

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

**2001 Legislative Session**

Bill No. CB-40-2001

Chapter No. 75

Proposed and Presented by Chairman Ronald V. Russell

Introduced by Council Members Russell, Shapiro, Scott, Wilson and Estepp

Co-Sponsors \_\_\_\_\_

Date of Introduction October 16, 2001

**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.

5 BY repealing and reenacting with amendments:

6 SUBTITLE 24. SUBDIVISIONS.

7 Sections 24-101 and 24-122.02,

8 The Prince George's County Code

9 (1999 Edition, 2000 Supplement).

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12 same are hereby repealed and reenacted with the following amendments:

**SUBTITLE 24. SUBDIVISIONS.**

**DIVISION 1. GENERAL PROVISIONS.**

**Subdivision 1. Definitions.**

**Sec. 24-101. Definitions.**

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

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

20 (1) **Acreage:** A measure of land commonly used to mean land that is not the subject  
21 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).

~~[(6)](7)~~ **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.

~~[(7)](8)~~ **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.

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

1           [(9)](10) **Outparcel:** A parcel of land designated on a subdivision plat which does  
 2 not meet the requirements of this Subtitle for adequate public facilities and is, therefore, not  
 3 usable as a legal building site.

4           [(10)](11) **Patuxent River Primary Management Area Preservation Area:** A buffer  
 5 established or preserved along perennial streams within the Patuxent River watershed excluding  
 6 the area within the Chesapeake Bay Critical Area Overlay Zones, which as a minimum includes:

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

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

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

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

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

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

19           [(11)](12) **Perennial Stream:** A stream that maintains flowing water in its channel  
 20 except during extremely dry periods of the year. For the purpose of this Subtitle, all streams  
 21 which have a watershed area of fifty (50) acres or greater shall be considered perennial streams;  
 22 however, perennial streams may have watershed of less than fifty (50) acres.

23           [(12)](13) **Planning Director:** That person responsible for the functions of the Prince  
 24 George's County Planning Department of the Maryland-National Capital Park and Planning  
 25 Commission.

26           [(13)](14) **Public Facilities:** Facilities and services such as, but not limited to, water,  
 27 sewerage, transportation (i.e., streets, transit), schools, libraries, recreation, police protection,  
 28 fire, and emergency service.

29           [(14)](15) **Public Facilities Agreement:** An agreement wherein an applicant for a  
 30 subdivision promises to provide required public improvements. Such agreement, however, does

not replace bonding requirements of public agencies other than the Planning Board in connection with building, grading, street construction and the like.

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

[(15)](17) Reforestation: The establishment of a forest through artificial reproduction or natural regeneration.

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

(19) School Regulations: The "Adequate Public Facilities Regulations for Schools," as adopted and amended by the County Council.

[(17)](20) Tree Conservation Plan: A site map that delineates tree save areas and text that details the requirements, penalties, or mitigation negotiated during the development and/or 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 [initial] adequacy of school facilities test in accordance with [paragraphs (1), (2), or (3), below:] 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.

[(1)](2) [The] A subdivision meets the test, unless otherwise provided below, if the number of students generated by the proposed subdivision at each stage [of the proposed subdivision] will not exceed one hundred five percent (105%) of the state rated capacity, as adjusted by the School Regulations, of the affected elementary, middle, and high school[s] clusters, as determined by the Planning Board [pursuant to the guidelines provided in (A) through (C), below].

[(A)] (3) The number of elementary, middle, and high school students generated by the proposed subdivision shall be determined in accordance with the pupil yield factors, as

1 defined in Section 24-101(b), for each dwelling unit type as determined by the Planning Board  
 2 [upon] from historical information provided by the [Board of Education] Superintendent of the  
 3 Prince George's County Public Schools.

4 [(B) Based upon the advice of the Board of Education, the elementary, middle,  
 5 and high schools serving the property at the time of review of the subdivision shall be  
 6 determined and shall be considered the "affected" schools.

7 (C) The projected five-year enrollment, as determined by the Planning Board in  
 8 cooperation with the Board of Education and any other County or State agency deemed  
 9 appropriate, for each affected school shall be added to the number of students generated by the  
 10 proposed subdivision as determined in subparagraph (A), above, plus the number of students  
 11 generated by approved preliminary plats since the most recent annual enrollment projections.

12 (2) The total projected number of students for each affected school, as determined in  
 13 subparagraph (C), above, shall be compared to the rated capacity of each affected school and an  
 14 adequate public facilities fee shall be calculated by multiplying the number of students generated  
 15 by the proposed subdivision above the one hundred five percent (105%) rated capacity in  
 16 accordance with the following schedule:

17 (A) \$9,000 per elementary school student;

18 (B) \$12,000 per middle school student;

19 (C) \$10,000 per high school student.

20 Such fee is to be paid at time of issuance of a building permit, unless the application is subject to  
 21 the provisions of Subsection (a)(4), herein.

22 (3) An addition to the affected school or a new school to serve the students generated  
 23 by the proposed subdivision has been funded by the State in an adopted State of Maryland annual  
 24 budget bill in accordance with Article III, Section 52, of the Maryland Constitution, and the  
 25 projected enrollment of the new or expanded school will not exceed one hundred five percent  
 26 (105%) of its rated capacity.

27 (4) If the students to be generated as determined in Subsections (a)(1) and (2), above,  
 28 exceed one hundred thirty percent (130%) at any affected school, no permits may be issued for  
 29 the development until:

30 (A) Capacity exists below one hundred thirty percent (130%) in all affected  
 31 schools; or

(B) Four (4) years have elapsed since the time of the approval of the preliminary plan of subdivision.

(5) Whenever an adequate school facility fee is charged, it shall be offset by the full amount of the school facilities surcharge imposed on the same property.]

(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.

(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.

(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.

(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.

(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 the cluster within the calendar year. The Board shall then determine the percent capacity by dividing the cluster enrollment by the state rated capacity (adjusted by the School Regulations) of schools in the cluster.

(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:

(A) Three (3) 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, 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.

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

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

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

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

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

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

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

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

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

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

29                  (8) If during the six-year period in (a)(7)(A) a new school becomes funded in a  
 30 cluster which was found to be over 105% of capacity, then building permits may be issued three



1 (3) years after the date the school becomes a funded school, or six (6) years after the date of  
 2 approval of the preliminary plat, whichever is earlier.

3 (9) If the percent capacity for the subdivision is greater than one hundred five percent  
 4 (105%) and there is one or more funded schools, and if the subdivision is or is a part of a  
 5 Development of Significant Impact, which totals six hundred (600) or more dwelling units, then  
 6 building permits may be issued:

7 (A) Three (3) years after the date of approval of the preliminary plat of  
 8 subdivision;

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

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

14 (10) If the percent capacity for the subdivision is greater than one hundred five percent  
 15 (105%) and there is no funded school, and if the subdivision is or is a part of a Development of  
 16 Significant Impact, then building permits may be issued:

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

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

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

23 (11) The Planning Board shall accept, for the purposes of adequate school facilities, an  
 24 executed school facilities agreement which includes a commitment to construct all or part of a  
 25 school, or to secure funding for all or part of a school, in a schedule of fee payments.

26 (12) A school facilities agreement approved by the applicant and the County Council  
 27 and County Executive may provide for funding or construction of all or part of a school,  
 28 construction and sale or lease of a school to County Council and County Executive, or any  
 29 substantially equivalent arrangement.

30 [(b) Regardless of any previous adequate public facilities test, a building permit shall not be  
 31 issued for any lot shown on a record plat that has been recorded for more than six (6) years until

the Planning Board has applied a final adequate school facilities test in accordance with paragraphs (1), (2), and (3), below, unless on or before April 1, 1999, street construction permits have been issued by the County Department of Public Works and Transportation (DPW&T) or a municipality for public streets shown on the approved preliminary plan for the subdivision. Said street construction permits shall be maintained in the active status until the streets have been constructed in accordance with DPW&T or the municipality standards, and all public streets shown on the preliminary plan shall be bonded, permitted, and constructed without unreasonable delay. Failure to have or to maintain said street construction permits in an active status or complete construction of the streets shall subject all future building permits to a final adequate school facilities test by the Planning Board in accordance with paragraphs (1), (2), and (3), below.

(1) If the number of students measured under Subsection (a)(1) exceeds one hundred five percent (105%) of the rated capacity of any affected school(s) using the most recent actual enrollment data, instead of projected enrollment data, the applicant may pay an adequate school facilities fee equal to the cost of a permanent seat for each student generated by the subdivision above the one hundred five percent (105%) rated capacity.

(2) The adequate school facilities fee shall be determined by multiplying the number of students generated by the proposed subdivision above the one hundred five percent (105%) rated capacity in accordance with the following schedule:

(A) \$9,000 per elementary school student;

(B) \$12,000 per middle school student;

(C) \$10,000 per high school student.

(3) If the students to be generated as determined in Subsections (b)(1) and (2), above, exceed one hundred thirty percent (130%) at any affected school, no permits may be issued for the development until:

(A) Capacity exists below one hundred thirty percent (130%) in all affected schools; or

(B) Three (3) years has elapsed since the time of the application for a building permit.

(4) Whenever an adequate school facility fee is charged, it shall be offset by the full amount of the school facilities surcharge imposed on the same property.]

1        (b) [(c) Notwithstanding the above requirements, building permits may be approved  
 2 without the payment of an adequate school facilities fee for the following:] The following shall  
 3 be exempt from the preliminary plat of subdivision test in Subsection (a):

4            (1) A subdivision which is a redevelopment project that replaces existing dwelling  
 5 units;

6            [(2) A subdivision for less than thirty-six (36) dwelling units which will be developed  
 7 in a Revitalization Tax District as provided in Subtitle 10 of this Code where the proposed  
 8 subdivision is not included in a larger Comprehensive Design or Mixed Use Zone development;  
 9 or

10           (3) A subdivision for less than thirty-six (36) dwelling units, which will not be served  
 11 by public water and sewerage systems, is not included in a larger Comprehensive Design or  
 12 Mixed Use Zone development, and for which the applicant/owner, or their predecessors in  
 13 interest and/or title, did not own any property adjacent to the proposed subdivision as of May 31,  
 14 1997. For purposes of this Section, land is considered adjacent if the property lines are  
 15 contiguous at any point; are separated only by a public or private street, road, highway, utility  
 16 right-of-way, or other public or private rights-of-way at any point; or are separated only by other  
 17 land of the applicant/owner or their predecessors in interest and/or title which is not subject to  
 18 this Section at the time the applicant submits a preliminary plat of subdivision for approval.]

19           [(4)] (2) A subdivision for elderly housing operated in accordance with State and  
 20 Federal Fair Housing law.

21           [(5)] (3) A subdivision containing no more than three (3) lots on less than five (5)  
 22 gross acres of land and for which the lots, except for one to be retained by grantor, are to be  
 23 conveyed to a son or daughter or lineal descendant of the grantor.

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

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

31           (A) A subdivision means all land originally included in one preliminary plat

1 application. Subsequent re-subdivision for the purpose of creating additional lots is permitted,  
 2 provided that in no case shall an exemption be applied to more than a total of thirty-five (35)  
 3 lots; and

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

5 (i) Are contiguous at any point;

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

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

11 SECTION 2. BE IT FURTHER ENACTED that, upon the effective date of this Act, the  
 12 preliminary plats of subdivision that had been approved under the previous adequate public  
 13 facilities for schools test and subject to a four (4) year wait condition affecting the issuance of  
 14 building permits, will be affected, upon application of the test described in this Act, as described  
 15 below:

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

19 (2) If application of the test in the elementary, middle, and high school clusters that  
 20 are impacted by the project establishes a three (3) year wait period, then either a new three (3)  
 21 year wait period or the remaining wait period from the previous approval shall apply, whichever  
 22 time frame is less;

23 (3) If application of the test in the elementary, middle, and high school clusters that  
 24 are impacted by the project establishes a six (6) year wait period, then the remaining wait period  
 25 from the previous preliminary plat approval shall remain in effect; or

26 (4) An applicant may, in lieu of any remaining wait period, enter into a school  
 27 facilities agreement, as described in Section 1. Building permits may be issued pursuant to the  
 28 executed school facilities agreement.

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

Adopted this 19<sup>th</sup> day of November, 2001.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY: \_\_\_\_\_  
Ronald V. Russell  
Chairman

ATTEST:

\_\_\_\_\_  
Joyce T. Sweeney  
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.