



Gregory J. Swain, County Attorney

MEMORANDUM

To: Council Members, Anne Arundel County Council

Via: Gregory J. Swain, County Attorney /s/

From: Lori L. Blair Klasmeier, Supervising County Attorney /s/

Date: October 4, 2021

Subject: Bill No. 85-21 – Subdivision and Development – Adequate Public Facilities – Public Schools

Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 85-21. The summary is intended to explain the purposes and legal effects of the bill.

Background. Prior to 2017, § 17-5-502 of the County Code provided for the preparation of school utilization charts each November that based the designation of a school as “open” or “closed” for purposes of determining adequacy of public facilities (“APF”) based on 100% of the school’s capacity. Bill No. 92-17 modified the method of preparation of the chart, set the standard of an “open” school at 95% of the State-rated capacity, and added adequacy of school mitigation provisions.

Bill No. 15-18 modified exemption requirements, further modified the standards for schools being considered as “open”, required additional school charts to be prepared in May and September of each year based on reductions to available school capacity as a result of proposed developments, and decreased the requirements for APF approval for projects when affected schools did not exceed 85% of the available capacity. Bill No. 15-18 also changed the criteria for an exemption from the school APF requirements from subdivisions of no more than three lots to subdivisions of no more than five lots (§ 17-5-207(a) and (b)), and changed the exemption requirement that the developer own the property for five years to requiring ownership for three years (§ 17-5-207(a)).

Bill Nos. 92-17 and 15-18 (collectively the “Bills”) contained provisions for the Bills to sunset on the earlier of January 1, 2020, or the adoption of legislation updating the 2009 General

Development Plan (“GDP”). Bill No. 74-19 extended the effective date of the Bills until the final adoption of the GDP by the County Council, after which time the provisions “stand repealed with no further action required by the County Council”. The updated GDP was adopted by the County Council on May 3, 2021, thus resulting in the sunset of the Bills. This had the practical effect of returning § 17-5-502 regarding the school utilization chart and the other County Code provisions affected by the Bills to the forms they were in prior to the effective dates of the Bills. The Code has not yet been updated to reflect the sunset of the Bills, so I am attaching the affected provisions as they currently read.

Purpose. The purpose of this Bill is to restore the changes made by the Bills to: (1) §§ 17-5-207(a) and (b) relating to the eligibility for the exemption to school APF for certain properties; and (2) restore the entirety of the § 17-5-502 to the version resulting from the Bills.

Bill provisions.

Section 1 of the Ordinance repeals in its entirety the version of § **17-5-502** that resulted from the sunset of the Bills. This is the version of § 17-5-502 that existed prior to Bill No. 92-17 and which is attached to this Legislative Summary.

In **Section 2**, § **17-5-207(a)** is modified to revert to the version that was in affect after the enactment of the Bills. A developer may be exempt from APF for schools for five or less lots (rather than three or less) in a subdivision of single family dwellings or for five or less dwelling units (rather than three or less) on a site development plan if the developer has owned the property for at least three years (rather than 5 years). **Subsection 17-5-207(b)** is modified to provide that an agreement related to the exemption reflect that the developer acknowledges that the exemption is limited to five lots or dwelling units (rather than three).

Paragraph 17-5-501(a)(2) is modified to reflect a change in an internal reference.

Section 17-5-502 is added in its form after the enactment of the Bills but before the sunset of the Bills.

Section 3 provides that the Ordinance shall take effect 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you very much.

cc: Honorable Steuart Pittman, County Executive
Matt Power, Chief Administrative Officer
Lori Rhodes, Deputy Chief Administrative Officer for Land Use
Pamela Jordan, Deputy Chief Administrative Officer of Health and Human Services
Dr. Kai Boggess-de Bruin, PhD, Chief of Staff
Peter Baron, Legislative Liaison
Chris Trumbauer, Budget Officer

Attachment

§ 17-5-207. Exemptions.

(a) **Exemption.** A developer may obtain an exemption from the requirements for adequate public facilities for schools for no more than three lots in a subdivision for single family detached dwellings or for no more than three dwelling units shown on a site development plan if the following requirements are met:

(1) for a subdivision or site development plan application received before April 6, 2008, a developer shall sign and record an agreement as required by subsection (b); or

(2) for a subdivision or site development plan application received on or after April 6, 2008, a developer shall provide evidence of ownership of the property for a minimum of five years as of the date of application and shall sign and record an agreement as required by subsection (b).

(b) **Agreement.** All applications for subdivision or residential site development plans seeking exemption under this section shall execute an agreement with the County in which the developer acknowledges the exemption shall be limited to three lots or dwelling units, including any existing residences, of the pending application and that further subdivision or development of the site, if permitted, will be subject to the adequate public facilities requirement for schools. The agreement shall be:

(1) in the form and contain the language required by the Office of Law;

(2) recorded among the land records of Anne Arundel County, run with the land, and bind all future owners of the site that is the subject of the application and all future owners of the lots created by a subdivision approved under this exemption;

(3) executed and recorded before approval by the Planning and Zoning Officer of the proposed record plat for a subdivision, the application for a grading or building permit in connection with a site development plan, or the approval of a site development plan for development that does not require a permit, as applicable; and

(4) noted on the proposed record plat or site development plan, with the note including a reference to the book and page number of the location in the land records.

(c) **Exemptions within Parole Town Center Growth Management Area.** Residential development in the Parole Town Center Growth Management Area, subject to an approved incentive program, is exempt from the adequate schools facilities test if the following conditions are met:

(1) The project provides structured parking;

(2) The project is a mixed use development that includes residential, and commercial or industrial uses that are integrated and connected by pedestrian access;

(3) The residential portion of the mixed use project consists of multifamily dwellings, with no less than 50% of the dwelling units consisting of efficiency or one-bedroom units, and no dwelling units with more than two bedrooms;

(4) The project includes enhancement elements for bicycle, pedestrian, and transit infrastructure within the Parole Town Center Growth Management Area, as determined by the Office of Planning and Zoning;

(5) The project includes enhancement elements that will improve conveyance, roadway capacity, or vehicular traffic circulation within the Parole Town Center Growth Management Area, as determined by the Office of Planning and Zoning; and

(6) Vehicular access may not be from a scenic and historic road or a local road that directly accesses a scenic or historic road; and

(7) The provisions of this subsection are not varied, modified, or reduced.

(d) Exemptions within Meade Village. Residential development in Meade Village is exempt from the adequate schools facilities test if the following conditions are met:

(1) The project consists of no more than 25 units;

(2) The project is developed in conjunction with a partnership that includes the Housing Commission of Anne Arundel County;

(3) The project includes funding comprised of either 4% low income housing tax credits, tax exempt bonds, or County home funds;

(4) The project holds approval from the United States Department of Housing and Urban Development for federal conversion under the Rental Assistance Demonstration Program;

(5) The sale or rental of the units is restricted to persons having a household income not exceeding 120% of the area median income, adjusted by household size, as defined by the United States Department of Housing and Urban Development; and

(6) The provisions of this subsection are not varied, modified, or reduced.

(e) Exemptions for residential development funded in part by low income tax credits. Residential development that is funded in part by low income tax credits awarded from the Maryland Department of Housing and Community Development is exempt from the adequate school facilities test if the following conditions are met:

(1) The The project consists of no more than 50 dwelling units;

(2) (i) As of the date of application for the award of the low income tax credits, all schools serving the project were designated as open on the County's school utilization chart; or

(ii) At the time of testing for adequate schools facilities, the school enrollment for each elementary and middle school is no more than 3% above the percentage of the State-rated capacity set forth in § 17-5-502(a)(4) and the school enrollment for each high school is no more than 5% above the percentage of the State-rated capacity set forth in § 17-5-502(a)(4);

(3) The property is encumbered by recorded deed restrictions that the units be restricted to occupancy by eligible households under this paragraph for at least 30 years and that at least 60% of rental units be occupied by a household with an income that does not exceed 60% of the median income adjusted for household size for the Baltimore Primary Metropolitan Statistical Area, as defined and published annually by the United States Department of Housing and Urban Development; and

(4) The provisions of this subsection are not varied, modified, or reduced.

(f) Exemptions within the Glen Burnie Sustainable Community Overlay Area. Residential redevelopment in the Glen Burnie Sustainable Community Overlay Area under Subtitle 3 of Title 7 is exempt from the adequate schools facilities test if the following conditions are met:

(1) The redevelopment takes place on properties located in the TC Zoning District;

(2) The project includes a mix of at least two residential, commercial, or industrial uses that are integrated and connected by pedestrian access; and

(3) If multifamily dwellings form part of the mix of uses, no less than 50% of the dwelling units consist of efficiency or one-bedroom units and no dwelling units have more than two bedrooms.

(Bill No. 90-07; Bill No. 65-08; Bill No. 59-10; Bill No. 94-18; Bill No. 13-19; Bill No. 12-20; Bill No. 64-20)

§ 17-5-501. Standards; report to the Board of Education.

(a) Standards. A development passes the test for adequate school facilities if:

(1) each public elementary, middle, and high school is designated as "open" on the school utilization chart described in § 17-5-502 for the geographical attendance areas for the development in the third school year after the school year in which the determination is being made;

(2) the Office of Planning and Zoning has received written notice via certified mail from the Board of Education that the requirements for applicable future capacity, as described in § 17-5-502(c)(2)(i) and (ii), have been satisfied, without formal adoption of a school utilization chart; or

(3) the developer has executed an approved School Capacity Mitigation Agreement under the provisions of § 17-5-901.

(b) **Report to Board of Education.** If approved, the Office of Planning and Zoning shall specify the number and type of dwelling units that are approved and report the number and type to the Board of Education.

(Bill No. 3-05; Bill No. 47-12; Bill No. 105-15)

§ 17-5-502. School utilization chart.

(a) **Chart defined.** The Planning and Zoning Officer shall prepare a school utilization chart for approval by ordinance of the County Council. The school utilization chart:

(1) may not be modified by the Office or be subject to review on any appeal of a decision by the Office under this subtitle after the school utilization chart has been approved as provided in subsection (d);

(2) shall be revised at least once a year by the County Council upon the annual recommendation of the Planning and Zoning Officer made no later than November 30 each year, and the chart may be revised more often because of significant changes in enrollments or capacities;

(3) shall be based on enrollments projected by the Board of Education and the capacities of schools as determined by the Board of Education under subsections (b) and (c); and

(4) shall determine for each public elementary, middle, and high school whether the school has capacity for additional students during the third school year after the school year in which the most recent revision of the school utilization chart is adopted and designate for that year each public elementary, middle, and high school in the County as "open" or "closed" based on capacity for additional students.

(b) **What projected enrollment in the chart includes.** The projected enrollment of a school used in the school utilization chart shall include:

(1) any predicted increase in the number of students from new development in the geographical attendance area of the school; and

(2) other students expected by the Board of Education to enroll in the school, including students assigned to the school for programmatic reasons.

(c) **What capacity in the chart includes.** The capacity of a school used in the school utilization chart shall:

(1) include the existing capacity of the school based on the program requirements of the Board of Education;

(2) include any applicable future capacity if:

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(i) a contract for construction of the school or an addition to the school necessary to achieve the future capacity has been awarded; and

(ii) the Board of Education estimates that the construction will be completed in time to be used for the beginning of classes in the school year in which the future capacity is included in the school utilization chart; and

(3) not include capacity based on temporary or relocatable structures.

(d) **Approval.** A school utilization chart and any revisions to the chart shall not take effect until the County Council by ordinance has approved the chart or the revisions to the chart. The ordinance shall establish the effective date of the chart or revised chart, and the chart or revised chart shall continue in effect until replaced or revised.

(Bill No. 3-05; Bill No. 91-07; Bill No. 70-08; Bill No. 14-17)