# Adequate Public Facilities Standards
# Rockville, Maryland

June 1, 2015

Adopted by Resolution 06-15

Resolution No. 2-11 RESOLUTION: To amend the Adequate Public Facilities Standards for the purpose of exempting portable public school classrooms from the provisions of the Adequate Public Facilities Ordinance

WHEREAS, the City of Rockville has determined that the use of portable classrooms in connection with existing public schools are necessary to the welfare and educational quality of students; and

WHEREAS, the Mayor and Council has determined that the existing public schools are deemed to be in compliance with the Adequate Public Facilities Ordinance, being Article 20 of Chapter 25 of the City Code; and .

WHEREAS, the Mayor and Council has determined that revising the Adequate Public Facilities Standards for the purpose of exempting portable classrooms is necessary and appropriate for the protection of the public health, safety, comfort, convenience, and welfare.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that the Adequate Public Facilities Standards as contained in the attached document dated February 28, 2011, shall hereafter be used as the standards to evaluate the adequacy of public facilities to serve proposed new development and redevelopment.

* * * * * * * * * * * * * * * * * *

I hereby certify that the foregoing is a true and correct copy

of a resolution adopted by the Mayor and Council at its

meeting of February 28, 2011

Glenda P. Evans

Glenda P. Evans, City Clerk

Resolution No. 15-11 RESOLUTION: To amend the Adequate Public Facilities Standards for the purpose of allowing a development application filed during the pendency of a related annexation petition to meet the City's adequate public facilities school test by obtaining a determination from MCPS that the proposed development would not create a moratorium in the proposed development's school cluster under certain circumstances

WHEREAS, the Mayor and Council of Rockville has determined that the adequacy of public facilities associated with a development application filed during the pendency of a related annexation petition should be reviewed under different standards under certain circumstances; and

WHEREAS, the Mayor and Council of Rockville has decided to amend the Adequate Public Facilities Standards for the purpose of allowing a development application filed during the pendency of a related annexation petition to meet the City's adequate public facilities school test by obtaining a determination from MCPS that the proposed development would not create a moratorium in the proposed development's school cluster under certain circumstances.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that the Adequate Public Facilities Standards as contained in the attached document dated June 6, 2011, shall hereafter be used as the standards to evaluate the adequacy of public facilities to serve proposed new development and redevelopment.

* * * * * * * * * * * * * * * * * *

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Mayor and Council at its meeting of June 6, 2011

Glenda P. Evans

Glenda P. Evans, City Clerk

Resolution No. 13--13 Resolution: To amend the Adequate Public Facilities Standards for the purpose of ensuring its consistency with Adequate Public Facilities Ordinance, and to make certain technical amendments.

WHEREAS, the Mayor and Council of Rockville reaffirms that ensuring the adequacy of public facilities associated with development and redevelopment in the City of Rockville remains a priority of the City; and

WHEREAS, the Mayor and Council of Rockville has determined that certain revisions to its Adequate Public Facilities Standards require amendment in order to ensure the consistency of those standards with the Adequate Public Facilities Ordinance; and

WHEREAS, the Mayor and Council of Rockville has received and considered testimony, recommendations, comments, and observations from the citizens of Rockville, from the City of Rockville Planning Commission, and from the Adequate Public Facilities Ordinance Committee appointed by the City of Rockville Planning Commission, and has determined to make revisions to its Adequate Public Facilities Standards to improve and strengthen those standards.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that the attached document titled "Adequate Public Facilities Standards, Rockville, Maryland," dated October 28, 2013, is hereby adopted as the standards to evaluate the adequacy of public facilities to serve proposed new development and redevelopment.

* * *

I hereby certify that the above is a true and correct copy of a resolution adopted by the Mayor and Council of Rockville at its meeting of October 28, 2013.

Douglass A. Barber

Douglass A. Barber, City Clerk

Resolution No. 06-15

RESOLUTION:

To amend the Adequate Public Facilities Standards for the purpose of aligning the Rockville school standards and adequacy test with Montgomery County's school standards and adequacy test.

WHEREAS, the Mayor and Council of Rockville reaffirms that ensuring the adequacy of public facilities associated with development and redevelopment in the City of Rockville remains a priority of the City; and

WHEREAS, the Mayor and Council of Rockville has determined that certain revisions to its Adequate Public Facilities Standards should be made to align the Rockville school standards and adequacy test with Montgomery County's school standards and adequacy test; and

WHEREAS, the Mayor and Council of Rockville has received and considered testimony, recommendations, comments, and observations from the citizens of Rockville, other stakeholders, and from the City of Rockville Planning Commission and has determined that making revisions to its Adequate Public Facilities Standards is necessary and appropriate and in the interest of the health, safety and welfare of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that the attached document titled Adequate Public Facilities Standards, dated June 1, 2015, is hereby adopted as the standards to evaluate the adequacy of public facilities to serve proposed new development and redevelopment.

* * *

I hereby certify that the above is a true and correct copy of a resolution adopted by the Mayor and Council of Rockville at its meeting of June 1, 2015.

Sara Taylor-Ferrell

Sara Taylor-Ferrell, Acting City Clerk

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# I. Introduction

The Adequate Public Facilities Ordinance (APFO) establishes procedures and standards necessary to ensure that adequate public facilities and services are provided concurrent with new development and redevelopment, and tests the capacity of public facilities based on current and projected data available at the time of development application, as outlined in Table I. Net available system capacities[1] will change as 1) new projects come into the system, 2) other projects are completed, 3) some projects are abandoned, and 4) new facilities are programmed in capital budgets. APFO provisions are integrated into the development review process to establish a benchmark for the availability of capacity at the time of project review. Once a development project is approved, capacity of public facilities required by that project is reserved, throughout its validity period, as determined at the time of project approval, including any extensions.

The Mayor and Council has developed the following mission statement to guide administration of the APFO:

> *The City of Rockville is experiencing substantial interest in redevelopment of older areas into mixed use, dynamic centers. This pressure has raised concerns regarding public infrastructure capacity because of the expected increase in commercial/office square footage and residential dwelling units. The Mayor and Council have expressly stated that they want to provide opportunities to revitalize certain areas of the city and ensure that all attributes needed for modern urban living are provided. Additionally, they want to provide for long term economic vitality.*
>
> *The Mayor and Council have adopted an ordinance to ensure that the necessary public facilities will be available to serve new development and redevelopment. Developers may be permitted to mitigate the impact of their development projects. The Mayor and Council will periodically review the adequate public facilities standards and modify them as deemed necessary.*

The APFO will be applied to all development projects unless specifically exempted herein. Adequacy shall first be considered at the earliest stage in the application process so as to assure adequacy of public facilities for the project and to provide guidance to the applicant as to how the APFO requirements can be met if deficiencies are identified.

[1] Net available system capacity is the total amount of capacity minus all existing background development, development with building permits, and development approved but not yet permitted.

**TABLE I: APFO Approval Types**

| Type | Application | Scope of Review |
|---|---|---|
| **Initial** | Concept Plans for Project Plans (PJT), Some Special Exceptions (SPXs) | Transportation Impact (may exclude some site-specific design review that requires more detailed design), Schools, Fire/Emergency, Water, and Sewer. |
| **Detailed** | Site Plan (STP), some SPXs, Preliminary Subdivision Plans | Requirements of Initial Approval (if not previously approved) plus transportation analyses that require detailed site-specific design. |
| **Final** | Building Permit | Water and Sewer evaluated by City to ensure that capacity is still available. Other detailed approval elements are not retested. |

All new development applications filed after the effective date of the Ordinance[2] are subject to its provisions. Any development applications filed prior to the effective date will be reviewed based on the standards and requirements in effect at that time, except as provided in section II.B below.

## II. Process

Determining whether or not a development project provides "adequate" public facilities is dependent on the City's standard level of performance of a public facility, which is referred to as a Level of Service (LOS). The impacts of a development project must not be so great that they negatively impact citizens' quality of life beyond certain thresholds. The thresholds, or standards, have been established by the City for various public facilities (transportation, schools, fire protection, water supply, and sewer) and are outlined in detail in the following sections.

The following are procedures used by the City to ensure that adequate public facility systems exist during and after a development project:

- During review of any development project, the City will check to ensure that capacities of public facility systems are adequate, as defined in this document, through all phases, including at the completion of the development.
- To ensure that approved but not yet built development does not use all of the available capacity required to maintain adequate LOS, the City will approve firm schedules for the implementation of multi-phase development projects. In other cases, the expiration dates established in the Zoning Ordinance for the particular type of development application will determine the service commitment.
- If a development project does not provide adequate public facilities, it will either be denied or approved with special conditions.

This general framework is described in further detail in the body of this document.

[2] The effective date of the Ordinance is November 1, 2005

### *II.A. Development Projects and Capacity Schedules*

Table II outlines the stages at which different public facilities are evaluated against prior approvals and when capacity is reserved. If a developer fails to meet the predetermined service commitment for use of reserved capacity, APFO approval lapses.

**TABLE II: Facility Capacity Schedules**

| Facility Type | Capacity Schedule |
|---|---|
| Transportation | Application approval reserves transportation capacity; capacity moves from the reserved to the used category once staff determines that the site is fully operational. |
| Schools | An application queue date is assigned upon filing and acceptance of a complete application for Project Plan, subdivision, or Site Plan approval. Acceptance of a complete application reserves the capacity to the application queue. |
| Fire/Emergency | Application approval reserves the capacity; at the building permit stage capacity is moved from the reserved to the used category. |
| Water | Project Plan approval, subdivision approval or Site Plan approval reserves the capacity; at the building permit stage capacity is moved from the reserved to the used category. |
| Sewer | Project Plan approval, subdivision approval or Site Plan approval reserves the capacity; at the building permit stage capacity is moved from the reserved to the used category. |

A binding service commitment attached to the validity periods, as defined in the Zoning Ordinance or as approved for multi-phase projects, is a critical component of the system for reserving capacity for proposed projects. The consequence of failure to comply with the validity period or service commitment is that the developer is required to reapply for that capacity before proceeding with the project or with the uncompleted portions of the project.

For a multi-phase project, the service commitment allocates the capacity for a set period of time for specific phases. Capacity allocations expire automatically according to the service commitment unless the original Approving Authority determines that an extension is warranted.

### *II.B. Approved, Not-Completed Development Projects*

There are several multi-phase projects in the City that have received development approvals prior to this APFO. At the time these projects were approved, there was no requirement for a completion schedule.

Development projects approved within a Planned Development Zone are subject to review and implementation of adequate public facilities as specified in the following provisions. The length of time for which facilities are deemed adequate under these approvals may vary for each public facility. The validity period for determining the adequacy of public facilities is as follows:

a. The number of years specified in the original approval, if explicitly stated; or

b. If the original approval does not specify the number of years that public facilities are deemed adequate, the validity period ends twenty-five (25) years from November 1, 2005 if all required public infrastructure have not been provided. The Mayor and Council may approve one five-year extension to implement the approved development project when the applicant demonstrates that development has proceeded with due diligence but that factors beyond the control of the developer such as a economic conditions or change in governmental regulations have precluded development of the property within the approved time frame or that the project is substantially complete.

If the adequate public facility approval is no longer valid, then the development must retest the relevant public facilities, with credit for provided facilities, prior to approval of subsequent detailed applications, use permits, or final record plats.

### *II.C. Exemptions and Waiver Provisions*

Certain classes of uses are deemed to have little or no impact on public facilities. As such, the following uses or classes of uses are exempt from the APFO requirements, except for Fire and Emergency Services Protection and some may be granted a waiver by the Approving Authority.

(i) The following uses or classes of uses are exempt from the APFO school capacity and Transportation requirements. They are not exempt from Fire and Emergency Services Protection and any necessary final adequacy check for water and sewer service, if needed for the project.

- Accessory Apartments
- Personal Living Quarters
- Wireless Communications Facilities
- MCPS schools and portable classrooms
- Up to 3 housing units
- Housing for senior adults and persons with disabilities and other age-restricted residential uses
- Nursing homes

(ii) If not otherwise exempted above, the following uses or classes of uses may be granted a waiver from the APFO school capacity requirements by the Approving Authority if the Approving Authority finds that there will be minimal adverse impact resulting from such a waiver[3]. They are not eligible for a waiver from Fire and Emergency Services Protection standards, or any necessary final adequacy check for water and sewer service, if needed:

- Places of worship
- Publicly-owned or publicly operated uses

[3]Section 25.20.01.b of the City's Zoning Ordinance provides the following: *"A waiver of the requirement to comply with one or more of the Adequate Public Facilities Standards may be granted only upon a super-majority vote of the Approving Authority. For purposes of this Article, a super-majority vote shall be 3 votes for the Board of Appeals, 5 votes for the Planning Commission, and 4 votes for the Mayor and Council. The Chief of Planning may not grant a waiver."*

## III. Levels of Service

### *III.A. Transportation*

Currently, mobility throughout the City of Rockville is limited due to traffic congestion generated by local and regional trips. Regional growth, combined with anticipated development activity within the City will stress the existing and proposed infrastructure. In addition, Rockville's roadway system is essentially built out. Locations that currently contain the worst congestion levels generally require multi-million dollar improvements to solve the problem. Alternatively, these areas will require an increased reliance on non-vehicular improvements to increase the capacity of a multi-modal transportation system. However, in less densely developed areas of the City where traffic operates at acceptable LOS, many small-scale intersection improvements can still occur.

The City's Master Plan provides a vision for a shift from an auto-centric transportation system to a multi-modal system that serves motorists, bicyclists and pedestrians. Through stated goals and objectives, it aims to create a transportation system that is safe and accessible, provides mobility for all users, and accommodates anticipated local and regional demands. To address all modes of transportation, the City has implemented a Comprehensive Transportation Review (CTR) for new development projects. The CTR policy is included by reference in the Adequate Public Facilities review for purposes of determining the adequacy of transportation facilities. The CTR focuses on auto, transit, pedestrian, and bicycle levels of service, as well as Transportation Demand Management (TDM) programs. The CTR requires a Transportation Report (TR) be submitted with all development applications. The TR consists of five components: an examination of existing conditions, a site access and circulation analysis, an automobile traffic analysis, a non-auto off-site analysis, and proposed mitigation and credits. The analysis included in the TR is based on the type of development project and projected site trip generation(s). Development projects in the City that generate more than 30 peak hour auto trips, as defined in the CTR, must submit all five (5) components of the TR. Development projects that generate less than 30 peak hour auto trips do not need to provide the automobile traffic analysis and the non-auto off-site analysis. The TR report is used to test if the development project meets APF standards.

The following are requirements to ensure that adequate transportation facilities exist during and after a development project:

- In order to address increased congestion and to encourage development activity where viable transportation options exist, the City has established Transit-Oriented Areas (TOAs) and non Transit-Oriented Areas (non-TOAs), as approved by the Mayor and Council. Areas defined as TOAs must include existing or programmed facilities that provide multi-modal access. TOAs include areas 7/10ths of a mile accessible walking distance from existing and programmed Metro and MARC stations and programmed fixed-guideway transit stations on dedicated transit rights-of-way. A map of the TOAs is attached in Appendix B and shows walking distances of 7/10ths of a mile from fixed-guideway transit stations.
- Transit-Oriented Areas (TOAs) and non-Transit-Oriented Areas (non-TOAs) have different thresholds. More congestion is allowed in TOAs, where viable multi-modal options exist. Stricter congestion standards are applied in non-TOAs where less congestion is mandated.

- Development projects in TOAs can claim larger amounts of credit for multi-modal transportation improvements and TDM programs and/or contributions than development projects in non-TOAs.

  At the preliminary plan, Project Plan, or Site Plan review stage there must be a detailed transportation capacity analysis following the CTR. If transportation facilities are found to be inadequate the proposed project will be denied. If transportation facilities are found to be adequate, or adequate subject to specified conditions, the project may be approved. Mitigation and other physical improvements may be required to meet APF standards through the normal development review process. Capacity for a development will be reserved after approval.

### *III.B. Schools*

The Montgomery County Public Schools system has established a method of determining school capacity that it applies and reports as part of its Subdivision Staging Policy.

The APFO test for schools in Rockville is based on the program capacity for each school as defined by MCPS.

A determination of the adequacy of public school capacity is based on the following:

1. 120 percent of Montgomery County Public Schools program capacity using the projected school capacity in 5 years. The program capacity is determined annually by the Superintendent of Montgomery County Public Schools, as reported to the Board of Education, and set forth as the School Test in Montgomery County's Subdivision Staging Policy.

2. Using the clusters already established by the Montgomery County Public School system, each cluster must be assessed separately at each of the 3 grade levels – elementary, intermediate/middle, and high school.

3. Available school capacity must be allocated in a cluster at each of the three grade levels based on the application queue date of the development application.

4. The Approving Authority must determine whether adequate school capacity is available by subtracting the capacity required by development applications with conditional approval queue dates and earlier application queue dates from the remaining capacity as set forth by MCPS. Based on this calculation, the Approving Authority may:

   a. Approve an application for which there is sufficient capacity;
   b. Give conditional approval of an application if requested by the applicant in accordance with provisions of Section 25.20.02.d of the Zoning Ordinance[4]; or
   c. Deny an application for which there is insufficient capacity.

<u>Application Queue Date</u>

The application queue date of a development application is the date:

1. A complete application is filed with CPDS; or

2. Six months after the prior application queue date if the prior application queue date expires as set forth below.

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[4]If an application is granted conditional approval, the Chief of Planning will assign the application a conditional approval queue date as set forth in Sec. 25.20.02.d of the Zoning Ordinance.

Expiration of Application Queue Date

An application queue date for a development application expires:

1. Six months after the application queue date if sufficient school capacity was available for the entire project on the application queue date and the Approving Authority has not approved the application or granted an extension of the application queue date; or

2. Six months after sufficient capacity becomes available for the entire project.

The Approving Authority may grant one or more 6-month extensions of an application queue date if the applicant demonstrates that an application queue date expired or will expire because of governmental delay beyond the applicant's control.

### *III.C. Fire and Emergency Service Protection*

For all proposed development, the time required for an emergency call to be received and processed, and for emergency apparatus from at least two (2) Fire and Rescue Service stations to arrive at the site of the proposed development, shall be no more than ten (10) minutes. Service areas and adequacy will be determined based upon the latest data provided by Montgomery County Fire and Rescue Service.

### *III.D. Water Supply*

The APFO requires denial of any development that would create total water demand in the City that would exceed available supply less a reasonable reserve for fire-flow.

(i) Levels of Service

Any proposed development that would create total water demand in the City that would exceed available supply less a reasonable reserve for fire-flow shall not be approved.

Any proposed development for which a minimum fire-flow of 1,000 gallons per minute, or where such fire-flow will not be available from hydrants located within 500 feet of any structure within the development not provided with sprinklers, shall not be approved.

(ii) Regulatory Implementation

Final check-off for adequacy of water service will be determined prior to the issuance of building permits.

### *III.E. Sewer Service*

The APFO provisions require denial of any development project that would cause the City to exceed the transmission capacity in any part of the sewerage system or the treatment capacity available to it at the Blue Plains Treatment Plant or other facilities provided by WSSC.

(i) Levels of Service

Any proposed development that would cause the City to exceed the treatment capacity available to it at the Blue Plains Treatment Plant or other facilities provided by WSSC shall not be approved.

Any development for which transmission capacity in the City or WSSC system to Blue Plains or another treatment facility will not be available concurrently with the anticipated demand shall not be approved.

(ii) Regulatory Implementation

Final check-off for adequacy of water service will be determined prior to the issuance of building permits.

## Sources

Annual Growth Policy (AGP), 2004 (Montgomery County, Maryland-National Capital Park and Planning Commission).

Comprehensive Plan. "City of Rockville Comprehensive Master Plan," November 12, 2002.

Comprehensive Transportation Review Methodology, September 29, 2004.

Hollida, John, P.E. 2003. Civil Engineer II, City of Rockville, Public Works Department; e-mail communication April 14, 2003.

Ierley, Sarah. 2002. (Montgomery County Fire Department). E-mail to District Chief James Resnick, responding to inquiry from Deane Mellander.

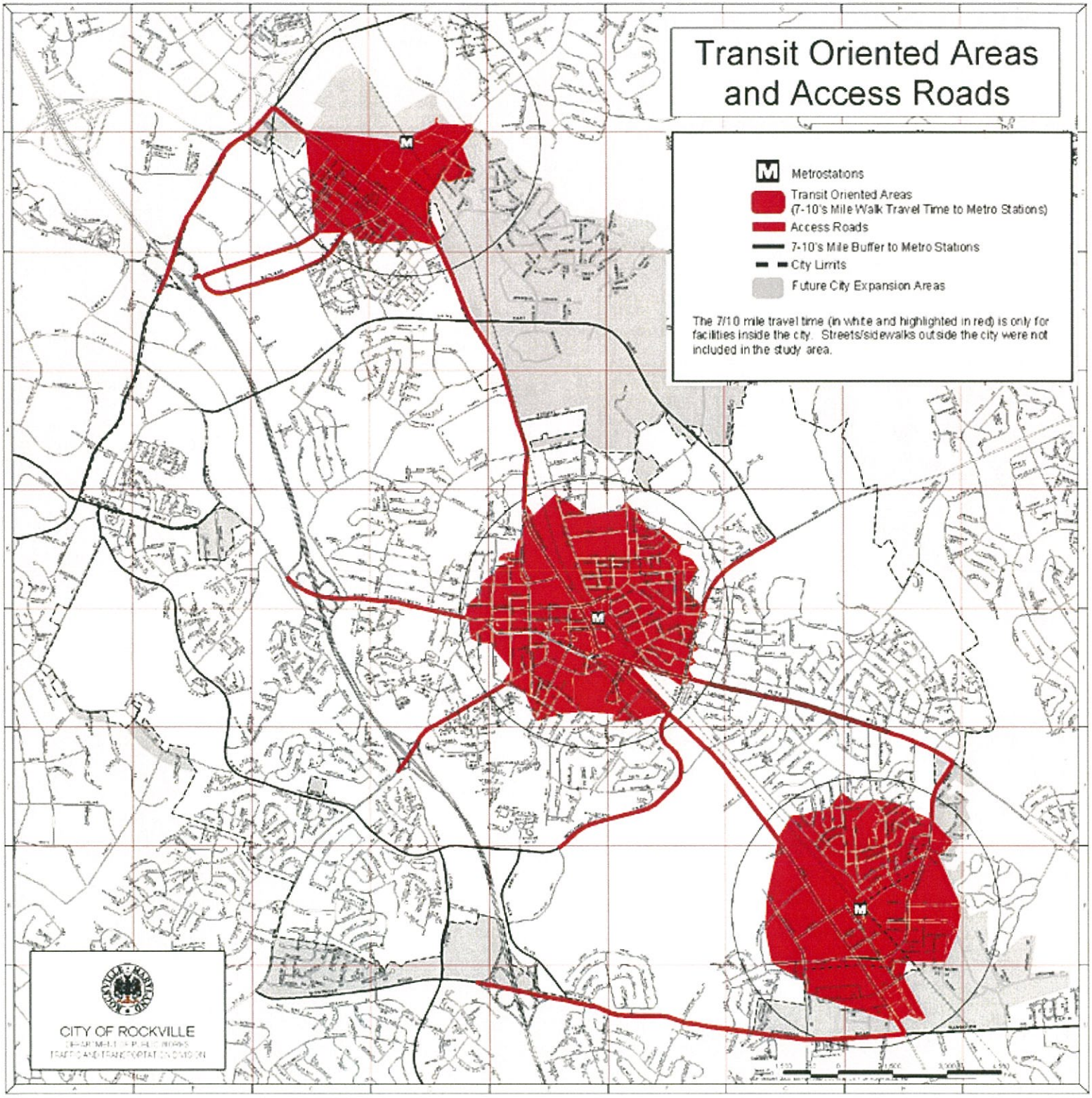
Montgomery County Public Schools (MCPS). FY 2006 Educational Facilities Master Plan and the Amended FY 2005-2010 CIP

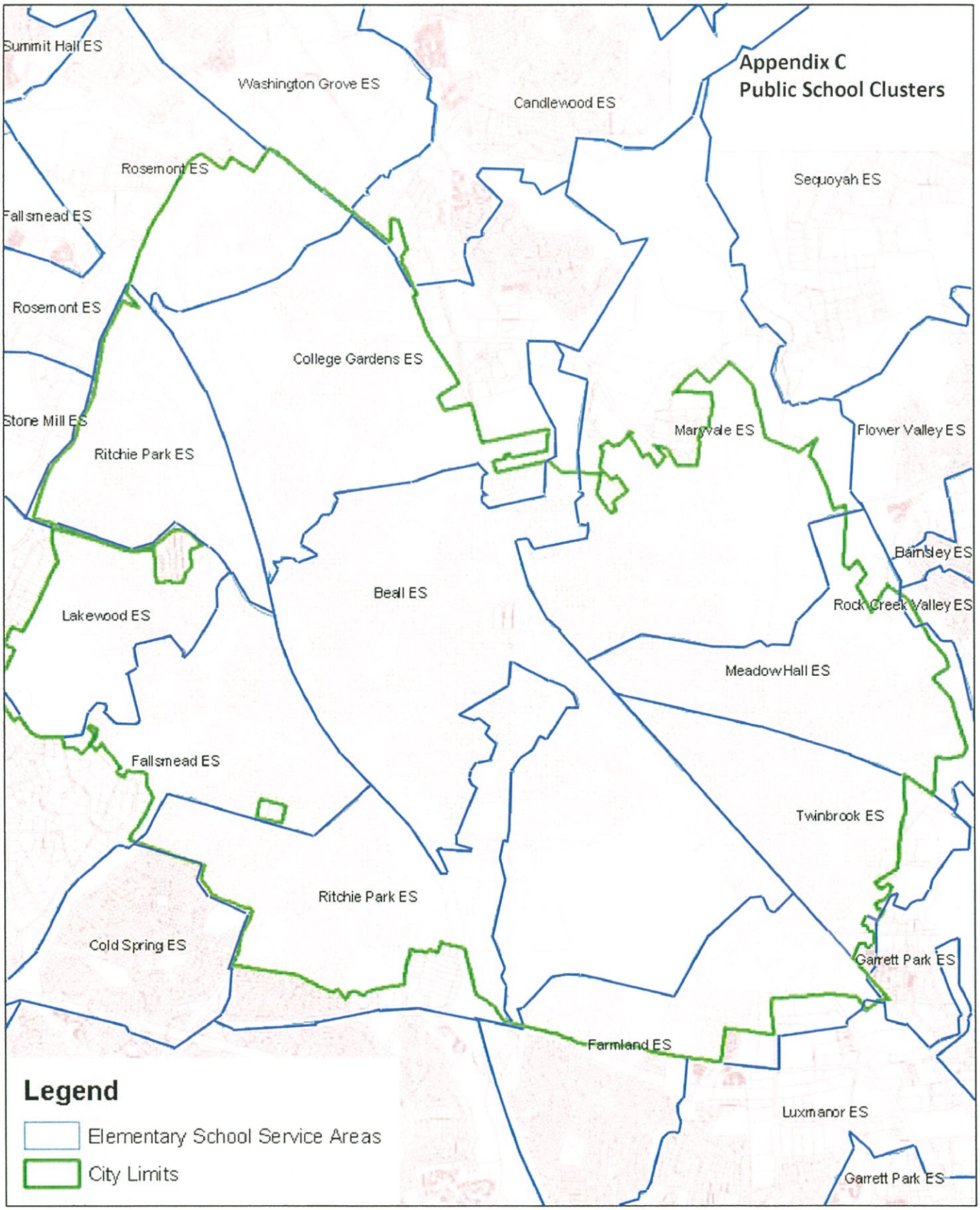
Resnick, James. 2002. District Chief, Montgomery County Fire Department. Meeting November 2002; also included Paul Quigley and others.

Rockville Town Center Master Plan. October 22, 2001.

## Appendix A: Definitions

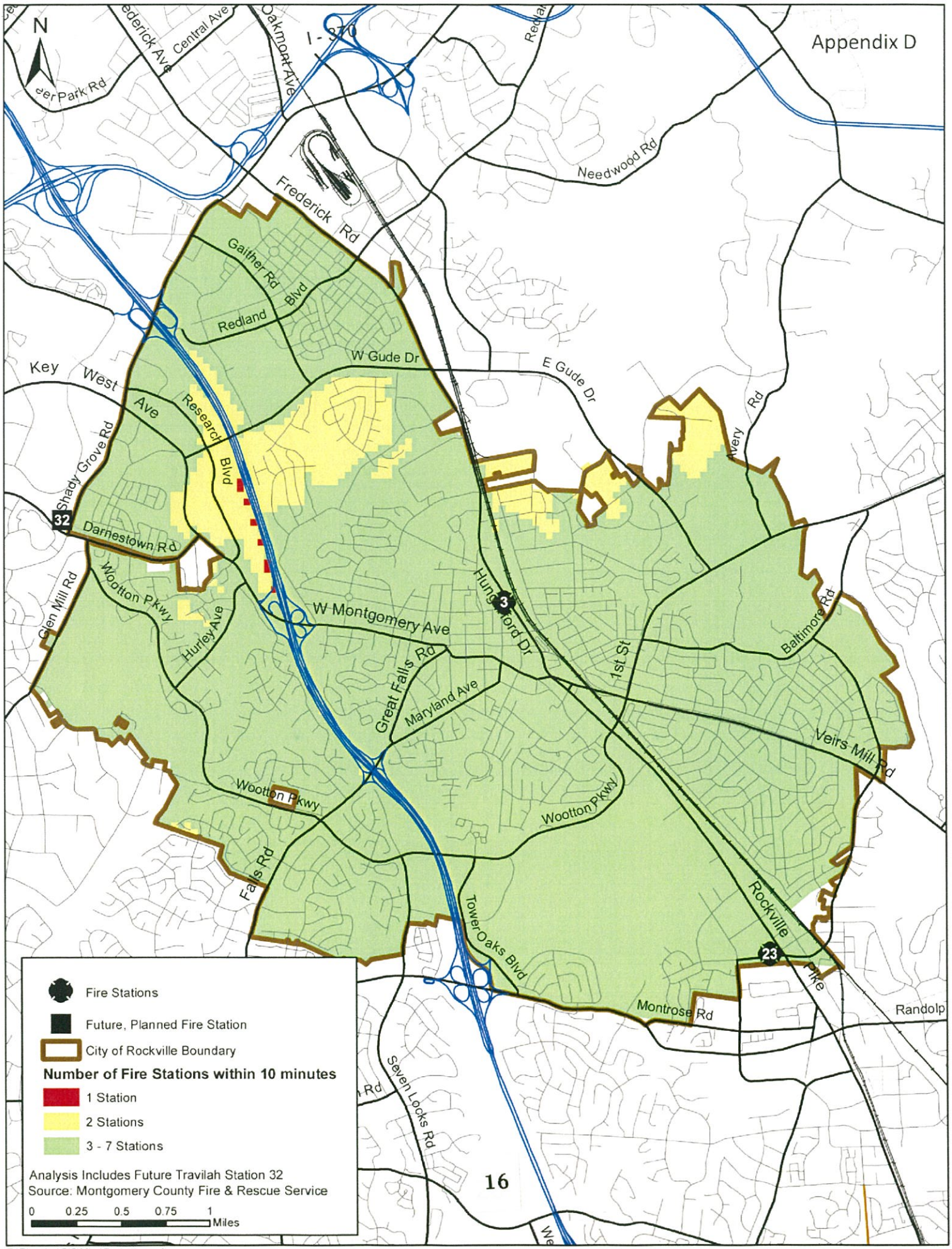
| | |
|---|---|
| *Development Project* | Any new development or significant redevelopment project presented to the City after November 5, 2001. |
| *CTR* | • Comprehensive Transportation Review describes the process by which to proceed with development or redevelopment within the City. Principles and methodologies explained in the CTR are used by the City to evaluate the transportation impacts of development applications on site access and circulation, multi-modal facilities, and off-site automobile traffic. Mitigation measures to alleviate negative impacts are also addressed. |
| *Transportation Report (TR)* | Transportation Report, required by the CTR, is one report that consists of five components:<br>• **Component A: Introduction and Existing Conditions:** Project description.<br>• **Component B: Site Access & Circulation:** Analysis of internal circulation, entrance configurations, truck access and other relevant access and on-site features.<br>• **Component C: Automobile Traffic Analysis:** Analysis of auto traffic using the technical guidelines for traffic analysis in the auto study area.<br>• **Component D: Non-Auto Off-Site Analysis:** Analysis of access to alternative modes of transportation available in the respective study area for pedestrian, bicycle, and transit facilities in the multi-modal study area.<br>• **Component E: Summary and Mitigation:** Summary of the report findings and recommendations. |
| *Service Commitment* | Public facility capacity reserved as part of project approval. |
| *TOA* | Areas defined as TOAs must include existing or programmed facilities that provide multi-modal access. TOAs include areas 7/10ths of a mile accessible walking distance from existing and programmed Metro and MARC stations and programmed fixed-guideway transit stations on dedicated transit rights-of-way. |
| *TDM* | Transportation Demand Management is a general term for strategies that promote alternatives to travel by single occupancy vehicle. |
| *PJT* | Project Plan. |
| *STP* | Site Plan. |
| *SPX* | Special Exception. |
| *Subdivision* | The creation of lots, either by dividing existing lots or parcels or combining existing lots, for the purpose of new development or redevelopment. |


Transit Oriented Areas and Access Roads
Metrostations
Transit Oriented Areas (7-10's Mile Walk Travel Time to Metro Stations)
Access Roads
7-10's Mile Buffer to Metro Stations
City Limits
Future City Expansion Areas
The 7/10 mile travel time (in white and highlighted in red) is only for facilities inside the city. Streets/sidewalks outside the city were not included in the study area.
CITY OF ROCKVILLE




CITY OF ROCKVILLE
DEPARTMENT OF COMMUNITY PLANNING
AND DEVELOPMENT SERVICES

**Elementary School Boundaries**
**FY 2016**


Appendix D
N
I-270
Central Ave
Oakmont Ave
Frederick Rd
Needwood Rd
Gaither Rd
Blvd
Redland
W Gude Dr
E Gude Dr
Key West Ave
Research Blvd
Shady Grove Rd
Darnestown Rd
Glen Mill Rd
Wootton Pkwy
Hurley Ave
W Montgomery Ave
Hungerford Dr
Great Falls Rd
Maryland Ave
1st St
Baltimore Rd
Veirs Mill Rd
Falls Rd
Tower Oaks Blvd
Rockville Pike
Montrose Rd
Seven Locks Rd
Fire Stations
Future, Planned Fire Station
City of Rockville Boundary
Number of Fire Stations within 10 minutes
1 Station
2 Stations
3 - 7 Stations
Analysis Includes Future Travilah Station 32
Source: Montgomery County Fire & Rescue Service
0 0.25 0.5 0.75 1 Miles
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## 25.20.01 – Adequate Public Facilities Standards

a. The Mayor and Council has adopted Adequate Public Facilities Standards by resolution, establishing the method used by the City to ensure that the necessary public facilities will be available to serve proposed new development or redevelopment. The Mayor and Council will periodically review the Adequate Public Facilities Standards and modify them as deemed necessary.

b. Any development or redevelopment within the City must comply with all requirements of the Adequate Public Facilities Standards, unless a waiver is granted pursuant to said standards. A waiver of the requirement to comply with one (1) or more of the Adequate Public Facilities Standards may be granted only upon a super-majority vote of the Approving Authority. For purposes of this Article, a super-majority vote must be three (3) votes for the Board of Appeals, five (5) votes for the Planning Commission, and four (4) votes for the Mayor and Council. The Chief of Planning may not grant a waiver.

c. A finding that public facilities are adequate may include consideration of mitigation of impacts that are necessary to comply with the required level of service as set forth in the Adequate Public Facilities Standards.

## 25.20.02 – Applicability

a. Except as otherwise provided in this Chapter, no development can be approved without a determination that the public facilities are adequate, as provided herein.

b. An application for any development approval or any amendment thereto, that is subject to the provisions of this Chapter, must not be approved unless the Approving Authority determines that public facilities will be adequate to support and service the area of the proposed development. Public facilities and services to be examined for adequacy will include, but not necessarily be limited to, roads and public transportation facilities, sewerage and water service, schools, and fire and emergency services protection.

c. The applicant for any development approval, or any amendment thereto, that is subject to the provisions of this Chapter must, at the request of the Approving Authority, submit sufficient information and data on the proposed development to demonstrate the expected impact on and use of public facilities and services by possible uses of said development. Utilizing the most recent public facilities assessment, the applicant must demonstrate mitigation measures designed to alleviate any adverse impact on public facilities deemed inadequate in the public facilities assessment as set forth in the Adequate Public Facilities Standards. The resulting development must not result in any impact on public facilities that exceed any level of service established by the Adequate Public Facilities Standards.

d. The applicant may request conditional approval of the development application, subject to future availability of the necessary public facilities. The Approving Authority may grant the conditional approval for a period of two (2) years. Extensions may be granted in accordance with the provisions of Section 25.20.03.b.4. Such conditional approval will place the application in a queue maintained by the Chief of Planning. The order of

the queue will be based on the date of the letter stating the action taken by the Approving Authority. If, at the end of the conditional approval period the necessary public facilities are not deemed available, the approval becomes void.

e. Once any development approval or any amendment thereto, that is subject to the provisions of this Chapter, has a valid adequate public facilities determination, an application to implement such development approval is not subject to further adequate public facilities determination, except for water and sewer service, which is confirmed prior to the issuance of a building permit, provided that the adequate public facilities determination and any extension thereof, has not expired.

**25.20.03 – Adequate Public Facilities Determination: Validity Period; Extension; Redetermination**

a. *Validity Period*

1. *Approvals of Development* - Except as otherwise provided in this Section, 25.20.03, a determination of adequate public facilities made in connection with the approval of any development approval or any amendment thereto, that is subject to the provisions of this Chapter, is timely and remains valid so long as the underlying approval remains valid. If at any time a development approval or any amendment thereto, that is subject to the provisions of this Chapter, becomes void due to lack of implementation or otherwise, the determination of adequate public facilities also becomes void with respect to that portion of the approved project that has not been timely implemented or has otherwise become void. An extension of time granted for the implementation of any development approval or any amendment thereto, automatically extends the validity period for the determination of adequate public facilities.

2. *Approvals of Preliminary Plans* - A determination of adequate public facilities made in connection with the approval of a preliminary plan of subdivision (or final plat of subdivision where a preliminary plan is not required) is timely and remains valid for a period as determined by the Planning Commission at the time of subdivision approval. Where a subdivision plat is approved prior to the approval of a site plan or other development approval by the Approving Authority, the Approving Authority may defer the determination of adequate public facilities until consideration of such site plan or other development approval.

3. *Prior Approvals of Certain Developments* - A determination of adequate public facilities made prior to March 16, 2009 in connection with the approval of the following developments under the zoning regulations in effect at the time remains valid for such period as may have been determined by the Mayor and Council or the Planning Commission, as applicable, at the time of approval: Comprehensive Planned Development, Variable Lot Size Development, Cluster Development, Residential Townhouse Development, Planned Residential Unit Development, I-3 Optional Method of Development, Preliminary Development Plan, development pursuant to an optional method of development requiring a Preliminary Development Plan.

4. *Considerations in Setting Validity Periods* - In setting the validity period for a determination of adequate public facilities, the Approving Authority must consider the size and complexity of the development, the mix of uses and current and future

market projections for the proposed uses, and the required public improvements and/or impact mitigations and the schedule for completion of such improvements and mitigations.

b. *Extension*

1. *Extension of Development Implementation Period Is an Extension of Validity Period* - An extension of time granted for the implementation of any development approval or any amendment thereto, other than approval of a preliminary plan of subdivision or approval of any of the developments identified in subsection 25.20.03.a.3 above prior to March 16, 2009 automatically extends the validity period for the determination of adequate public facilities.

2. *Residential Subdivision Extension* - The Planning Commission may extend the validity period for a determination of adequate public facilities for a preliminary plan of subdivision (or a final plat of subdivision where a preliminary plan is not required) for an exclusively residential subdivision where at least 50% of the entire subdivision has received building permits prior to the date of application for extension. The Planning Commission may approve one (1) or more extensions provided that the aggregate length of all extensions for the development does not exceed 30 months for subdivisions with an original period of five (5) years or less and does not exceed six (6) years for subdivisions with an original validity period of greater than five (5) years.

3. *Nonresidential Subdivision Extension* - The Approving Authority may extend the validity period for a determination of adequate public facilities for any approval that allows nonresidential development provided that:

   (a) Forty percent (40%) of the approved development is either built and/or under construction and/or has received building permits;

   (b) All of the infrastructure required by the conditions of the original preliminary plan approval have been constructed or bonded, or the payments for construction have been made or bonded;

   (c) The approved development is an "active" project as demonstrated by at least ten (10) percent of the project having been completed (as evidenced by occupancy permits having been issued or, for developments where occupancy permits are not typically issued, final inspection has been completed and approved) within the last four (4) years before an extension request is made, or at least five (5) percent of the project having been completed within the last four (4) years before an extension request is made, if 60% of the project has been built and/or under construction and/or has received building permits.

   (d) The aggregate length of all extensions for the development does not exceed 30 months for projects up to 150,000 square feet, or six (6) years for projects 150,000 square feet or greater.

4. *Extension Request and Review; Expiration of Adequate Public Facilities Determination*

(a) A request for extension must be filed with the original Approving Authority before the expiration of the validity period for which the extension is requested.

(b) A new development schedule or phasing plan for completion of the project must be submitted to the Approving Authority for approval.

i. The extension expires if the development is not proceeding in accordance with the phasing plan, unless a revision to the schedule or phasing plan is approved by the Approving Authority.

ii. A revision to the new development schedule or phasing plan may be approved if documentation is provided to show financing has been secured for either:

A. Completion of at least one (1) new building in the next stage of the amended development schedule; or

B. Completion of infrastructure required to serve the next stage of the amended development schedule.

iii. No additional development beyond the amount approved in the determination of adequate public facilities may be proposed or approved.

iv. No additional public improvements or other conditions beyond those required for the original project approval may be required.

3. *Extension Not Automatic* – Compliance with the conditions of this Section, 25.20.03, including instances where the applicant has completed all conditions imposed at the time of development approval to meet adequate public facilities requirements, does not require the Approving Authority to extend the validity period of a finding of adequate public facilities.

4. *Reevaluation and Reaffirmation* – After the expiration of a determination of adequate public facilities, reaffirmation of the adequacy of the public facilities to serve the project may be granted by the original Approving Authority based on an analysis of the impact of the net remaining development on the public facilities, consistent with the Adequate Public Facilities Standards. The analysis shall apply credits for infrastructure that has been provided in conjunction with the development. If the analysis indicates that existing and programmed public facilities will be overburdened, mitigation of said impacts shall be required as a condition of reaffirmation.

**25.20.04 – Applicability to Previously Approved Planned Development**

a. Any Planned Development identified in Section 25.14.07 of this Chapter is deemed to satisfy the Adequate Public Facilities Standards for the following validity periods:

1. The number of years specified in the original approval, if explicitly stated; or

2. If the original approval does not specify the number of years that public facilities are deemed adequate, the validity period ends 25 years from November 1, 2005.

b. *Extension* - The Mayor and Council may approve one (1) five-year (5-year) extension to implement the approved development when the applicant demonstrates that either:

   1. Development of the project has proceeded with due diligence but that factors beyond the control of the developer, such as economic conditions or change in governmental regulations, have precluded development of the project within the approved time frame; or

   2. The project is substantially complete, provided that all infrastructure required by the conditions of the approved exploratory application, concept plan, or preliminary development plan have been constructed, bonded, or payments for construction have been made. Internal infrastructure improvements required only to serve the unconstructed portions of the project do not need to be completed.

c. *Expiration* - If the adequate public facility determination expires, the unconstructed portion of the development must satisfy the relevant public facilities standards, with credit for provided facilities, prior to approval of subsequent detailed applications, use permits, or final record plats.