

# **Adequate Public Facilities Ordinance**



**Adopted 1999**

**Revised and Reprinted 2006 and 2022**

**City of Brunswick, Maryland**

**ADEQUATE PUBLIC FACILITIES ORDINANCE**

Adopted 1999  
Revised in 2006 and 2022

Mayor & Council

Nathan Brown, Mayor  
Vaughn Ripley  
Brian Sandusky  
Andrew St. John  
Chris Vigliotti  
Angel White  
Daniel Yochelson

Planning Commission

Nick Caruso  
Carroll Jones  
Alan Miner  
Dan Roe  
Andrew St. John  
Jerry Bonanno

Julie Martorana, City Administrator  
Bruce R. Dell, Planning & Zoning Director

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State law reference – Adequate Public Facilities, Anno. Code of MD., Land Use Article, Title 7, Subtitle 1.

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## **ARTICLE 1. IN GENERAL**

### **1.1 Title**

This Ordinance shall be known and cited as the City of Brunswick Adequate Public Facilities Ordinance (APFO).

### **1.2 Authority**

This Ordinance is established in accordance with the provisions of Land Use Article, Title 7, Subtitle 1.

### **1.3 Jurisdiction**

The provisions of this Ordinance shall apply to all lands within the territorial limits of the City of Brunswick.

### **1.4 Intent**

This Ordinance is adopted with the intent that new residential, industrial, and commercial development take place in accordance with the Brunswick Master Plan, County Comprehensive Plan, and the City and County Capital Improvements Programs, 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 public facilities will take place in cooperation with the County, especially when County facilities are affected by new development which falls under the requirements of this Ordinance. For the purposes of this Ordinance, public facilities shall include roads, water, sewerage, and school facilities.

### **1.5 Definitions**

A. The following rules of construction shall apply to the text of this Ordinance:

1. The particular will control the general.
2. The words “shall” and “will” are always mandatory and not discretionary. The word “may” is permissive.
3. Words used in the present tense include the future; and words used in the singular include the plural; and the plural includes the singular; words of the masculine gender will include the feminine, and the neutral gender will refer to any gender as required, unless the context plainly indicates the contrary.
4. A building or structure includes any part thereof.
5. The phrase “used for” includes “arranged for”, “designed for”, “intended for”, “maintained for”, or “occupied for”.

6. The word “person” includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
  7. Unless it is plainly evident from the context that a different meaning is intended, a regulation which involves two (2) or more items, conditions, provisions, or events connected by the conjunction “and”, “or”, or “either...or”, the use of the conjunction is defined as follows:
    - a. “And” means that all the connected items, conditions, provisions, and events apply together and not separately.
    - b. “Or” means that the connected items, conditions, provisions, or events apply separately or in any combination.
    - c. “Either...or” means that the connected items, conditions, provisions, or events shall apply separately but not in combination.
  8. The word “includes” does not limit a term to the specified examples, but is intended to extend the term’s meaning to all other instances or circumstances of like kind or character.
  9. When a term defined in the Brunswick Subdivision Regulations, Zoning Ordinance, or the Building Code occurs in this Ordinance, it has the meanings specified in the Subdivision Regulations, Zoning Ordinance, or Building Code, unless it is specifically defined in this Ordinance.
  10. The word “City” means the City of Brunswick, Maryland. The word “County” means Frederick County, Maryland. The word “State” means the State of Maryland.
  11. Throughout this Ordinance, all words, other than the terms specifically defined herein, have the meaning inferred from their context in this Ordinance or their ordinarily accepted definitions.
- B. In this Ordinance, the following terms are used as defined unless otherwise apparent from the context:

**Adaptive Reuse** – Rehabilitation or renovation of existing obsolescent or historic structure(s) from their original or most recent use to a new use.

**Adequate Public Facilities (APF)** – Those public facilities included in the context of this Ordinance which meet established minimum standards as further specified herein.

**Adequate Public Facilities Letter of Understanding** – A letter from the Planning Commission to the developer which sets forth all terms, conditions, and restrictions which must be satisfied for a finding of adequacy. The developer may propose an Adequate Public

Facilities Letter of Understanding, but in all cases, the final letter shall be developed by the City Attorney at developer's cost.

**Affordability** – The extent to which enough rental housing units of different costs can provide each renter household with a unit it can afford (based on the 60-percent or less of the Frederick County area median income standard).

**Age-Restricted Community** – A development or portion thereof which has been designated as an age-restricted community.

**Amend or Amendment** – Any repeal, modification, or addition to a regulation; any new regulation.

**Background Enrollment Growth** – The average annual impact of equated student enrollment changes during the preceding three years in the school attendance areas serving the proposed development as determined in Section 5.2G with appropriate adjustments made in the determination by the Frederick County Public Schools (FCPS) to eliminate student enrollment changes caused solely by school redistricting.

**Capital Budget** – The current and first year of the approved CIP.

**Capital Improvement Program (CIP)** – An annual document adopted by the City of Brunswick indicating City capital projects having funding approval for the current fiscal year and those capital projects which are currently planned for the following five-year period, including the proposed means of financing the same. The County CIP will also be reviewed for school projects and road improvements to County owned rights-of-way.

**Children/Child** – Those individuals 18 years of age and younger.

**City Engineer** – The professional engineering firm under contract with the City of Brunswick. The City Engineer will serve as the technical authority on all matters requiring a certified engineer.

**Consolidated Transportation Program (CTP)** – An annual document prepared by the Maryland Department of Transportation (MDOT) and approved by the Maryland General Assembly indicating State transportation projects which have funding approval for the current fiscal year and those projects which are planned for the following five-year period.

**Department of Public Works** – The City of Brunswick Public Works Department (in the person of the Public Works DIRECTOR), the City Engineer, or if so designated by Mayor and Council, the County Department of Public Works.

**Developer** – An individual, partnership, corporation, or other entity (or agent thereof) that undertakes the responsibility for any or all of the activities covered by this Ordinance and the City of Brunswick Subdivision Regulations, particularly the designing of a subdivision plat or site plan showing the layout of the land and the public improvements involved

therein. Inasmuch as the subdivision plat is merely a necessary means to the end of assuring a satisfactory development, the term “developer” is intended to include the term “subdivider”, even though the personnel involved in successive stages of the project may differ.

**Development** – The area of land which is subject to a change in use (preliminary plat or site plan approval) or the expansion of an existing use, and which is subject to subdivision or site plan review.

**Fair Housing Act** – 42 United States Code, section 3607 et seq., as amended.

**Final Plat** – The final map, drawing, or chart upon which the subdivider’s plan of subdivision is presented to the Planning Commission and which, if approved, will be submitted for recording among the Land Records of Frederick County.

**Government Project** – Any building, structure, or alteration thereof paid for and used by local (City), State, or Federal government entities.

**Housing For Older Persons** – Housing intended for, and occupied by, older persons in accordance with the provisions of 42 U.S.C. § 3607(b)(2), as amended.

**Level of Service (LOS)** – A standardized index of relative service provided by a road or highway ranging from “A” to “F” with “A” representing free, unobstructed flow and “F” representing a forced flow beyond capacity of the facility, as defined in the Highway Capacity Manual published by the Highway Research Board.

**Lot** – A contiguous area or parcel of land separated from other areas of land by separate description (including a recorded deed, a subdivision plat or record of survey map, or by metes and bounds) for purpose of sale, lease, transfer of ownership or separate use.

**Lot of Record** – Any lot legally and officially recorded prior to the adoption of the Ordinance (October 1967), which may or may not conform to the area or width requirements of the zoning district in which it is located, and is subject to modified front, side, and rear yard setback requirements.

**Major Subdivision** – Any parcel which has been or is proposed to be subdivided to create six (6) or more lots.

**Master Plan** – The policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the City’s future development, as adopted by the Mayor and Council and maintained in accordance with The Land Use Article of the Annotated Code of Maryland.

**Minor Subdivision** – Any parcel which has been or is proposed to be subdivided to create five (5) or fewer lots.

**Planning and Zoning Director** – The Administrative Officer in charge of Zoning Administration (Zoning Administrator) within the City corporate limits.

**Planning and Zoning Department** – A department within the City government that performs the administrative function for the Planning Commission and other functions as directed by the Planning Commission, City Administrator, or Mayor and Council. The principal point of contact will be the City Planning & Zoning Director.

**Planning Commission** – The duly appointed City of Brunswick Planning Commission.

**Planned Unit Development (PUD)** – A Residential Development Overlay Option approved by the City of Brunswick which allows a variety of uses and dwelling unit types in accordance with an approved plan and schedule of improvements.

**Preliminary Plat** – The preliminary drawings and supplementary materials indicating the proposed layout of the subdivision to be submitted to the Planning Commission for its consideration.

**Public Works Agreement** – A contract between the developer and the City setting forth the obligations of the Developer to financially guarantee and to complete the necessary public improvements in accordance with the City approved plans and specifications by a given date.

**Roads** – Public rights-of-way recognized and maintained by the State, County, or City including, but not limited to, pavement, drainage devices, traffic control devices, bridges, and culverts.

**School Facility, Public** – An educational program for students approved by the Maryland State Department of Education for the teaching of children or adults including elementary and secondary schools and similar facilities. Charter schools funded by the state are included in this definition.

**Site Development Plan (Site Plan)** – The plan indicating the location of existing and proposed buildings, structures, paved areas, walkways, vegetative cover, landscaping, lighting, parking and screening within a site proposed for development which is to be submitted to the Planning Commission for approval prior to the release of building permits for the site.

**State Rated Capacity (SRC)** – The maximum number of students, as determined by the State, that can be reasonably accommodated in a school facility without significantly hampering delivery of the given educational program.

**Structural Adequacy (roads)** – Determination by the City Engineer, or other City designee appointed by The Mayor and Council, that the pavement cross-section (or bridge design) is of sufficient depth and design to carry the increased traffic volume generated by



the proposed development, including the heavy construction vehicles which will be present, without causing undue failure of the infrastructure.

**Subdivision** – The division of a lot, tract, or parcel of land into two (2) or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of transfer of ownership or for building development. It includes re-subdivision and when appropriate to the context relates to the process of re-subdividing or to the land or territory subdivided.

## 1.6 General Requirements

- A. In planning and developing any subdivision or any development, the developer shall comply with the general principles set forth in this Ordinance for the provision of adequate public facilities; and in every case the developer shall observe the procedure outlined in this Ordinance.
- 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 preliminary plats or site plans from that development shall be considered during the APFO review of each subsequent portion of the development.
- C. Except as provided in Section 1.7, all Developments must receive APFO approval prior to development or subdivision

## 1.7 Exemptions

- A. Minor residential subdivisions, public or private elementary and middle or high schools and public safety facilities are not subject to the requirements of this Ordinance.
- B. Any existing preliminary plat approved prior to March 29, 1999, shall be exempt from the requirements of this Ordinance for the following time periods as long as the preliminary PLAT approval remains valid:
  - 1. Residential development with valid preliminary plat approval:
    - 6-100 units ..... 3 years from March 29, 1999
    - Over 100 units ..... 5 years from March 29, 1999
  - 2. Nonresidential development with valid preliminary plat approval shall be exempt three (3) years from March 29, 1999.
  - 3. All plats having preliminary approval and seeking extensions of THAT approval must comply with Subdivision Regulations.
  - 4. Notwithstanding any other provisions of this Ordinance, any residential development under construction which is subject to a phasing schedule imposed

prior to March 29, 1999, as a condition of rezoning and which is not completely built out within the time periods set forth in Subsection (1) above, and which has been substantially delayed due to the City or County's inability to provide planned public utilities, may proceed with construction in accordance with the rezoning phasing schedule if all schools serving the Development are adequate as defined in this Ordinance. If any public schools serving the development are not adequate as defined in this Ordinance, the development may proceed with construction at a reduced rate equal to 60% of the number of units permitted annually by the phasing schedule imposed at the time of rezoning, or as subsequently amended.

- C. As long as a particular development meets the requirements of this Ordinance during preliminary plat approval, it will not be necessary to conduct APFO testing for the development at site plan approval.
- D. Any development which qualifies as "housing for older persons" defined in Section 1.5 hereof, and which meets the following criteria shall be exempt from the Schools' Adequacy Requirements of this Chapter.
  - 1. Except in the case of a Phase II revision per Zoning Ordinance Section 7.3C; if the proposed development is a PUD or MXD that is not an adaptive reuse project, all or a portion of the development must have been designated as an age-restricted community at Phase I in accordance with §21-15 (c) of the Zoning Ordinance.
  - 2. The proposed project must comply with the minimum age restriction as stated in the Fair Housing Act requirements for housing for older persons, and thereby maintain an exemption from the prohibition against familial status discrimination, such that children will be excluded as residents.
  - 3. The zoning certificate, site plan and subdivision approvals shall require occupancy of each dwelling unit:
    - a. solely by persons aged 62 and older; or
    - b. by at least one-person age 55 or older, provided that the following criteria are met:
      - 1) at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older; and
      - 2) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph (b); and
      - 3) the housing facility or community complies with rules issued by the secretary of housing and urban development for verification of

occupancy, as set forth in the fair housing act, 42 U.S.C. §3607 *et seq.*

4. The proposed development shall be located in an area that will be served by both public water and sewer within a designated growth area.
5. The construction and development must include a full program of amenities and other activities for older persons at a minimum, the amenities must include:
  - a. a trail system, walking paths, and sidewalks for pedestrian accessibility;
  - b. a clubhouse/multi-purpose building(s) or equivalent space sized at 10 square feet for every dwelling unit. a minimum of 2,000 sq. ft. must be provided. the maximum square footage required shall be 10,000 square feet. only the physical structure (i.e. gross building square footage) of the clubhouse/multi-purpose building(s) or equivalent space, not the parking area(s), will be considered in determining the square footage;
  - c. active recreational open space at a rate of 1/3 acre per 100 dwelling units. a minimum of 1 acre must be provided. qualifying amenities, including but are not limited to, clubhouse/multi-purpose building(s) or equivalent space (gross building square footage only), swimming pool, tennis courts, chip and putt course, bocce courts, horseshoe pits, and/or similar active recreational amenities. a single large-scale amenity, such as a golf course, may not be proposed as the sole means to satisfy this requirement;
  - d. passive recreational space, including but not limited to, picnic areas, gazebos, pocket parks and/or other similar passive recreational amenities; and
  - e. an appropriate phasing schedule in each phase of development to meet the needs of the residents.
6. If the age-restricted community is an adaptive reuse of an existing structure or structures, or if, due to unusual circumstances of shape and topography or other physical features or conditions of the development, or because of the nature of adjacent developments, or due to the existence of resources that will be shared with adjacent developments, extraordinary hardship will result from strict compliance with the requirements set forth in Subsections (d)(5)(a) through (d)(5)(e) of this Section, the Planning Commission may grant a modification of these requirements. The applicant must submit a justification statement with its request for the modification, together with evidence that the development meets the requirements stated above for the requested modification, however, the Planning Commission may not grant a modification that will have the effect of substantially altering or nullifying the intent and purpose of this section. In granting modifications, the

Planning Commission may require such conditions as are deemed necessary by the Planning Commission in its sole judgment.

7. Prior to granting APFO approval for the development, the Planning Commission must review and approve the proposed restrictive covenants applicable to the project to ensure that the project is limited exclusively to housing for older persons as specified under Subsection (d)(3) above, and excludes children from residency. These covenants must require that appropriate enforcement mechanisms be in place to enforce the age restriction and also ensure compliance with the requirements to qualify as housing for older persons under the fair housing act. The restrictive covenants must also provide that any subsequent revisions or modifications of the covenants pertaining to age limits for occupancy shall be submitted to the planning commission for approval prior to recordation. These revisions or modifications will require the re-approval of the phase II plan, site plan, zoning certificate, and subdivision plat(s), as necessary.
8. Prior to recordation of subdivision plats and issuance of building permits or the zoning certificate for the project, the restrictive covenants described above in Subsection (d)(7) must be recorded in the County Land Records.
9. Before any revision or modification to the development 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.
10. Any development approved under this Section shall meet the requirements of the Sections of this Chapter requiring that roads, public water and sewerage facilities be adequate.
11. "Appropriate Enforcement Mechanisms" as used in this Section means that the restrictive covenants for the project require the homeowners' association or similar entity, through a property\_management agent, to enforce the age restrictions and ensure compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children will be excluded as residents. If more than one (1) homeowners' association or similar entity is established for the project, then the homeowners' association or similar entity governing the housing for older persons' project shall have the primary responsibility for enforcing the age restrictions and ensuring compliance with the requirements to qualify as housing for older persons under the Fair Housing Act such that children shall be excluded as residents.

## **1.8 Approval of Subdivisions, Site Plans**

- A. All major residential subdivisions, major and minor commercial/industrial subdivisions, site plans, and revised subdivision 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 Section 1.7.

- B. Subdivision plats or site plans that do not meet the requirements for adequate public facilities in Articles 2-5 herein, shall not be granted preliminary plat or site plan approval by the Planning Commission. A conditional approval as allowed for in Section 1.10 may be granted, provided no final approval shall be granted or lots recorded until the conditions set forth in the conditional approval have been met.
- C. Prior to the signing of a preliminary plat or site plan, a proposed Adequate Public Facilities Letter of Understanding shall be prepared by the developer and forwarded to the Planning Commission. The City Attorney shall prepare the final Letter of Understanding.
- D. Approval of adequate public facilities as set forth in this Ordinance shall be valid from the date of the meeting at which preliminary plat or site plan approval is granted by the Planning Commission for the following time period as long as the preliminary plat or site plan approval remains valid:

1. Residential Subdivisions

6-100 units .....	3 years
101-300 units .....	5 years
301-500 units .....	10 years
Over 500 units .....	15 years

(Ord. 551, 11-4-22)

2. Nonresidential Subdivisions

0-50 acres .....	3 years
Over 50 acres .....	5 years

3. Site Plans

For as long as the site plan approval remains valid, but in no event shall it be for more than three (3) years.

- 4. At the request of the developer, the Planning Commission may approve a preliminary plat or site plan for a time period less than that shown above, but in no case for less than one (1) year.
- 5. If a developer is seeking concurrent subdivision and site plan approval, the APFO testing shall be required as part of the subdivision approval. Notes shall be placed on both documents specifying approved use(s).

- E. At the request of the developer, the Planning Commission shall extend the approval of adequate public facilities beyond the time frame provided in Section 1.8D above if the Planning Commission finds that:
  - 1. The development is proceeding as scheduled;
  - 2. All conditions of approval are being met;
  - 3. All road, water, and sewerage improvements specified in the Adequate Public Facilities Letter of Understanding have been either vested (under Sections 2.2J, 3.2D, or 4.2D) or have been impeded by circumstances in the sole or primary control of the City or County; and
  - 4. All unrecorded lots or unbuilt site plan structures are either vested (under Sections 2.2J, 3.2D, or 4.2D) or meet the requirements for adequate school, road, water, and sewerage capacity.
- F. The Planning Commission may grant APFO approval for time frames beyond those specified in Section 1.8D if pre-existing conditions of rezoning or other required phasing limitations, such as those provided in Sections 1.9 and 5.2H, warrant such action.
- G. If the preliminary plat 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, the portion of the development not built), shall meet the requirements of this Ordinance prior to again obtaining preliminary plat or site plan approval.
- H. A developer seeking preliminary plat or site plan approval of a development must comply with the Brunswick Subdivision Regulations and Zoning Ordinance.
- I. Prior to recordation of final plats, all Maryland Department of the Environment (MDE) and other reviewing agency comments and requirements must be complied with.
- J. For all developments which were exempt from this Ordinance or for which APFO approval was granted, the subdivision lots must be recorded (or where no subdivision is required, substantial construction pursuant to the site plan must be commenced) in order to remain exempt from future APFO testing.

## **1.9 Approval of Planned Unit Developments (PUDs)**

- A. All PUD plans or amended PUD plans resulting in an increase in density or intensity of use, shall meet the requirements of this Ordinance prior to PUD approval or re-approval. A phasing plan indicating the density and rate of development in accordance with the availability of adequate public facilities shall also be approved as part of the PUD approval or re-approval. Phasing of development to address school adequacy must also comply with Section 5.2H.

- B. PUD plans or site plans that do not meet the requirements for adequate public facilities in Articles 2-5 herein shall not be approved except as a conditional approval as permitted by Section 1.10B. Final plat approval may be granted and lots recorded as the conditions set forth in the conditional approval are met.
- C. Prior to the signing of the PUD Phase II Plan, a proposed Adequate Public Facilities Letter of Understanding shall be forwarded to the Planning Commission by the developer. The City Attorney shall prepare the final Letter of Understanding.
- D. Approval of Adequate Public Facilities for PUDs shall be valid for length of time of the original plan approval. The preliminary plan (Phase III) APFO approval shall be based on the number of units approved on the PUD Phase II Plan.
- E. If the PUD plan is voided or is amended such that the density or intensity of use is increased, then the unrecorded or undeveloped portion of the development shall meet the requirements of this Ordinance prior to again obtaining PUD plan approval.
- F. All developments seeking PUD plan or site plan approval must comply with the Brunswick Subdivision Regulations and Zoning Ordinance.
- G. Prior to recordation of final plats all MDE and other agency requirements must be met.

### **1.10 Conditional Approval**

- A. Conditional preliminary plat or site plan approval may be granted to a development that does not have adequate public facilities at the time of Planning Commission consideration, provided that the developer offers to provide the necessary improvements to make the facility or facilities adequate as permitted by Section 1.11. If 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 PUD Phase II Plan approval may be granted for a PUD plan that does not have adequate public facilities at the time of Planning Commission consideration, provided that a phasing plan detailing the rate and density of construction of the PUD in accordance with the availability of facilities is approved by the Planning Commission. Phasing of development to address school adequacy must also comply with Section 5.2H.
- C. If conditions of a PUD plan 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 any conditions have been satisfied and the facilities have been determined to be adequate.
- E. Conditional approval may also be granted by the City Planning Commission in the event that the County Council (CC) or Board of Education (BOE) fail to address the required infrastructure issues which cause the development to fail an APFO test. In order to invoke

this condition, the developer must first put up his required share of any funding necessary to complete the infrastructure. This condition will be invoked only after joint discussion between the City Planning Commission, the Mayor and Council, and the CC.

### **1.11 Developer Option**

- A. 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 Ordinance, or to wait for public facilities to become adequate by improvements made pursuant to the City or County CIP or other sources. A State, County, or City agency may participate in the improvements.
  
- B. If the Planning & Zoning Director denies a Certificate for Adequate Public Facilities (CAPF), the Developer may mitigate the impact of the proposed development through either of the options described in this subsection.
  - 1. A Developer has the option to financially guarantee and construct, in accordance with a public works agreement with the City, any or all of the public facility improvements necessary to support the proposed development and to ensure adequacy of public facilities as set forth in this ordinance.
  - 2. A Developer has the option to pursue a Mitigation Agreement with the City in accordance with Section 1.11-C.
  
- C. Mitigation Agreements
  - 1. In order to receive a final CAPF, a Developer proposing to phase the construction of any public facility improvements necessary to support the proposed development must enter into a Mitigation Agreement with the City. A Mitigation Agreement is not valid unless it is approved by the Mayor and Council.
  - 2. A Mitigation Agreement shall establish, for each phase or section of Development, the terms and conditions under which the necessary public facility improvements will be constructed, financed and delivered by developer.
  - 3. A Mitigation Agreement may provide that instead of financially guaranteeing the completion of a public facility improvement required within a phase or section of development, the Developer may demonstrate that the improvement is scheduled for construction, as a result of other specifically identified funding, within two years after the unconditional approval of a specified preliminary subdivision plat or final site plan.

### **1.12 Escrow Funds for Road Improvements**

- A. In lieu of either providing the public facility improvements or waiting for public facilities to become adequate as provided in Section 1.11, the developer shall have the option of



contributing money to an escrow account as set forth in this section provided the Planning Commission determines that the developer has fulfilled each of the requirements of this section.

- B. The amount of money the developer shall be required to place in the escrow account shall be the proportionate share of costs of making the improvements required to satisfy the roads adequacy requirements in Sections 2.1 and 2.2. This proportionate share shall be based on an equitable allocation or portion of traffic trips that the proposed development is estimated to cause, when measured against the additional usable capacity that the proposed improvement is creating. The amount of such escrow shall be roughly proportionate to the anticipated traffic impact of the proposed development. In arriving at the equitable allocation or portion, the Planning Commission shall consider the traffic impact of the development as it relates to the entire road improvement being proposed. The developer shall provide adequate information to make this equitable allocation. The City staff shall review this information provided by the applicant and recommend an equitable allocation. The Planning Commission shall determine the equitable allocation. The proposed road improvement may, upon the request of the developer, be designed to create more new capacity than only that which is required for the development to satisfy the adequacy requirements in Sections 2.1 and 2.2 if the Planning Commission determines that the road link or intersection to be improved will require greater improvement to handle additional future development consistent with the Master Plan. Once an improvement is approved for a particular road link or intersection and an escrow account is established, subsequent developers shall either contribute to the escrow fund an equitable allocation of the approved road improvement or construct the approved road improvement.
  
- C. The Planning Commission shall approve this escrow request if the Planning Commission determines that it would not be equitable to impose the entire cost of the required improvements on the developer because of the limited impact that the proposed development would have on the roads in question and that the development would not have a substantial adverse impact on traffic. Limited impact shall be defined as 50% or less of the traffic impact capable of being handled by the proposed road improvement. However, for limited impact projects of between 25% and 50% impact, the Planning Commission may disapprove the escrow account request if it determines that funds (40% or more of the total required) exist in an escrow account which, along with the applicant's proportionate share, are sufficient to substantially complete the necessary improvements or if the escrow approval will result in a piecemeal effort by the applicant to avoid making the necessary road improvements. Additionally, the Planning Commission may approve an escrow request if improvements necessary to establish adequacy are practically infeasible due to circumstances beyond the control of the applicant but which are feasible if constructed as a public project. No escrow request shall be approved for a road improvement that the Planning Commission determines is infeasible to construct as a public project. In determining whether a development has a limited impact, the Planning Commission shall consider the general requirement in Section 1.6B that the developer not avoid the intent of this Ordinance by submitting piecemeal applications and may deny an escrow request for a piecemeal application.

- D. Once an escrow account is established, any developer having an impact on the improvement project shall be required to pay its proportionate share into the escrow account or make the road improvements as provided in Section 1.11 to gain adequate public facilities approval to allow the development to proceed.
- E. The escrow account shall be maintained by the City in an interest bearing account and shall be used solely for road improvements benefiting the property as determined by the Mayor and Council. Any funds in the escrow account (together with interest earned thereon) which are not expended or encumbered by the end of the tenth fiscal year following deposit shall, upon application by the escrow account payer, be refunded to the payer. The Mayor and Council may extend this ten (10) year period for a specified term based on a reasonable expectation that road improvements benefiting the property will be constructed during the extended term. In addition, if the money paid into an escrow account for road improvements exceeds actual costs, the applicant may seek a refund. Any application for refund must be filed with the City within one (1) year of the time at which such funds become available for refund.
- F. If the Planning Commission approves an escrow fund for road improvements under this section and the development meets all other requirements, then the Planning Commission shall grant to the development conditional preliminary plat or site plan approval.
- G. If a developer constructs road improvements for which an escrow account has previously been established pursuant to this section, the funds in the escrow account shall be made available to the developer to defray the construction costs of the road improvements.
- H. A State, County, or City government agency may participate in the improvements.

## **ARTICLE 2. ROADS**

### **2.1 Thresholds**

- A. Except where an APFO escrow account (Section 1.12D) has already been established, this article exempts developments which generate or are expected to generate less than one hundred (100) total vehicle trips during the highest daily peak hour of the adjacent street traffic, as defined by the most recent edition of the Institute of Transportation Engineers (ITE) "Trip Generation Manual", for the use category determined by the Planning & Zoning DIRECTOR. Said trips are driveway volumes in and out and may be a combination of "new" trips and "intercept" trips.
- B. In determining whether or not a total of one hundred (100) peak hour vehicle trips will be generated during the peak hour of the adjacent street traffic, all land at one location within the City under common ownership or control by a developer shall be included. The phrase "at one location" means all adjacent land of the developer, the property lines of which are contiguous or nearly contiguous at any point. A developer shall not avoid the intent of this section by submitting piecemeal applications for preliminary plats or site plans. A developer may seek approval of only a portion of a subdivision or development which

generates less trips than the criteria, provided that upon seeking approval of the remaining subdivision or development which generates trips greater than the criteria, including that approved previously under this subsection, the development will comply with the requirements of this section.

## **2.2 Determination of Adequacy**

- A. For all development applications meeting the threshold criteria outlined in Section 2.1, a Traffic Impact Study (TIS) shall be prepared by the developer and submitted to the City Planning and Zoning Department which will review it along with the City Engineer. The portion of existing road(s) required to be adequate shall be determined by the Planning & Zoning Administrator in consultation with the City Engineer based on a pre-study conference or documented correspondence between the County, the City, and the developer. The City Engineer shall use as guidelines the criteria set forth in (1) and (2) below, but may, in consultation with the developer, adopt a reasonable study area based on sound traffic engineering knowledge of the site and the situation. Any disputes regarding study area or scope shall be resolved by the Planning Commission.
  - 1. The portion of the existing road(s) required to be adequate for a proposed development shall be from the site's planned entrance(s) to the nearest intersection of an arterial road or freeway/expressway with an arterial road, in the directions of traffic flow anticipated by the City Engineer unless the pre-study conference determines otherwise.
  - 2. All primary and interstate highways shall be exempt from the requirements herein.
- B. The TIS 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., any combination of morning, afternoon, evening, or weekend hours as determined via the pre-study agreement. The TIS will include, but not be limited to:
  - 1. A written description of the site boundaries and characteristics which the study has been based upon, including, but not limited to, development size, land usage, and proposed parking, a graphical depiction of the site location, and, where helpful, a graphical summarization of any unique site-plan characteristics;
  - 2. Existing conditions including existing traffic volumes recorded during specific times, for example, when school is in session (unless in the opinion of the City Staff or the Department of Public Works significant circumstances preclude this), existing lane usage, existing levels of service (LOS), and a thorough study area descriptive narrative of the physical roadway conditions, including all controls, constraints, and deficiencies;
  - 3. Vehicle trip generation and design hour volumes generated by the proposed development and traffic expected to be generated by approved development in the study areas as determined by the Planning & Zoning Administrator. For minor

commercial/industrial subdivisions the developer shall have the option to specify particular uses for traffic analysis, to use the highest traffic generating use, or limit the property usage to a traffic level below the APFO threshold. Such restrictions shall be noted on the plat or site plan. The latest edition of the ITE “Trip Generation Manual” is to be used unless specifically applicable rates (county comparable, individual generator studies, etc.) are identified and accepted by the City Engineer. Approved background development traffic impacts will be prorated to coincide with the length of time for which APFO approval is requested for the proposed Development in proportion to the approved background projects;

4. Trip distribution and traffic assignment based upon sound planning judgment of the future conditions;
  5. Growth in through-traffic as determined from historical data or other planning factors affecting future traffic volumes (growth rates will be applied only to the “through” trips at the intersection);
  6. LOS capacity analysis of all required intersections and links (where necessary) for existing conditions, and all intermediate and ultimate future conditions with and without the proposed development;
  7. In cases where traffic safety is identified as an issue at the pre-study conference, reported traffic accidents for the last five years;
  8. Roadway and bridge improvements programmed or currently funded for construction in the most recent City or County Capital Budget or second year of CIP;
  9. Improvements funded in the current or second budget year of the Maryland Department of Transportation (MDOT) Consolidated Transportation Program; and
  10. Any other information that may reasonably be required by the City Planning and Zoning Department to effectively evaluate the road network or application.
- C. All traffic studies shall use the Critical Lane Method (CLM) of analysis at intersections and when required the Highway Capacity Manual (HCM) for roadway links capacity at peak hour traffic flow. Additionally, at signalized intersections, the HCM method must also be employed. The developer is responsible for confirming and using the existing signal timings when analyzing existing conditions. A technical description of the CLM is given in the January 1971 issue of Traffic Engineering, and staff will have available copies. The following specific treatments will be applied to the CLM analysis:
1. All non-signalized intersections will be modeled as simple two-phased operations, i.e., run N-S together, and then E-W together.

2. The following lane use factors (LUF) will be used:

<u>NUMBER OF APPROACH LANES</u>	<u>LUF</u>
1	1.00
2	0.55 (through lanes) 0.60 (turn lanes)
3	0.40 (through lanes) 0.45 (turn lanes)
≥ 4	0.30

3. “Free right turns” (which are not analyzed in the CLM) are defined as movements typically isolated by channelization and controlled by a yield sign. Only if the right-turning vehicles are isolated from the queue of through vehicles on the approach leg, and there is sufficient exclusive acceleration opportunity on the turn leg, can they be excluded from the analysis.
4. Right-turn-on-red (RTOR) “credits” generally will not be allowed unless it can be demonstrated/documentated that RTORs are occurring at the intersection; even then, only low-volume intersections will be considered as candidate intersections.
5. Where no separate left turn lanes occur at high volume intersections, the left-most approach lane should be assumed to handle all the lefts, with the other lanes carrying the through traffic and rights, etc. Actual observations/documentation of other conditions will be reviewed on a case-by-case basis.
6. On one-lane approaches where a bypass of left-turning vehicles exists, a separate left turn lane can be assumed. Otherwise, the volumes should be combined.
7. The following CLM LOS criteria shall be used:

<u>CRITICAL LANE VOLUME</u>	<u>LOS GRADES</u>
≤ 977	A
978-1022	A/B
1023-1127	B
1128-1172	B/C
1173-1277	C
1278-1322	C/D
1323-1427	D
1428-1472	D/E
1473-1577	E
1578-1622	E/F
≥ 1623	F

8. Passby/intercept trips may be assumed when the tested street traffic volume is greater than 10,000 Average Daily Traffic (ADT). Otherwise, all trips must be modeled as “new” trips. Unless otherwise supported by first-hand data the

maximum allowable credits for primary “passby/intercept” trips for a particular land use shall be as follows:\*

Sit-Down Restaurant	30%
Fast Food Restaurant	60%
Day-Care (on collector or arterial street)	20%
Day-Care (in a PUD)	**
Service Station	60%
Convenience Store	60%
Retail less than 40,000 square feet (S.F.)	50%
Retail 40,000 S.F. or greater but less than 100,000 S.F.	35%
Retail 100,000 S.F. or greater	25%

\* Secondary and diverted trips from parallel networks shall not be considered.

\*\* 80% of trips assumed to originate within the PUD; 20% assigned to outside the PUD.

9. Where a project is testing a state highway and the specific factors of Subsection C are different from those used by the State Highway Administration (SHA), then the SHA factors shall be used.

D. The following LOS criteria shall be met to determine road adequacy:

1. Roads and intersections shall be considered adequate if a LOS “D” or better is maintained using the CLM. Further, for signalized intersections only, which are also required to be analyzed using the HCM method, the overall intersection LOS must be “D” or better to be considered adequate. Required mitigations, if any, will be reviewed on a case-by-case basis.
2. Roadway links when required by staff and, based on sound traffic engineering principles, shall be determined to be acceptable if actual capacity does not exceed 80% of rated capacity. ADT counts will be required by staff at both link-ends when mid-block intersections are present.

E. If a future condition is determined to be inadequate to accommodate the traffic flow projected by the TIS, the preliminary plat or site plan approval shall be denied, except as provided for in Section 1.10.

F. Road improvements necessary to meet the standards herein shall be determined by the Planning Commission after reviewing the entire record including TIS, road volume capacity, structural adequacy of the pavement, alignment, sight distance, structural

G. Upon completion of construction of APFO road improvements for a development, the APFO road approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO roadway testing unless the density or intensity of the development increases.

## **ARTICLE 3. WATER FACILITIES**

### **3.1 Thresholds**

There will be no new private wells authorized in the City of Brunswick.

### **3.2 Determination of Adequacy**

- A. Given existing connections, future connections from buildings under construction, recorded lots for which allocations have been made, and multi-year tap agreements, a public or private community water system shall be considered adequate if: (1) the source facilities, storage tanks and local pumping stations have sufficient available capacity to provide maximum daily demand to the proposed development and meet peak hour demand in addition to fire flow; and (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 City and developer.
- B. If a public or private water system is found to be inadequate, the site plan, PUD plan, or preliminary plat approval shall be denied except as provided for in Section 1.10.
- C. Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as provided for in Section 1.11.
- D. Upon completion of construction of APFO public or private community water improvements for a development, the APFO water approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO water testing unless the density or intensity of the development increases.

## **ARTICLE 4. SEWERAGE FACILITIES**

### **4.1 Thresholds**

There will be no new private septic systems authorized in the City of Brunswick.

### **4.2 Determination of Adequacy**

- A. Given existing connections, future connections from buildings under construction, recorded lots for which allocations have been made, and multi-year tap agreements, the sewerage system shall be considered adequate if the systems designed to serve the proposed development are sufficient to accommodate ultimate peak flows. 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 City and the developer.
- B. If a sewerage system is found to be inadequate, preliminary plat or site plan approval shall be denied except as provided for in Section 1.10.

- C. Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as allowed for in Section 1.11.
- D. Upon completion of construction of APFO sewerage system improvements for a development, the APFO sewerage approval shall be vested for the capacity created by the improvements and shall not be subject to further APFO sewerage system testing unless the density or intensity of the development increases.

## **ARTICLE 5. SCHOOLS**

### **5.1 Thresholds**

This Article applies only to residential development.

### **5.2 Determination of Adequacy**

- A. To meet adequacy criteria, all public elementary, middle, and high schools serving the proposed subdivision or development shall be adequate or, alternatively, adequate capacity must be scheduled for construction within the first two (2) years of the County CIP. The CIP project and the proposed development must be located within the same school attendance boundaries, including areas where redistricting boundaries have been approved.
- B. The following adequacy criteria must be met:
  - 1. The Frederick County Public Schools (FCPS) will provide actual enrollment data to the City for the last school day of September, December, March, and June and the State Rated Capacity (SRC) for each elementary, middle, and high school. Adequacy of every elementary, middle, and high school serving the proposed development shall be determined as of the date of plan submission or the first date upon which all necessary APFO documentation and materials were submitted, whichever occurs last. The Planning Commission will determine adequacy based upon the data as provided by FCPS. If approval has not been received from the Planning Commission within six (6) months of the date determined, the most recent quarterly school enrollment data must be utilized by the Planning Commission for APFO review unless a delay occurs not attributable to the developer.
  - 2. For determining adequacy, enrollment shall mean the FCPS official enrollment figures plus background enrollment plus pupils generated from the proposed development.
  - 3. Pupil generation rates shall be determined using the formulas adopted by FCPS and shall reflect the characteristics of the school attendance area within which the proposed development is located. Pupil yield from the proposed development shall be prorated over the number of years for which APFO approval is sought. SRCs



and pupil generation rates approved for use by FCPS shall be used in all calculations.

- C. An elementary school shall be considered adequate if the enrollment is at or less than 105% of SRC. A middle or high school shall be considered adequate if enrollment is at or less than 110% of SRC.
- D. If a school's capacity is not adequate as defined in Section 5.2C and an adjoining school district at the same level is at least 20% below SRC, 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 redistricting would result in all the schools serving the proposed development meeting the standards established in Section 5.2C, then the school shall be considered adequate.
- E. If a school's capacity is not adequate, and redistricting is not a viable alternative, then the preliminary plat, PUD plan, or site plan approval shall be denied, except as provided for in Sections 1.8 and 1.9.
- F. Improvements necessary to meet the standards herein shall be determined by the Planning Commission and may be provided by the developer as set forth in Section 1.11.
- G. Background enrollment growth will be extrapolated over the number of years for which APFO approval is requested. Included in the calculations shall be any additional approved (but unrecorded) preliminary plat for major developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete by a factor of 35% or more.
- H. The following criteria must be met:
  - 1. If a development does not meet the school adequacy requirements of this section, a developer may request phasing as part of APFO review.
  - 2. The developer will be eligible to request phasing only if:
    - a. The current quarterly actual enrollment (as determined under Section 5.2B) for any school serving the proposed development does not exceed 115% of the SRC for an elementary school or 120% of the SRC for a middle or high school; and
    - b. A school construction project, located in the same attendance area, is contained in the six (6) year CIP to provide additional school capacity to serve the proposed development.

- c. The number of units approved per year for phasing will be the total number of units for which approval has been requested, divided by the number of years for which approval has been requested.
- d. The following criteria must be met:
  - 1) If, during the APFO test period, the enrollment (as determined under Section 5.2B) in any elementary school serving the proposed development does not exceed 115%, and the enrollment (as determined under Section 5.2B) in any middle or high school does not exceed 120% of the school capacity (as determined under Section 5.2A), then the Planning Commission shall approve the development for APFO school adequacy based upon the phasing limit established in this section.
  - 2) If, during the APFO test period, the enrollment (as determined under Section 5.2B) in any elementary school serving the proposed development exceeds 115% or the enrollment (as determined under Section 5.2B) in any middle or high school exceeds 120% of the school capacity (as determined under Section 5.2A), then the Planning Commission shall grant partial APFO school approval for the annual phasing limit established in Subsection C above for any year in which the enrollment (as determined under Section 5.2B2) of any school serving the site does not exceed the 115% or 120% phasing threshold.
- I. The Planning & Zoning Director shall issue a CAPF-SCH if any one of the following conditions is met:
  - 1. The residential project has passed all three (3) schools (elementary, middle, and high school);
  - 2. An acceptable mitigation plan has been approved and associated agreements executed pursuant to section 1.11; or
- J. The Planning & Zoning Department, upon receiving the September 30th actual enrollment data and SRC for each school from Frederick County Public Schools (FCPS), will test each residential development application that has failed the school adequacy test every year on or after October 15th. The order that residential developments will be tested is based on the date of the City's formal acknowledgement of completed preliminary or final subdivision plat, or site plan application submission.
- K. If a residential development fails the school adequacy test and is subsequently retested the following year based on new FCPS information and meets the adequacy test for schools, the Planning & Zoning Director shall issue a CAPF-SCH for the submitted preliminary or final subdivision plat, or site plan.

- L. If a residential development, or the residential portion of a mixed use development, meets the requirements of this ordinance during preliminary subdivision plat approval, it will not be subject to adequate public facilities testing at the final subdivision plat or site plan approval stage.
- M. If a school's capacity is not adequate, and redistricting is not a viable alternative, the Planning & Zoning Director shall deny the CAPF-SCH.
- N. If a CAPF-SCH is denied, a developer may pursue a Mitigation Agreement in accordance with Section 1.11. The Developer shall submit to the Planning & Zoning Director a Mitigation Plan describing the improvements necessary to meet the standards of this section. The Developer shall first submit the Mitigation Plan to the Frederick County Board of Education (BOE) and Frederick County Public Schools (FCPS) for review and comment. The Planning & Zoning Director may not accept a Mitigation Plan unless the Mitigation Plan has been approved by BOE and FCPS. If the Planning & Zoning Director finds that the implementation of the Mitigation Plan would result in adequate school capacity for the proposed residential development, The Planning & Zoning Director shall recommend to the Planning Commission that the Mitigation Plan be accepted. If the Planning & Zoning Director recommends acceptance of the Mitigation Plan, the Planning Commission shall consider the Mitigation Plan as submitted along with the application for master plan, preliminary or final subdivision plat, or site plan approval. If the Planning Commission approves the Mitigation Plan, the Planning & Zoning Director shall issue a provisional CAPF-SCH. if the Mayor and City Council approve, in accordance with section 1.11, a mitigation agreement that includes the Mitigation Plan approved by the Planning Commission, BOE, and FCPS, the Planning & Zoning Director shall issue a final CAPF-SCH. If the Mayor and City Council do not approve a Mitigation Agreement that includes the Mitigation Plan, then the provisional CAPF-SCH will be void.

## **ARTICLE 6. ADMINISTRATION**

### **6.1 Administrative Agency Designated**

The Adequate Public Facilities Ordinance shall be administered by the Planning & Zoning Director in conjunction with the County Planning and Zoning Department. All applications, maps, and other documents relative to preliminary plat or site plan approval and subject to the provisions of this Ordinance shall be submitted to the City Planning and Zoning Department 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.

### **6.2 Referral to Other Agencies/Public Comment**

- A. The City Planning and Zoning Department may refer the subdivision or site plan to any agency it deems appropriate for its review for 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.

### **6.3 Appeals**

- A. Any person aggrieved by any action of the Planning Commission pursuant to this Ordinance may appeal to the Circuit Court pursuant to Title 7, Chapter 200 Maryland Rules of Procedure, of the Annotated Code of the State of Maryland. The decision of the Circuit Court may be appealed to the Court of Special Appeals, or, upon *certiorari*, to the Court of Appeals of Maryland.
- B. The Mayor and Council may file a responsive pleading and be a party to an appeal, or may take an appeal of any decision made under this Ordinance to the Circuit Court, the Court of Special Appeals, or, upon *certiorari*, to the Court of Appeals of Maryland.

### **6.4 Amendments**

- A. The Mayor and Council may amend the provisions of this Ordinance if it determines that any such amendment will be in the best interest of the citizens of the City and consistent with the general intent of this Ordinance. Proposals for an amendment may be initiated by any person, group, agency, or organization, by resolution of the Mayor and Council, by motion of the Planning Commission, or by any other agency of the City government.
- B. Proposed amendments shall be filed with the City Planning and Zoning Department for review and comment. The Planning Commission shall hold a public hearing on the proposed amendments and shall submit its recommendations or proposals to the Mayor and Council within 32 days of the public hearing. The Mayor and Council shall hold a public hearing on the proposed amendment and shall render a decision within 60 days of the public hearing.
- C. Notice of the time and place of the public hearing, together with a summary of the proposed amendment, shall be published in at least one newspaper of general circulation in the City once each week for two successive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.

### **6.5 Fees**

The Mayor and Council shall have the authority to establish by resolution fees for APFO related services specified in this Ordinance, but in no event shall the fee charged be more than the costs incurred by the City.