by the Planning Board and effective in January of each year for use in that calendar year, for each school cluster.

(C) The completion enrollment, which is the total number of elementary, middle, and high school students to be generated by the estimated number of residential completions, for each school cluster.

(i) Residential completions are estimated from the total of all substantially completed dwelling units added to the County's assessable tax base in the two (2) previous calendar years, allowing for one lag year from cycle to cycle to compile the completion data.

(ii) In determining completion enrollment, the estimated number of residential completions in a given school cluster will not exceed the number of dwelling units shown on:

(aa) An approved preliminary plat of subdivision with no waiting period, or with a waiting period less than twenty-four (24) months as of September 30 of each calendar year; and

(bb) All recorded plats not subject to an adequate public facilities test for schools at time of building permit issuance.

(D) The subdivision enrollment, which is the anticipated number of elementary, middle, and high school students to be generated by all dwelling units shown on the proposed preliminary plat of subdivision, multiplied by the pupil yield factor, for each school cluster.

(E) The cumulative enrollment, which is the total of all subdivision enrollments resulting from approved preliminary plats of subdivision in each school cluster for the calendar year in which an adequate public facilities test is being applied.

(F) The wait enrollment, which is the total number of elementary, middle, and high school students anticipated from the dwelling units currently in a wait status, for each school cluster.

(5) The Planning Board shall determine the subdivision's cluster enrollment by adding: the actual number of students in the cluster as of September 30; the number of students anticipated from residential completions in the cluster; [the number anticipated from the subdivision; and] the number anticipated from subdivisions already approved [in] within the cluster and within the calendar year; the number of students anticipated from the dwelling units currently in a wait status in the cluster; and the number of students anticipated from the subdivision. The Board shall then determine the percent capacity by dividing the cluster enrollment by the state rated capacity (as adjusted by the School Regulations) of schools in the cluster, to include the capacity of new schools and additions funded with State construction dollars in the County's adopted and effective Capital Improvement Program (CIP), which are programmed for the purpose of relief of overcrowding and not as replacement seats.

(6) If the percent capacity for a stage of the subdivision is greater than one hundred five percent (105%) [and there is a funded school, as defined in Section 24-101(b),] the preliminary plat may then be approved, and building permits may be issued:

1 (A) [~~Three (3)~~] Five (5) years after the date of approval of the preliminary plat of
2 subdivision;

3 (B) At any time that the percent capacity, as adjusted pursuant to the School
4 Regulations, is less than or equal to one hundred five percent (105%); or

5 (C) Pursuant to the terms of an executed ~~[s]School [f]Facilities [a]Agreement~~,
6 [whereby the subdivision applicant, to avoid a waiting period, agrees with the County Council
7 and County Executive to construct or secure funding for construction of all or part of a school, to
8 advance school capacity.] Eligibility for a School Facilities Agreement shall be subject to a
9 phased-in threshold above which, if the percent capacity of an affected cluster, as adjusted
10 pursuant to the School Regulations, exceeds a threshold as described below, the project shall not
11 be eligible for a School Facilities Agreement:

12 (i) The phased-in threshold above which a project shall not be eligible for
13 a School Facilities Agreement, shall be as follows:

14 (aa) Year 1 of implementation, which shall be from the adoption of
15 this legislation through December 2003: All projects shall be eligible for a School Facilities
16 Agreement without regard to an affected cluster's percent capacity.

17 (bb) Year 2 of implementation, which shall be from January 2004
18 through December 2004: If the percent capacity for a stage of the subdivision is greater than
19 125%, the project is not eligible for a School Facilities Agreement.

20 (cc) Year 3 of implementation, which shall be from January 2005
21 through December 2005: If the percent capacity for a stage of the subdivision is greater than
22 120%, the project is not eligible for a School Facilities Agreement.

23 (dd) Year 4 of implementation, and thereafter, which shall be from
24 January 2006, and thereafter: If the percent capacity for a stage of the subdivision is greater than
25 110% for the elementary school cluster, the project is not eligible for a School Facilities
26 Agreement; if the percent capacity for a stage of the subdivision is greater than 120% for the
27 middle and/or high school cluster, the project is not eligible for a School Facilities Agreement.

28 [(i)] (ii) An applicant with a project which is not a Development of
29 Significant Impact, as described below, may enter into a ~~[s]School [f]Facilities [a]Agreement~~ to
30 pay a specific amount of fees, comprising the school facilities surcharge and a per-dwelling unit
31 fee for each and every dwelling unit for that stage of the proposed subdivision that exceeds 105%

1 percent capacity and pursuant to the phased-in threshold above which a project is not eligible for
 2 a School Facilities Agreement, as described above.

3 [(ii)] iii The fee[s] per dwelling unit [are as follows: \$2,150 for an
 4 elementary school; \$840 for a middle school; and \$1,950 for a high school] is \$5,000. The fee to
 5 be adjusted yearly by the amount of inflation factor as determined by an appropriate index as of
 6 September 30 of the prior year; the index to be identified within the School Regulations.

7 [(iii)] iv An applicant whose project is not a Development of Significant
 8 Impact may join with one or more applicants in the same clusters to use the agreement
 9 procedures recited below, if their combined projects have six hundred (600) or more dwelling
 10 units.

11 (v) If an applicant is in a wait condition pursuant to the phased-in threshold
 12 above which a project is not eligible for a School Facilities Agreement, as described above, in
 13 subsequent cycles, if the percent capacity of an affected cluster drops below the defined
 14 threshold for the new cycle, an applicant may then enter into a School Facilities Agreement.

15 [(iv)] vi If the applicant under (i) does not agree to pay the fees provided
 16 for in (ii), it may, after negotiation and County Council and County Executive approval and
 17 pursuant to the phased-in threshold above which a project is not eligible for a School Facilities
 18 Agreement, as described above, pay for or provide for facilities which are [substantially]
 19 equivalent in value to the fees which would otherwise be paid.

20 [(v)] vii The fees required in (ii) may be paid in phases for multifamily
 21 residential dwellings with more than 20 units. The phased payments shall be: 25% on issuance
 22 of the first building permit, and the remainder 24 months later.

23 [(7) If the percent capacity for a stage of the subdivision is greater than one hundred
 24 five percent (105%) and there is no funded school, the preliminary plat may then be approved,
 25 and building permits may be issued:

- 26 (A) Six (6) years after the date of approval of the preliminary plat of subdivision;
- 27 (B) At any time that the percent capacity, as adjusted pursuant to School
 28 Regulations, is less than or equal to one hundred five percent (105%); or
- 29 (C) Pursuant to the terms of an executed school facilities agreement whereby the
 30 subdivision applicant, to avoid a waiting period, agrees with the County Council and County

Executive to construct or secure funding for construction of all or part of a school, to advance school capacity.

(i) An applicant with a project which is not a Development of Significant Impact, as described below, may enter into a school facilities agreement to pay a specific amount of fees, comprising the school facilities surcharge and a per-dwelling unit fee.

(ii) The fees per dwelling unit are as follows: \$2,150 for an elementary school; \$840 for a middle school; and \$1,950 for a high school.

(iii) An applicant whose project is not a Development of Significant Impact may join with one or more applicants in the same clusters to use the agreement procedures recited below, if their combined projects have six hundred (600) or more dwelling units.

(iv) If the applicant under (i) does not agree to pay the fees provided for in (ii), it may, after negotiation and County Council and County Executive approval, pay for or provide for facilities which are substantially equivalent in value to the fees which would otherwise be paid.

(v) The fees required in (ii) may be paid in phases for multifamily residential dwellings with more than 20 units. The phased payments shall be: 25% on issuance of the first building permit, and the remainder 24 months later.

(8) If during the six-year period in (a)(7)(A) a new school becomes funded in a cluster which was found to be over 105% of capacity, then building permits may be issued three (3) years after the date the school becomes a funded school, or six (6) years after the date of approval of the preliminary plat, whichever is earlier.

(9) (7) If the percent capacity for the subdivision is greater than one hundred five percent (105%) [and there is one or more funded schools], and if the subdivision is or is a part of a Development of Significant Impact, which totals six hundred (600) or more dwelling units, then building permits may be issued:

(A) [Three (3)] Five (5) years after the date of approval of the preliminary plat of subdivision;

(B) At any time that the percent capacity, as adjusted pursuant to School Regulations, is less than or equal to one hundred five percent (105%); or

(C) Pursuant to the terms of an executed school facilities agreement whereby the subdivision applicant agrees with the County Council and County Executive to construct or

1 secure funding for construction of all or part of a school, to advance school capacity which shall
2 be equivalent in value to the fees that would otherwise be paid.

3 [(10) If the percent capacity for the subdivision is greater than one hundred five percent
4 (105%) and there is no funded school, and if the subdivision is or is a part of a Development of
5 Significant Impact, then building permits may be issued:

6 (A) Six (6) years after the date of approval of the preliminary plat of subdivision;

7 (B) At any time that the percent capacity, as adjusted pursuant to School
8 Regulations, is less than or equal to one hundred five percent (105%); or

9 (C) Pursuant to the terms of an executed school facilities agreement whereby the
10 subdivision applicant agrees with the County Council and County Executive to construct or
11 secure funding for construction of all or part of a school, to advance school capacity.

12 [(11)] (8) The Planning Board shall accept, for the purposes of adequate school
13 facilities, an executed [s]School [f]Facilities [a]Agreement which includes a commitment to
14 construct all or part of a school, or to secure funding for all or part of a school, in a schedule of
15 fee payments.

16 [(12)] (9) A [s]School [f]Facilities [a]Agreement approved by the applicant and the
17 County Council and County Executive may provide for funding or construction of all or part of a
18 school, construction and sale or lease of a school to County government [Council and County
19 Executive], or any [substantially] equivalent arrangement.

20 (b) At the time of building permit, the Planning Board shall apply an adequacy of school
21 facilities test where the record plat has been recorded for more than six years in accordance with
22 this Subsection.

23 (1) The conditions of Subsection (a) above to apply, except that if inadequate the wait
24 condition to be four (4) years, instead of five (5) years.

25 (2) If a project is subject to a wait condition pursuant to Subsection (a) above, the
26 length of time before retesting is required will be extended year for year while in a wait
27 condition.

28 [(b)] (c) The following shall be exempt from the preliminary plat of subdivision test in
29 Subsection (a):

30 (1) A subdivision [which] that is a redevelopment project that replaces existing
31 dwelling units;

(2) A subdivision for elderly housing operated in accordance with State and Federal Fair Housing law.

(3) A subdivision containing no more than three (3) lots on less than five (5) gross acres of land and for which the lots, except for one to be retained by grantor, are to be conveyed to a son or daughter or lineal descendant of the grantor.

(4) A subdivision [which] that is located in the Developed Tier, as described in the County's adopted Biennial Growth Policy Plan.

(5) A subdivision for fewer than thirty-six (36) dwelling units, which will not be served by public water and sewerage systems, is not included in a large Comprehensive Design or Mixed-Use Zone development, and for which the applicant/owner, or predecessors in interest and/or title, did not own any property adjacent to the proposed subdivision as of May 31, 1997. For purposes of this Subsection:

(A) A subdivision means all land originally included in one preliminary plat application. Subsequent re-subdivision for the purpose of creating additional lots is permitted, provided that in no case shall an exemption be applied to more than a total of thirty-five (35) lots; and

(B) Land is considered adjacent if the property lines:

(i) Are contiguous at any point;

(ii) Are separated only by a public or private street, road, highway, utility right-of-way, or other public or private right-of-way at any point; or

(iii) Are separated only by other land of the applicant/owner or their predecessors in interest and/or title which is not subject to this Section at the time the applicant submits a preliminary plat of subdivision for approval.

* * * * *

SECTION 2. BE IT FURTHER ENACTED that, upon the effective date of this Act, the preliminary plats of subdivision that had been approved under previous adequate public facilities for schools test and subject to a wait condition affecting the issuance of building permits, will be affected, upon application of the test described in this Act, as described below:

(1) If application of the test in the elementary, middle and high school clusters that are impacted by the project does not establish a wait period, then any remaining wait period from a previous approval shall terminate;

(2) If application of the test in the elementary, middle and high school clusters that are impacted by the project establishes a five (5) year wait period, then either a new five (5) year wait period or the remaining wait period from the previous approval shall apply, whichever time frame is less;

(3) An applicant may, in lieu of any remaining wait period, enter into a School Facilities Agreement, as described in Section 1. Building permits may be issued pursuant to the executed School Facilities Agreement.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect thirty (30) calendar days after it becomes law.

Adopted this _____ day of _____, 2002.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Peter A. Shapiro
Chair

ATTEST:

Redis C. Floyd
Acting Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Wayne K. Curry
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.