

# ADEQUATE PUBLIC FACILITIES ORDINANCE

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# **ADEQUATE PUBLIC FACILITIES ORDINANCE**

## **ARTICLE I - PURPOSE**

### **1.1 SHORT TITLE**

This Ordinance shall be known and may be cited as the Adequate Public Facilities Ordinance of Washington County, Maryland.

### **1.2 PURPOSE**

It is the purpose of the Board of County Commissioners of Washington County that public facilities and services needed to support new development shall be available concurrently with the impacts of such new developments. In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for new development are phased, or the new development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that new development, are available concurrently with the impacts of the new development.

## **ARTICLE II - DEFINITIONS**

### **2.1 GENERAL<sup>1 2</sup>**

(a) For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. Words in the present tense include the future, the singular number includes the plural, and the plural includes the singular. The word “shall” is mandatory and the word “may” is permissive. The words “used for” shall include “arranged for,” “designed for,” “intended for,” “maintained for,” “constructed for,” or “occupied for”. The word “individual” shall mean natural person, joint venture, joint stock company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, association, club, company, corporation, limited liability company, real estate investment trust, business trust or similar legal entity or the manager, lessee, agent, servant, officer or employee of any of them. The word “land” shall include water surface and land under water. The term “Ordinance” shall refer to this Ordinance and all subsequent additions or amendments thereto.

(b) A Developer shall not avoid the intent of this Ordinance 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 adequate public facilities review of each subsequent portion of the development.

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<sup>1</sup> Section 2.1 amended 5/25/04.

<sup>2</sup> Section 2.1 amended 11/1/05

## **2.2 ADEQUATE PUBLIC FACILITIES**

For the purpose of this Ordinance, the term “Adequate Public Facilities” shall be defined as those facilities relating to roads, sewerage disposal systems, schools, water supply and distribution systems, and interim fire protection systems meeting established minimum standards.

## **2.3 DEFINITIONS**

### **2.3.1 Agricultural Purposes**

A parcel of land that has been determined by the Maryland Department of Assessments and Taxation as having an “Agricultural Use Assessment” or a parcel of land that is primarily involved in a bona fide and continuing agricultural activity, such as, the raising of farm products for use or sale, including animal or poultry husbandry, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers and similar products of the soil.<sup>3</sup>

#### **2.3.1.1 Background Enrollment Growth<sup>4</sup>**

The average annual impact of equated student enrollment changes during the preceding three (3) years in the school attendance areas serving the proposed development as determined in Section 5.4 with appropriate adjustments made in the determination by the Board of Education to eliminate student enrollment changes caused solely by school redistricting.

#### **2.3.2 Board of County Commissioners (Board)**

The legislative body of Washington County, Maryland.

#### **2.3.3 Board of Education<sup>5</sup> (BOE)**

The elected Board of Education of Washington County.

#### **2.3.4 Comprehensive Plan**

The Comprehensive Plan of the County.

#### **2.3.5 County**

Washington County, Maryland.

#### **2.3.6 County Engineer**

The duly designated Chief Engineer of Washington County, Maryland.

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<sup>3</sup> Section 2.3.1 amended 8/31/93

<sup>4</sup> Section 2.3.1.1 added 11/1/05

<sup>5</sup> Section 2.3.3 amended 5/25/04

### **2.3.7 County Health Department**

The Washington County Health Department.

### **2.3.8 Developer**

Any individual commencing proceedings under this Ordinance to effect a subdivision or development of land for himself or for another.

### **2.3.9 Extraordinary Hardship**

Extraordinary hardship is a condition that exists when strict compliance with this Ordinance would result in an unusually and extraordinarily severe financial economic impact on the owner or Developer.

### **2.3.10 Immediate Family Member**

Immediate family member shall mean father, mother, step-father, step-mother, son, daughter, brother, sister, stepson, stepdaughter, grandchild.

### **2.3.11 Improvements**

Improvements shall mean storm sewers, sanitary sewers, water supply lines, roads, curbs, gutters, gas lines, electricity lines, water lines, septic tanks, wells, walks, and other accessory works and appurtenances, dwellings, farm buildings, and other principal or accessory structures.

### **2.3.12 Lot<sup>6</sup>**

A parcel of real property marked by the Developer as a numbered, lettered or otherwise identified tract to be utilized as a unit of land intended for building development or a lot or parcel described by metes and bounds, the description of which has been recorded among the land records of Washington County.

#### **2.3.12.1 Minor subdivision<sup>7</sup>**

A minor subdivision is the division of a lot, tract or parcel into five (5) or fewer lots for the immediate or future transfer of property ownership.

#### **2.3.13 New Development<sup>8</sup>**

New development consists of new subdivisions and site plans for new construction received for approval by the Washington County Planning Commission after the effective date of this Ordinance as set forth in Article XII. New development also consists of construction activity requiring a building and/or zoning permit but does not consist of construction activity for agricultural purposes provided

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<sup>6</sup> Section 2.3.12 amended 12/16/03

<sup>7</sup> Section 2.3.12.1 added 11/1/05

<sup>8</sup> Section 2.3.13 amended 5/25/04

that, after said development, the parcel does not lose the “Agricultural Use Assessment” classification as determined by the Department of Assessments and Taxation.<sup>9</sup>

### **2.3.14 Original Tract of Land.**

A parcel of real estate unsubdivided as of the date of adoption of this Ordinance.

### **2.3.15 Planning Commission (Commission).**

The Washington County Planning Commission.

### **2.3.16 Plat**

A map, plan, chart or drawing indicating the subdivision or resubdivision of land filed or intended to be filed for the record.

#### **2.3.16.1 Remaining Lands**

The residual portion or tract of land which remains after lots or parcels have been subdivided from the original tract of land.<sup>10</sup>

### **2.3.17 Residential Development**

The term “residential development” as used in this Ordinance means any lot, building or portion thereof used exclusively for dwelling units, including concomitant uses, and other uses of a residential nature for the individuals residing in said dwelling units.

### **2.3.18 Right-of-Way**

A land area designated, dedicated, or reserved for use as a highway, street, alley, interior walk, or for a drainage channel, or other public use.

### **2.3.19 Road**

A public right-of-way, intended for vehicular traffic, including freeways, expressways, arterials, parkways, thoroughfares, collector streets, local streets, cul-de-sacs, marginal access streets, avenues, boulevards, lanes and other public ways, and as now or hereafter or otherwise designated.

### **2.3.20 Simplified Plat<sup>11</sup>**

The term “simplified plat” as used in this Ordinance is a map, plan, chart or drawing indicating the proposed subdivision or resubdivision of land filed or intended to be filed with the Planning Commission and where the intent of the subdivider is neither to develop the land nor to divide land containing existing development.

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<sup>9</sup> Section 2.3.13 amended 8/31/93

<sup>10</sup> Section 2.3.16.1 added 8/31/93

<sup>11</sup> Section 2.3.20 amended 5/25/04.

### **2.3.21 Site Plan**

A drawing that shows all of the existing conditions of a specified area (the site) and all of the improvements and changes proposed to be made on the site. A site plan is the drawing required by the Zoning Ordinance for all new development and certain additions and must contain all applicable information as specified in the Zoning Ordinance.

#### **2.3.21.1 State Rated Capacity<sup>12 13</sup>**

As used in this Ordinance, State Rated Capacity shall refer to the capacity of each school as determined by the state of Maryland. Portable classrooms shall not be used in computing the school capacity for the purposes of this Ordinance.

### **2.3.22 Subdivision Ordinance**

The Washington County, Maryland Subdivision Ordinance, and all subsequent additions or amendments thereto.

### **2.3.23 Zoning Ordinance**

The Zoning Ordinance of Washington County, Maryland, and all subsequent additions or amendments thereto.

## **ARTICLE III - ADMINISTRATION**

### **3.1 ADMINISTRATION OF ORDINANCE<sup>14</sup>**

This Ordinance shall be administered by the Planning Commission. All applications, maps, and documents relative to subdivision or site plan approval coming under the provisions of this Ordinance shall be submitted to the Planning Commission.

### **3.2 JURISDICTION**

This Ordinance does not apply to land within a municipal corporation.

### **3.3 NEW DEVELOPMENT<sup>15</sup>**

This Ordinance applies to all new subdivisions and site plans for new construction received for preliminary approval, not to include preliminary consultations under the Subdivision Ordinance or Zoning Ordinance, by the Planning Commission after the effective date of this Ordinance, as set forth

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<sup>12</sup> New definition added 12/16/03.

<sup>13</sup> Section 2.3.31.1 amended 5/25/04.

<sup>14</sup> Section 3.1 amended 5/25/04.

<sup>15</sup> Section 3.3 amended 5/25/04.

in Article XII. Except as provided in this Section or Section 3.5 of this Ordinance, all new development shall meet the requirements set forth in this Ordinance prior to final approval. Nothing in this Ordinance shall prevent the Planning Commission from approving portions of subdivisions or site plans of new development if the portions of the subdivision or site plan comply with the provisions of this Ordinance. If the Planning Director of the Washington County Planning Department determines that a site plan contains minor additions to existing development, the site plan is not subject to the requirements of this Ordinance.

### **3.4 DISAPPROVAL<sup>16 17</sup>**

New development not meeting the requirements for adequate public facilities contained within this Ordinance shall not be approved by the Planning Commission unless the Developer reaches an agreement with the Board of County Commissioners for the purpose of advancing the adequacy of public facilities, pursuant to Section 9.1.

### **3.5 SIMPLIFIED PLATS EXEMPT**

Subdivisions which can be approved by the simplified plat procedure described in Section 318 of the Washington County Subdivision Ordinance are not subject to the requirements of this Ordinance.

### **3.6 APPEALS<sup>18</sup>**

3.6.1 Appeals from any decision of the Planning Commission under this Ordinance shall be *de novo* to the Board of Appeals in accordance with Article 25 of the Zoning Ordinance of Washington County. The Board of Appeals may grant a variance from the requirements of this Ordinance only if the variance meets the following requirements:

- (a) The requirements imposed by the Ordinance would result in extraordinary hardship as defined in Section 2.3.9;
- (b) The physical features and characteristics of the proposed plat or site plan are such that granting a variance would not impair the intent and purpose of the requirement;
- (c) The variance will not endanger or present a threat to the public health, safety, or welfare;  
and
- (d) Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.

3.6.2 The standards contained in Article 25 of the Zoning Ordinance for “Variances” are not applicable to appeals from decisions of the Planning Commission under this Ordinance to the Board of Appeals.

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<sup>16</sup> Section 3.4 amended 5/25/04.

<sup>17</sup> Section 3.4 amended 11/1/05.

<sup>18</sup> Section 3.6 amended 5/25/04.

### **3.7 VIOLATIONS AND PENALTIES**

Any violation of this Ordinance shall constitute a misdemeanor and shall be punishable upon conviction by a fine of not less than Two Hundred (\$200.00) Dollars or more than One Thousand (\$1,000.00) Dollars. Each day that a violation continues shall be deemed a separate offense. In addition to any other remedies, the Board of County Commissioners may institute any appropriate actions or proceedings to compel compliance with this Ordinance, as provided for in Article 66B of the Annotated Code of Maryland, as amended from time to time.

## **ARTICLE IV - ROADS**

All new development shall be served by an adequate network of existing and proposed new roads.

### **4.1 EXEMPTIONS**

4.1.1 The Planning Commission may exempt from the terms of this Article the subdivision of an original tract of land into no more than five (5) lots provided:<sup>19 20</sup>

- (a) There exists in the original tract of land twenty-five (25) acres per each lot subdivided; and
- (b) The road in front of each lot to be subdivided is no less than sixteen (16) feet.

Any subdivision which results in the maximum number of lots allowed under 4.1.1 shall contain a statement on the plat, signed by the owner, that certifies that any transfer of the remaining lands cannot be developed upon or subdivided for the purpose of development until such time that the County road has been improved and determined to be adequate under the terms of this Ordinance nor can said remaining lands be used to qualify for additional exemptions under this subsection.<sup>21</sup>

4.1.2 The Planning Commission may exempt from the terms of this Article the subdivision of land used for transfer to a member of the immediate family of the owner(s) of the original tract of land provided the road width in front of the lots to be subdivided is no less than sixteen (16) feet. Any such subdivision shall contain a statement on the plat, signed by the owner, that:<sup>22</sup>

- (a) Certifies the intent of the owner to transfer the land only to a member of the immediate family; and
- (b) Expressly warrants that no conveyance of the lot will be made to anyone not a member of the immediate family for a period of ten (10) years, except as may be required to satisfy a mortgagee in case of loan foreclosure.

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<sup>19</sup> Section 4.1.1 amended 8/31/93

<sup>20</sup> Section 4.1.1 amended 11/1/05

<sup>21</sup> Section 4.1.1 amended 8/31/93

<sup>22</sup> Section 4.1.2 amended 11/1/05

4.1.3 Where the Planning Commission finds that extraordinary hardship will result from strict compliance with this Article of the Ordinance because of alteration to existing historic structures, including bridges, as determined by the Historic District Commission, the Planning Commission may approve a subdivision so that substantial justice may be done and the public interest secured.

## **4.2 NEW PUBLIC ROADS**

New public roads to be built as part of the new development shall be constructed to the standards adopted by the Board of County Commissioners contained in the Washington County Engineering Department's Specifications for Highway and Street Improvements, as amended or design and construction specifications as adopted by the State Highway Administration.

4.2.1 The type of road to be built shall be based on the projected volume of traffic determined by the County Engineer and/or the State Highway Administration that will be generated by the new development in accordance with the aforementioned standards, as amended.<sup>23</sup>

4.2.2 The County Engineer and/or the State Highway Administration may require a traffic impact study for proposed commercial or residential development to be provided by the Developer in order to determine which specification set forth in Section 4.2 above are applicable to the new development.

## **4.3 EXISTING PUBLIC ROADS**

Existing public roads that serve the new development shall at a minimum meet the standards contained in the Washington County Engineering Department's publication entitled *A Policy to Determine Adequacy of Existing Roadway for Additional Development, As Amended*, or the *Guidelines for Traffic Impact Reports/Studies, As Amended*, if the existing road is a state highway. Such roads are to meet the above standards as a condition precedent to approval of the proposed new development.<sup>24</sup>

4.3.1 The portion of the existing roads required to be adequate for the proposed new development shall be from its intersection with any new road in the new development, in the direction of traffic flow determined by the Planning Commission after receiving a recommendation from the County Engineer and/or the State Highway Administration to the nearest designated intersection with a road determined by the Planning Commission to be adequate to support the projected traffic volume generated by the development.<sup>25</sup>

4.3.2 The portion of the existing roads to be adequate for proposed new development that does not include the construction of new public streets shall be the road frontage of all new or existing lot(s) containing the proposed new development and the remainder of the roads in the anticipated direction of traffic flow as determined by the Planning Commission after receiving the recommendation from the County Engineer and/or the State Highway Administration to the nearest designated intersection with a road determined to be adequate to support the projected traffic volume generated by

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<sup>23</sup> Sections 4.2, 4.2.1, and 4.2.2 amended 8/29/95

<sup>24</sup> Sections 4.3, 4.3.1, 4.3.2, and 4.3.3 amended 8/29/95

<sup>25</sup> Sections 4.3, 4.3.1, 4.3.2, and 4.3.3 amended 8/29/95

the new development. The Planning Commission may require that roads be adequate in several directions or in any one direction from the location of the proposed new development.<sup>26</sup>

4.3.3 In evaluating the adequacy of the existing roads or the improvements necessary to make the existing roads adequate, the Planning Commission shall consider the following:<sup>27</sup>

- (a) Existing traffic,
- (b) Traffic projected to be generated by the development,
- (c) Traffic projected to be generated by other approved but not constructed development,
- (d) Improvements scheduled or approved and funded in the adopted Washington County Capital Improvements Program to take place within two (2) years from the anticipated date of final plat approval,
- (e) Improvements with full funding within the six (6) year schedule in the Maryland Department of Transportation Consolidated Transportation Program,
- (f) Traffic studies that may be required by the County Engineer and/or the State Highway Administration,
- (g) Any other information that may reasonably be required by the County Engineer, State Highway Administration, or the Planning Commission to effectively evaluate the road network or information supplied by the Developer.

#### **4.4 ROADS DETERMINED INADEQUATE**

Except as otherwise provided in this Ordinance, if an existing road is determined by the Planning Commission to be inadequate to accommodate the traffic flow projected to be generated from the new development when combined with existing traffic flow, the new development shall not be approved.

In instances where the existing county road is determined to be below the minimum standards as set forth in Section 4.3, the Planning Director, acting on behalf of the Planning Commission, shall disapprove any proposed application for new development.<sup>28</sup>

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<sup>26</sup> Sections 4.3, 4.3.1, 4.3.2, and 4.3.3 amended 8/29/95

<sup>27</sup> Sections 4.3, 4.3.1, 4.3.2, and 4.3.3 amended 8/29/95

<sup>28</sup> Section 4.4 amended 8/29/95

**ARTICLE V - SCHOOLS**<sup>29</sup> <sub>30</sub>

**5.1 ADEQUACY**

All residential new development shall be served by public schools that:

- (a) Are currently adequate;
- (b) Have funded construction capacity, exclusive of any capacity created pursuant to a Developer-funded mitigation program, scheduled for completion within the same school attendance area in the current or the next year of the approved Washington County Capital Improvement Program (CIP) following final plat or site plan approval to be adequate based upon 90% of elementary school State Rated Capacity and to be adequate based on 100% of State Rated Capacity for middle schools and high schools;<sup>31</sup> or
- (c) Have been identified by the Board of Education (BOE) as part of an approved redistricting plan scheduled to occur in the current or the next year of final plat or site plan approval that will render the public schools adequate.

**5.1.1 CAPACITY CREATED BY MITIGATION PROGRAM**

Funded construction capacity to be created by a mitigation program may not be used in a determination of adequacy for any Developer other than the Developers who are parties to the mitigation program.

**5.2 EXEMPTIONS**

Article V of this Ordinance does not apply to:

- (a) New development to be developed exclusively for non-residential uses;
- (b) New development to be developed according to federal regulations restricting occupancy in the dwelling units to elderly persons;
- (c) Public or private elementary and secondary schools, and public safety facilities; or
- (d) Minor Subdivisions.<sup>32</sup>

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<sup>29</sup> Article V repealed and reenacted 12/16/03

<sup>30</sup> Article V amended 11/1/05.

<sup>31</sup> See Section 3.4 “Disapproval,” which provides that “New development not meeting the requirements for adequate public facilities contained within this Ordinance shall not be approved by the Planning Commission unless the Developer reaches an agreement with the Board of County Commissioners for the purpose of ensuring the adequacy of public facilities, pursuant to Section 9.1.”

<sup>32</sup> See Section 2.3.12.1 Minor Subdivision. A minor subdivision is the division of a lot, tract or parcel into five (5) or fewer lots for the immediate or future transfer of property ownership.

### **5.3 DATA ON WHICH ADEQUACY SHALL BE DETERMINED.**

The BOE shall provide actual enrollment data to the Board of County Commissioners for the last school day of September, December, March and June and the State Rated Capacity for each elementary and secondary school.

### **5.4 DETERMINATION OF ADEQUACY**

5.4.1 The Planning Commission shall determine whether public school facilities are adequate for the proposed new development upon recommendation by the Planning Department after evaluating enrollment information provided by the BOE. The Planning Commission shall determine that a school is adequate if the school has the capacity as follows:

(a) Elementary schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding 90% of the State Rated Capacity (SRC) for each school.

(b) Middle schools and high schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding the State Rated Capacity established for each school.

(c) Available capacity for individual schools shall be determined in accordance with Section 5.5, below.

(d) Final approval will not be granted for developments in the review process until the affected schools obtain adequate status.

### **5.5 MEASURING FOR AVAILABLE CAPACITY**

(a) Adequacy of every elementary, middle and high school serving the proposed development shall be tentatively measured at the time of preliminary consultation and preliminary plat review, and shall be finally measured and determined as of the date of final plan submission, or the first date upon which all necessary documentation and materials have been submitted, whichever occurs last, based upon data as published by the BOE.

(b) If approval has not been received from the Planning Commission within six (6) months of the date of plan submission, 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.

(c) For determining adequacy, enrollment shall mean the total of the BOE official enrollment figures, background enrollment, pupils generated from the proposed development, and other previously approved developments, including municipalities.

(d) Pupil generation rates shall be determined using the formulas proposed by the BOE and adopted by the Board of County Commissioners and shall reflect the characteristics of the school attendance area within which the proposed development is located.

(e) If a school is not adequate as defined in section 5.4.1 and an adjoining school district at the same level is at least twenty (20) percent below State Rated Capacity, then the applicant may request

the 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 Section 5.4.1, then the school shall be considered adequate.

(f) 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 Section 5.4.1, then the final subdivision or site plan approval shall be denied, except as provided for in Section 9.3A.

(g) Any Developer proposal to create improvements to meet adequacy shall be submitted to the Board of Education for recommendations and reviewed under any BOE adopted mitigation policy then in effect and be subject to the standards and review processes of the Interagency Committee on School Construction (IAC) of the Maryland Board of Public Works.

(h) Background enrollment growth<sup>33</sup> will be extrapolated over the number of years for which approval is requested. Included in the calculations shall be any additional approved but unplatted major preliminary plan developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete.

(i) The Planning Commission may require phasing or an annual maximum build-out rate to plan for future adequacy.

## **5.6 RESIDENTIAL BUILDING PERMIT APPROVAL**

5.6.1 The Board of County Commissioners shall have the authority to limit the number of building permits in any school attendance area. The decision to limit building permits shall be based on the recommendation of the Planning Commission upon receipt of a recommendation from the BOE taking into consideration of the adequacy of the school attendance area and enrollment capacity in immediately adjacent school attendance areas.

5.6.2 The Board of County Commissioners shall have the authority to cap the number of residential building lots approved for development on an annual basis.

## **ARTICLE VI - SEWAGE DISPOSAL SYSTEMS**

All new subdivisions shall be served by adequate sewage disposal systems.

### **6.1 ADEQUACY DETERMINED**

6.1.1 The adequacy of a lot to accommodate a private, individual, on-site septic disposal system shall be determined by the Planning Commission upon recommendation by the Washington County Health Department taking into consideration the standards, guidelines and procedures contained in the Washington County On-Site Sewage Disposal Ordinance and C.O.M.A.R. 26.04.02 and 26.04.03.

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<sup>33</sup> Defined in §2.3.1.1 as follows:

The average annual impact of equated student enrollment changes during the preceding three (3) years in the school attendance areas serving the proposed development as determined in Section 5.4 with appropriate adjustments made in the determination by the Board of Education to eliminate student enrollment changes caused solely by school redistricting.

6.1.2 The adequacy of existing community or multi-use sewage disposal system to accommodate the flow projected to be generated by the new development shall be determined by the Planning Commission after receiving a recommendation and evaluation by the agency or municipal government with responsibility to construct, maintain, improve and permit hook-up to the disposal system. Adequacy shall be evaluated according to the agency's adopted guidelines, standards, policies or procedures and any other applicable County, State, or Federal regulation.

6.1.3 The adequacy of a new community or multi-use sewage disposal system shall be determined by the Planning Commission after receiving the recommendation and evaluation by the Hagerstown Water Pollution Control Department where the land may be served by the municipal utility system operated by the City of Hagerstown or by the Washington County Water & Sewer Department and the Maryland Department of Environment. Adequacy shall be evaluated according to the Department's Sewer Service Policy, where applicable in an established Water & Sewer Department, and Standard Specifications for Construction of Sanitary Sewers, as amended. Where the Hagerstown Water Pollution Control Department has jurisdiction, adequacy shall be evaluated according to the City's Revised Policy Statement Regarding the Distribution of Remaining Water Pollution Control Plan Capacity Allocation Among Development Projects and the Water Pollution Control Department Sanitary Sewer Standards and Specifications. Establishment of new community or multi-use sewage disposal systems shall be consistent with the Washington County Water and Sewerage Plan and the Comprehensive Plan for Washington County.

6.1.4 In evaluating the adequacy of any sewage disposal system (other than a private, individual, on-site system), all parts of the system affected by the projected flow generated from the new development shall be considered including, but not limited to, laterals, interceptors, pumping stations, force mains, treatment plants, points of discharge, flow meters and rights-of-way.

6.1.5 In evaluating the adequacy of sewage disposal systems, the responsible agency shall consider the following items:

- (a) Design Capacity;
- (b) Available Capacity;
- (c) The agency's adopted standards, guidelines, policies, and procedures;
- (d) The projected flow to be generated by the new developments;
- (e) Other proposed or expected connections to the system reasonably probable of fruition;
- (f) Other variables found to have an effect on the system's ability to accept the projected flow.

## **6.2 DETERMINATION OF EXPECTED FLOW**

The projected flow expected to be generated by the proposed new development shall be determined by the Planning Commission after receiving recommendations from the responsible governmental agency involved.

### **6.3 SEWAGE DISPOSAL SYSTEMS DETERMINED INADEQUATE**

Except as otherwise provided in this Ordinance, if the Planning Commission, upon recommendation of the responsible agency determines that the sewage disposal site or system is inadequate to accommodate the sewage disposal needs of the new development when considered together with existing development and development which is reasonably probably of fruition, the new development shall not be approved.

## **ARTICLE VII - WATER SUPPLY AND DISTRIBUTION SYSTEMS**

All new development shall be served by an adequate water supply and distribution system that provides sufficient water and service pressure for domestic consumption and fire protection.

### **7.1 ADEQUACY DETERMINED**

7.1.1 The adequacy of an on-site water supply distribution system shall be evaluated by a Maryland Registered Professional Engineer and a complete report submitted to the agency having jurisdiction for review. The engineer shall be provided by the Developer. Adequacy of the system shall then be determined by the Planning Commission upon recommendations by the Washington County Health Department according to the guidelines established in C.O.M.A.R. 26.04.02 and 26.04.03.

7.1.2 The adequacy of an existing public or multi-use water supply and distribution system to provide the projected water needs of the new development shall be evaluated by a Registered Professional Engineer and a report submitted to the agency having jurisdiction for review. The engineer shall be provided by the developer. Adequacy of the system shall then be determined by the Planning Commission upon consideration of the recommendations made by the Hagerstown Water Department, where applicable, the Washington County Water & Sewer Department, where applicable, municipal governments or any other properly established agency with the responsibility to construct, maintain, improve or permit hook up to the water supply system. Adequacy shall be determined according to the agency's adopted guidelines, standards, policies or procedures and all other applicable County, State, or Federal regulations.

7.1.3 The adequacy of a new community or multi-use water supply and distribution system shall be determined by the Planning Commission upon recommendations made by the Hagerstown Water Department, the Washington County Water & Sewer Department and the Maryland Department of Environment. Adequacy shall be determined according to the Maryland Department of Environment's adopted guidelines, standards, procedures and policies. Establishment of new public or multi-use water supply and distribution systems shall be consistent with the Washington County Water and Sewerage Plan and the Comprehensive Plan.

7.1.4 When evaluating the adequacy of any water supply and distribution system for domestic consumption and fire protection other than a private, individual on-site water supply (well), all parts of the system affected by the projected water needs of the new development shall be considered, including but not necessarily limited to the water source, quality, distribution or collection system, treatment system, pumping facilities, and metering devices.

7.1.5 When evaluating the adequacy of a water supply and distribution system the responsible agency shall consider the following items:

- (a) The system's design capacity;
- (b) The system's water supply source;
- (c) The system's available capacity;
- (d) The responsible agency's adopted guidelines, standards, procedures and policies regarding water service;
- (e) The projected water needs of the proposed development including domestic consumption and fire protection;
- (f) Other proposed or expected connections to the system reasonably probable of fruition;
- (g) The evaluations and recommendations of the Fire Department that provides fire protection service in the new development;
- (h) Other variables found to have an effect on the ability of the water system to deliver the projected water needs of the development;
- (i) The applicable guidelines concerning fire protection provisions in areas where public water supplies are inaccessible as set forth in Article VIII of this Ordinance.
- (j) Existing storage, treatment, and pumping facilities affected by the proposed development.

## **7.2 DETERMINATION OF PROJECTED WATER NEEDS**

The projected water needs of the new development for domestic consumption and fire protection shall be determined by the Planning Commission, after reviewing the recommendation of the agency having jurisdiction over the water supply and distribution system.

## **7.3 WATER SUPPLY AND DISTRIBUTION SYSTEM DETERMINED INADEQUATE**

Except as otherwise provided in this Ordinance, if the Planning Commission, upon recommendation from the responsible agencies determines that the community or multi-use water supply and distribution system is inadequate to accommodate the projected needs of the new development, the development shall not be approved.

**ARTICLE VIII - FIRE PROTECTION IN ADOPTED AREAS WHERE PUBLIC OR  
MULTI-USE WATER SYSTEM IS NOT AVAILABLE**

It is the intent of this Article of the Ordinance to ensure that adequate fire protection capability is provided in new commercial and industrial developments in adopted Urban or Town Growth Areas designated in the Comprehensive Growth Plan of Washington County, Maryland where public water is not currently available but is expected to be available within two (2) years. These systems shall be known as interim fire protection systems.

**8.1 DETERMINATION OF NEED FOR INTERIM FIRE PROTECTION SYSTEMS**

A commercial or industrial development shall provide an interim fire protection system if:

8.1.1 The Planning Commission determines that the commercial or industrial development is located substantially within adopted growth areas, and

8.1.2 A public water supply and distribution system is not available or scheduled in the Capital Improvements Program of any responsible agency to be in service within two (2) years, and

8.1.3 The commercial or industrial development proposes more than 2,000 square feet of new commercial, industrial or institutional enclosed area.

**8.2 ADEQUACY DETERMINED**

8.2.1 The adequacy of an interim fire protection system in the proposed commercial or industrial development shall be determined by the Planning Commission after receiving the recommendations from the Hagerstown Water Department, the Washington County Water & Sewer Department, municipal governments or any other properly established agency including organizations charged with fire protection with the legal authority and responsibility to construct, maintain, improve or permit hook up to the water supply system.

**8.3 GENERAL DESIGN**

The interim fire protection system shall be capable of providing the same level of fire protection service as if it were hooked up to a public water supply and distribution system.

**8.4 PROCEDURES AND STANDARDS**

The procedures and standards established by the Maryland State Fire Marshal shall be used in the design, review, approval and installation of the interim fire protection system.

**ARTICLE IX - EXCEPTIONS, AGENCY PARTICIPATION** <sup>34 35</sup>

9.1 Nothing under the terms of this Ordinance shall prohibit or prevent the Board of County Commissioners or any governmental body from reaching an agreement as to a mitigation program with a Developer for the purpose of advancing the adequacy of public facilities as required by this Ordinance. Prior to entering any such agreement, the Board shall invite comment from the BOE regarding same.

9.2 Notwithstanding any other provision or term of this Ordinance, neither the Board of County Commissioners nor any governmental body shall be compelled to enter into an agreement as to a mitigation program with a Developer for the purpose of advancing the adequacy of public facilities as required by this Ordinance.

9.3 A mitigation program providing for deferred payment of fees shall include the types, methods and schedules for the implementation of the mitigation program for the purpose of advancing the adequacy of public facilities.

9.3A In its sole discretion, the Board of County Commissioners or its designee may approve a mitigation program that allows a development to proceed in a school district otherwise designated as inadequate for development under the following conditions:

(a) The Board of County Commissioners determines that approving this development benefits the community by:

(i) encouraging certain types of development that offer advantages to the community, including but not limited to the following:

- (1) development in designated revitalization areas;
- (2) renovation of abandoned or under-utilized structures;
- (3) affordable or workforce housing or community revitalization projects; or
- (4) developments with preliminary plat approval prior to July 1, 2005.

(b) Development occurring while a particular school is in an inadequate status must not cause the enrollment level at that school to reach a level where temporary measures such as portable classrooms are not sufficient to prevent the average class size from rising beyond the class size based on State Rated Capacity or prevent the school's core services from serving the increased number of students in an acceptable manner.

(c) A mitigation program for major subdivisions under this section must provide for improvements that will occur within three years in order to return a school attendance area to adequate status.

(d) A mitigation program proposed under this section must include an acceptable phasing program for the development that is approved by the Board of County Commissioners or designee.

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<sup>34</sup> Article IX amended 5/25/04.

<sup>35</sup> Article IX amended 11/1/05.

(e) Any Developer-funded mitigation program construction project shall be excluded from the adequacy testing calculation in Article 5 of this Ordinance.

9.4 With regard to any public facility required to be adequate under the terms of this Ordinance, the Board of County Commissioners for Washington County, the mayor and council of any incorporated municipality in Washington County, the Washington County Water & Sewer Department, the state of Maryland, or any other governmental body, may elect to participate in the cost of any necessary improvements to advance the adequacy of facilities as required by this Ordinance.

9.5 Any mitigation program providing for deferred payment of fees shall be contained in a legal, binding, adequate public facilities agreement between the Developer or other responsible party and the Board of County Commissioners. Such agreement must have been approved for form and content by the Office of the County Attorney.

9.6 A mitigation program providing for deferred payment of fees shall be binding on the heirs, successors, and assigns of a project and shall run with the land. The deed or title for a property shall contain references to the mitigation program.

9.7 If a Developer fails to agree to a mitigation program to assure adequacy of public facilities, the Planning Commission shall disapprove the project for want of adequate public facilities as required by this Ordinance.

9.8 The Board of County Commissioners shall require security as appropriate to cover the costs of the facilities and lands not under the Developer's ownership that are part of a mitigation program providing for deferred payment of fees, in a form acceptable to the Board. The amount of the security shall be reduced as payments are made under the mitigation program. Upon default, the Board of County Commissioners shall have the authority to redeem the security in addition to any other remedy provided by law.

## **ARTICLE X - VALIDITY**

If validity of any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

## **ARTICLE XI - PERIODIC REPORTS**

The Planning Department of Washington County, beginning six (6) months from the date of the effective date of this Ordinance, shall periodically review whether there is a continuing need for this Ordinance or suggested amendments at an open, public, advertised meeting.

## **ARTICLE XII - EFFECTIVE DATE**

This Ordinance is effective as of December 1, 1990. Adopted this 16th day of October, 1990.

November 1, 2005