

AN ORDINANCE TO AMEND
TITLE 14
OF THE CODE OF EMMITSBURG
ENTITLED
ADEQUATE PUBLIC FACILITIES

BE IT ENACTED AND ORDAINED by the Board of Commissioners of the Town of Emmitsburg, Maryland that Chapter 14.04 of the Emmitsburg Municipal Code be, and it hereby is, amended as follows:

The amended section of this regulation reads as follows with new language designated by being in **BOLD CAPITAL LETTERS**, and language being deleted designated by being ~~stricken through~~.

14.04 Adequate Public Facilities

14.04.010 Title.

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

14.04.020 Authority.

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

14.04.030 Jurisdiction.

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

14.04.040 Intent.

This chapter is adopted with the intent that new residential, commercial, industrial and other development take place in accordance with the Town of Emmitsburg Comprehensive Plan and the Capital Improvements Program and to ensure that adequate public facilities and services are available concurrent with new development so that orderly development and growth can occur. Provision of adequate facilities will take place in cooperation with Frederick County and the State of Maryland when these facilities are beyond the jurisdiction of the town government. For purposes of this chapter, public facilities shall include road, water, sewerage, emergency services, and school facilities.

14.04.050 Definitions.

In this chapter, the following terms are used as defined unless otherwise apparent from the content.

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

CAPITAL IMPROVEMENT PROGRAM (CIP). An annual document adopted by the Board of Commissioners, indicating capital projects having funding approval for the current fiscal year and those capital projects which are currently planned for the following 5 year period, including the proposed means of financing the same.

COMPREHENSIVE PLAN. The plan adopted by the Board of Commissioners to guide the development of the town, including maps and text, and any changes or additions thereto made under the provisions of MD Code Ann., Art. 66B.

DEVELOPER. An individual, partnership, corporation (or agent thereof), or other entity that undertakes the responsibility for any or all of the activities covered by this chapter, particularly the designing of a subdivision plat or site development plan showing the layout of the land and the public improvements involved therein. The term DEVELOPER is intended to include the term SUBDIVIDER, even though the personnel involved in successive stages of the project may differ.

LEVEL OF SERVICE (LOS). A standardized index of relative service as defined in the "Highway Capacity Manual" published by the Transportation Research Board.

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

SENIOR HOUSING. Any project that meets the qualifications as defined in §17.04.020 of the Town Code, and restricts occupancy to persons 62 years of age and older, in keeping with the federal Fair Housing Act requirements for exemptions from the prohibition against familial status discrimination, such that children will be excluded as residents.

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

14.04.60 General Requirements.

- A. In planning and developing any subdivision or any development, the developer shall comply with the general principles set forth in this chapter for the provision of adequate facilities; and in every case the developer shall observe the procedure outlined in this chapter.
- B. A developer shall not avoid the intent of this chapter by submitting piecemeal applications for preliminary plats or site plans. However, a developer may seek approval of only a portion of the subdivision or development, provided that the impact from all previously approved preliminaries or site plans from that development shall be considered during the APF review of each subsequent portion of the development.
- C. Except as provided in §14.04.070 Exemptions, all parcels must receive APFO approval prior to preliminary or final subdivision or site plan approval.

14.04.070 Exemptions.

- A. Minor residential subdivisions and public safety facilities are not subject to the requirements of this chapter. Except as specifically provided in this section, all other applications for development, whether for State, County or Town facilities, or private sector projects, are required to obtain APFO approval.
- B. Any existing preliminary subdivision plat approved prior to January 1, 2011 shall be exempt from the requirements of this chapter for the following time periods as long as the preliminary approval remains valid:

1. Residential development with valid preliminary approval 3 years from January 1, 2011
 2. Nonresidential development with valid preliminary approval 3 years from January 1, 2011
- C. Senior housing exemption from schools requirement. Any project which qualifies as "senior housing" as defined in §17.04.020 of the Town Code, and restricts occupancy to persons 62 years of age and older, in keeping with the Fair Housing Act requirements for exemptions from the prohibition against familial status discrimination, such that children will be excluded as residents, is exempt from the APFO schools requirement. The project must meet all other APFO requirements and,
1. The zoning certificate, site plan and subdivision approvals shall limit occupancy of the property to persons age 62 and older as specified in the Fair Housing Act, as described in Section (C), above.
 2. Before any revision or modification to the project at any time in the future, whether the project is built out and occupied or not, which has the effect of removing or substantially modifying the age restriction for residents, the project must first comply with the schools adequacy requirements under this chapter.
 3. Any project approved under this section shall meet the requirements of the sections of this chapter requiring that roads, public water and sewerage facilities be adequate.

14.04.080 Approval of Subdivisions, Site Plans

- A. All subdivisions, site plans, and revised subdivisions or site plans resulting in an increase in density or intensity of use, received for approval, re-approval or extension by the Planning Commission shall meet the requirements set forth herein prior to preliminary plat or site plan approval, except as provided for in §14.04.070.
- B. Subdivision plats or site plans that do not meet the requirements for adequate public facilities set forth herein shall not be granted preliminary subdivision or site plan approval by the Planning Commission. A conditional approval as allowed for in §14.04.090 may be granted, provided no final approval shall be granted or lots recorded until the conditions set forth in the conditional approval have been satisfied.
- C. Prior to the signing of any preliminary plat, or site plan, an adequate public facilities letter of understanding shall be forwarded to the Planning Commission and to the developer by the Town Manager.
- D. Approval of adequate public facilities as set forth in this chapter shall be valid from the date of the meeting at which approval of the preliminary subdivision or site plan approval is first granted by the Planning Commission for the following time period as long as the preliminary plan or site plan approval remains valid.
1. Residential subdivisions – 3 years
 2. Nonresidential subdivisions – 3 years
- E. If a preliminary subdivision or site plan approval is renewed by the Planning Commission upon its expiration, the associated APFO approval is also extended.

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

14.04.090 Conditional Approval.

- A. Conditional site plan, or preliminary plat, approval maybe granted to a development that does not have adequate public facilities at the time of Planning Commission consideration, provided that the developer agrees to provide the necessary improvements to make the facility adequate as allowed for in §14.04.100. If the developer improvements will not result in adequate capacity, conditional approval shall not be granted, and preliminary plat and site plan approval shall be denied.
- B. Conditional approval will be granted for a 3-year time period for all necessary improvements to be provided, with the exception that a 5-year time period will be granted for improvements related to the building or expansion of school facilities.
- C. If any conditions of a preliminary plat approval have not been met, then approval shall not be granted to a final subdivision plat.
- D. If conditional site plan approval has been granted, a building permit shall not be issued until the conditions have been satisfied, or the facilities have been determined to be adequate.

14.04.100 Developer Option.

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

14.04.110 Administration.

The Adequate Public Facilities Ordinance shall be administered by the Town Planning Office. All applications, maps, and documents relative to subdivision or site plan approval and subject to the provisions of this chapter shall be submitted to the Planning Office, which will review all information and present the relevant information and its recommendations to the Planning Commission. Final determination of adequacy shall be the responsibility of the Planning Commission.

14.04.112 Referral to other agencies/Public Comment.

- A. The Town Planning Office may refer the subdivision, site and development plans, to any County, State, or other agency it deems appropriate for review, comments and/or recommendations pertaining to the adequacy of public facilities, and these recommendations shall be considered by the Planning Commission in making its decision.
- B. The Planning Commission shall accept public comments and consider these comments as part of the record in its decision making process.

14.04.120 Appeals.

- A. As provided in Article 66B, §4.07, any person aggrieved by any action of the Planning Commission pursuant to this chapter may appeal to the town Board of Appeals. A decision of the Board of Appeals may be appealed to the Circuit Court of the county, as provided in Title 7, Chapter 200 of the Maryland rules. A decision of the Circuit Court of the county may be appealed to the Court of Special Appeals, or, upon certiorari, to the Court of Appeals of Maryland in accordance with Maryland Rules.
- B. The Board of Commissioners may file a responsive pleading and be a party to or take an appeal to the Circuit Court of the county, to the Court of Special Appeals of Maryland, or upon certiorari, to the Court of Appeals of Maryland of any decision made under this chapter.

14.04.130 Fees.

The Town of Emmitsburg Board of Commissioners shall have the authority to establish fees for APFO-related services by resolution. This may include, but shall not be limited to, a base review fee, plus any additional costs incurred for professional review services.

14.04.140 Determination of Adequacy.

A. Roads.

- 1. Thresholds. This article does not apply to developments which are expected to generate 25 or fewer total vehicle trips during the highest daily peak hour of the adjacent street traffic and 50 or fewer trips during the peak hour of the site's generated traffic, as defined by the most recent edition of the Institute of Transportation Engineers (ITE) "Trip Generation Manual". Site generated trips are the sum of all peak hour traffic trips in and out of the proposed site.
- 2. A traffic impact analysis (TIA) shall be prepared for developments that will exceed the thresholds specified in (A)(1) , with the study area and/or scope of study to be determined by Town staff.
 - a. The TIA shall be prepared for the design hours, which are defined as the peak hours which will be most affected by the proposed development; i.e. peak hours of the adjacent street, or peak hour of generation by the land use.
 - b. The TIA will include Level of Service (LOS) capacity analysis of all required roadway corridors, intersections and links for existing conditions and specified intermediate and future conditions with and without the proposed development as delineated in the guidelines;
 - c. If the existing road facilities are determined to be inadequate to accommodate the traffic flow projected by the TIA, the preliminary plan or site plan approval shall be denied, except as provided in §14.04.090.
- 3. Road improvements necessary to mitigate inadequacies shall be determined by the Town staff, and/or their agents and consultants, after reviewing the entire record, including the TIA, road rating system, traffic management plan (if required), safety considerations and the Maryland SHA comments; and improvements may be provided by the developer as prescribed in 14.04.100. The Town staff

determination will be presented to the Planning Commission for use in their deliberations regarding the development application.

- B. **Public Water Supply.** For development applications that will require additional water supply beyond what is existing on the site, the proposed capacity usage will be evaluated relative to the existing available units of capacity (taps) and any anticipated expansion of capacity pursuant to the Capital Improvement Plan and water management plan.

The water capacity shall be considered adequate if, given existing connections, future connections from buildings under construction, recorded lots for which allocations have been made and multi-year tap agreements:

1. The source facilities, storage tanks and local pumping stations have sufficient available capacity to provide maximum day demand and fire flow to the proposed development
2. The distribution system is capable of providing normal required pressure as well as minimal residual pressure to the proposed development. It should be noted that water taps are not guaranteed for the project until such taps are purchased, or a multi-year tap agreement has been executed between the town and developer.
3. Water supply capacity (taps) will be allocated according to a plan developed by town staff that will assign the number of taps and a time frame in which to use them.
4. If water supply capacity is found to be inadequate, preliminary subdivision and/or site plan application shall be denied except as provided for in §14.04.090.
5. Improvements necessary to achieving the required capacity shall be determined by the town staff and may be provided by the developer as allowed in §14.04.090.
6. Upon completion of construction of APFO water system improvements for a development the APFO water capacity approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO water capacity testing unless the density or intensity of the development increases.

- C. **Public Sewer Capacity.** For development applications that will require sewer capacity in addition to that which is existing on the site, the proposed capacity usage will be evaluated relative to the existing available units of treatment capacity at the Wastewater Treatment Facility on Creamery Road. It should be noted that sewer taps are not guaranteed for the project until such taps are purchased or a multi-year tap agreement has been executed between the town and the developer.

1. Sewage treatment taps will be allocated according to a plan developed by town staff that will assign the number of taps and a time frame in which to use them.
2. If public sewage treatment capacity is found to be inadequate, preliminary subdivision and/or site plan applications will be denied.

3. Upon completion of construction of APFO sewage treatment system improvements for a development, the APFO sewer capacity approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO sewage treatment capacity testing unless the density or intensity of the development increases.
- D. Schools. Adequacy tests apply only to residential development. APFO test data include:
1. Adequacy of every public school serving the proposed development shall be determined using the most recent quarterly enrollment data published by the Frederick County Public Schools.
 2. Schools shall be considered adequate if the enrollment for each school serving the development is less than 100% of state-rated capacity during the entire period for which APFO approval is granted by the Planning Commission.
 3. Procedure. Town staff shall send a written request to the Board of Education or its designee, requesting a school adequacy test, and specifying: (1) the number of years for which the development should be tested; (2) the number and types of residential units to be tested; and (3) data concerning the approved developments in the school attendance areas that should be factored into the test. The BOE or its designee shall forward its school adequacy test results to town staff for presentation to the Planning Commission. After consideration of the school adequacy test results at a public meeting, the Planning Commission shall determine whether the proposed development meets the school adequacy requirements in this chapter.
 4. Request to redistrict. If a school is not adequate based on the BOE school adequacy test, and an adjoining school district at the same level is at least 20% below state rated capacity, then the applicant may request the Frederick County Board of Education (BOE) to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards utilized to provide the BOE school adequacy test results described in §40.04.140(3), then the schools shall be considered adequate.
 5. Denial. If a school is not adequate and the BOE has not approved a specific redistricting plan that would result in the school meeting the BOE school adequacy standards, then the preliminary subdivision or site plan shall be denied, except as allowed for in §14.04.090.
- E. Emergency services. Adequacy of emergency services will be evaluated with the assistance of Frederick County Emergency Services and/or other Frederick County departments.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Ordinance shall take effect on the date on which the Mayor approves the Ordinance after passing by the Board of Commissioners or on the date on which the Board of Commissioners pass the Ordinance over the veto of the Mayor.

PASSED this _____ day of _____, 2011, by a vote of _____ for, _____ against, _____ absent, and _____ abstain.

ATTEST:

EMMITSBURG BOARD OF COMMISSIONERS

By: _____
Donna DesPres, Town Clerk

Christopher Staiger, President

_____ APPROVED _____ VETOED

this _____ day of _____, 2011.

James Hoover, Mayor

I hereby certify that the foregoing Ordinance has been posted as required by Chapter 2.04 of the Emmitsburg Municipal Code.

Date: _____

Donna Des Pres, Town Clerk