



How to Streamline Housing Permitting in Maryland

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Maryland is not building enough housing to meet the needs of its current and future residents. A 2021 study commissioned by Maryland's Department of Housing and Community Development (DHCD) found a shortage of 85,000 affordable apartments in Maryland for families and individuals earning less than 30 percent of the median income.¹ This study also reported that an additional 97,200 families and individuals earning less than 50 percent of the median income are expected to move to the state by 2030, which will require a dramatic increase in the affordable housing supply over the next 10 years. Local governments in the state report issuing around 18,000 building permits per year,² but this is offset by the loss of approximately 9,000 units per year to demolition, disaster, and deterioration.³ The net-growth rate of Maryland's housing stock, 0.36 percent per year, is one-half to two-thirds of what is needed for the state to retain its share of the US population.⁴

Maryland has ambitious goals of creating new housing,⁵ yet its permitting regime causes a morass of delays and waste. Most developers experience a three- to four-year delay between securing land and receiving use and occupancy permits. Little of that time is spent on the actual work of site preparation and construction and does not include required delays, such as moratoria imposed by the Adequate Public Facility Ordinances, which often require housing project developers to wait for a prescribed period of time before moving forward on plan approval.

To meet the growing demand for housing and to contain housing prices, Maryland must revise how it processes permits for new construction at the state and local levels. The state's regulatory patchwork slows and decreases new construction and drives up housing prices with its duplications, bottlenecks, and veto points. Streamlining the permitting process will bring more housing to market at lower cost.

Permitting delays increase costs and imperil financing, exacerbating Maryland's housing shortage. Because developers must place property under contract before pursuing entitlements, delay-related costs include interest payments, property taxes, insurance, utilities, business operation

overhead, and higher financing costs to compensate investors for delays and uncertainty. A study conducted in Washington state estimated that each additional month needed for permitting increases building costs by approximately \$4,400 (or 1 percent).⁶ Another study on Los Angeles found that reducing delays by 25 percent would increase housing production there by 33 percent.⁷

Local governments usually bear the blame for slow permitting, but we do not believe the local governments are intentionally obstructive. Rather, the difficulty of complying with a mixture of local, state, and federal mandates for forest conservation, stormwater management, transportation enhancements, and other impositions on new development slows down permitting. Such mandates require detailed, time-consuming reviews of site development plans.

Maryland lawmakers have acknowledged the severity of the housing crisis and have taken steps at the state level to address it. The Housing Expansion and Affordability Act (HEA) of 2024, proposed by Governor Wes Moore and adopted by the state legislature, upzones thousands of acres across the state for new mixed-income housing. However, in the absence of reform to state and local permitting regimes, this legislation is unlikely to live up to policymakers' expectations.

In an effort to better understand the slowdowns in Maryland's permitting process, we interviewed a range of government officials, land-use lawyers, consultants, and developers, each of whom contributed a detailed perspective on a particular aspect of the land-entitlement process in one part of the state.⁸ Based on their input, we identified three areas for improvement:

1. Redirect public participation from projects to planning
2. Implement process improvements
3. Track housing production and target growth

We offer 10 recommendations across these three categories to streamline the permitting process.

Redirect Public Participation from Projects to Planning

Although public input and accountability are important to local governance, project-specific public participation is prone to abuse and causes significant delays. Maryland's development review processes include numerous opportunities for public comment, and approved development reviews can be appealed by neighbors or local interest groups who are unhappy with the approval. In their 2019 book *Neighborhood Defenders*, researchers David M. Glick, Katherine Levine Einstein, and Maxwell Palmer describe how public participation in the permitting of housing exacerbates political inequalities, stops new housing, and contributes to the affordable housing crisis.⁹ Rather than exclude the public from participating in land-use decisions, we recommend extensive public participation in crafting general plans and much less public involvement in the approval of specific projects that conform to those plans. Following that principle, we recommend slightly narrowing the circumstances that call for project-specific public meetings or that allow for appeals.

Recommendation 1: Remove requirements for public meetings for by-right developments.

The simplest development projects are those that comply with local zoning or meet the conditions for a special exception. Counties are legally required to approve these projects, but many Maryland jurisdictions require builders to publicize and host public meetings with surrounding neighbors before submitting an application for by-right (i.e., those allowed by the underlying zoning and not subject to administrative approval) subdivision developments.¹⁰ While these meetings are intended to provide opportunities for collaboration and feedback between residents and developers, opponents of the development often misperceive such meetings as requests for permission. This feeds a vicious cycle of frustration, distrust, and cynicism as participants discover that this process of engagement does not also give them agency. It also slows down the permitting process.

Local governments should revise subdivision and zoning regulations to remove meeting requirements for by-right and special exception applications. Instead, these applications should only require public notification. State lawmakers can also implement this reform and require that all counties process by-right and special exception applications without preapplication hearings or public meeting processes. This approach would remove delays for projects that comply with published rules.

Recommendation 2: Limit who can appeal administrative approvals.

In Maryland, only those who are specially aggrieved by a project can appeal administrative development approvals. But that standard has relaxed over time. Related case law has further defined the potentially aggrieved to include anyone living within a certain proximity to the project and affected by the development differently than the public at large is. This standard allows opponents to hinder housing development through delays and legal costs, even if their appeal is frivolous and filed in bad faith.

Maryland lawmakers should revise the administrative appeals statute to discourage such bad-faith appeals. They should narrow the definition of special aggrievement to include an objective injury not otherwise addressed by permits, such as damage to property. Appellants should substantiate such an injury by an affidavit or third-party expert report, similar to what is required of medical malpractice plaintiffs alleging professional negligence by a healthcare provider.¹¹

The legislature could go further and require appellants to post a bond for administrative appeals that prevent a developer from proceeding with the project while the appeal is pending. Currently, appealing a land-use decision is a no-risk proposition for appellants, with a clear upside of delaying the project. Requiring appellants to pay a bond commensurate to the cost of delay would discourage meritless appeals and ensure that both litigants have a stake in the outcome of the decision. Another alternative would be to require unsuccessful appellants to pay the permittee's attorneys'

fees and other costs if the appeal is deemed frivolous. Such potential costs would deter bad-faith appeals by those with no prospect of success.

Implement Process Improvements

Some states have tried to resolve delays by requiring regulators to approve or reject applications within one to three months.¹² But those we interviewed did not think that shot clocks for plan reviews and permitting decisions would work in Maryland. Delays are not a function of foot dragging. Instead, they reflect the enormous burden placed on regulators and developers by the range of state and local requirements. This administrative burden is often difficult for localities to shoulder logistically and financially. To shorten timelines, the state needs to find creative approval solutions and eliminate duplication between state and local requirements.

Recommendation 3: Support third-party reviews by licensed engineers.

In some Maryland counties, an applicant can choose to hire a licensed engineer to review plans instead of waiting for a county planner to do so. We recommend that all counties allow for this option. Although hiring an outside reviewer is more expensive for developers, it can speed up the approval process. Developers should have the right to make that choice.

In some jurisdictions, developers may use third-party reviewers to review plans prior to submission, allowing the developer to identify and correct deficiencies. Other jurisdictions allow outside reviewers to replace departmental reviews. These jurisdictions benefit from the reduced demand on department personnel. Some jurisdictions offer a list of approved reviewers, while others simply require that engineers be licensed and certified or have a certain number of years of experience. According to our interviews with those who have used third-party review, the best practice is to allow petitioners to hire reviewers on the basis of professional criteria and licensure as opposed to a preapproved list. The latter practice incentivizes third-party reviewers to provide an excessive level of scrutiny for fear of losing their position on the department's list.

State lawmakers should require counties to allow third-party review of plan submissions to entirely replace departmental review. In the meantime, counties can adopt or expand third-party review themselves.

Recommendation 4: Create a unified standard for environmental waivers.

In our interviews, planners and developers alike lamented the overlapping and often discordant environmental regulations that development proposals must adhere to. There are federal, state, and local regulations that govern soil conservation, sediment control, stormwater management, floodplain protection, and forest conservation, and each jurisdiction has different standards of compliance and even disparate approval processes.¹³ Environmental standards are so high in

Maryland that most developers apply for waivers—known as alternative compliance—rather than attempt to comply with all regulations. However, waiver provisions and standards vary from jurisdiction to jurisdiction. When standards and allowances for state and local regulatory waivers differ, a developer must seek two separate waivers.

To lessen the procedural costs of building new homes, Maryland lawmakers should codify a uniform waiver standard that applies to state and local environmental regulations. Under this provision, developers would be permitted to pursue an alternative means of compliance when strict application of the regulations would result in a decrease in the number of homes proposed. Alternatives could include either paying a scheduled fee or completing other improvements that meet the intent of the regulations, such as planting two trees for every one removed or enhanced stormwater management. Waivers should be granted for proposals that improve site conditions even if they do not fully meet legislated conditions (for example, planting three trees in a redevelopment of a treeless parking lot when the county ordinance calls for 10 trees).

Recommendation 5: Include conserved land in density calculations.

Floodplain conservation frequently requires part of a development site to be left undeveloped. In some counties, the conservation of floodplains has no effect on the housing density allowed on the site; if zoning allows 20 units per acre, a one-acre site that is partially in the floodplain can be built up with 20 units provided all are built outside the floodplain. This “gross density” approach allows the county and state to meet environmental and housing goals at the same time. But in other counties, regulations that conserve floodplains have density regulations that hamper development. In this scenario, if half of the same one-acre site is on floodplain, only 10 units may be built. This “net density” approach raises the stakes of floodplain determination, delaying and shrinking housing developments as developers and counties duel over floodplain maps and measurements.

State legislators should require all counties that regulate density to use the gross-density approach for sites where land is conserved, such as those with floodplains and steep slopes, or sites otherwise excluded from development because of environmental considerations.

Recommendation 6: Allow fast-track permitting for “qualified projects.”

By passing the HEA, Maryland lawmakers prioritized the development of affordable housing for households earning 60 percent or less of the area median income. According to the law, projects that qualify for special treatment include housing developments for mixed-income occupants that are either located close to transit, owned by a not-for-profit entity, or situated on a former state campus. To be completed, qualified projects, like other income-restricted projects, commonly rely on delicate financing and time-limited tax credits.

The HEA specifically prohibits “unreasonable restrictions or limitations” on qualified projects when such restrictions or limitations threaten the project’s viability. Counties should go further and give qualified projects red-carpet treatment with prescribed timelines of 90 days or less for processing permits and administrative approvals. The state should also consider requiring fast-track approval for qualified projects in the event localities do not voluntarily expedite the approval of these projects.

Recommendation 7: Adopt preapproved standardized housing plans.

Preapproved housing plans are architectural designs and construction blueprints that have undergone scrutiny and approval by municipal authorities or regulatory bodies in advance of individual project applications. These plans adhere to established building codes, zoning regulations, and other pertinent standards to ensure compliance with local requirements. Our interviewees noted that because they can reuse previously approved building designs, large-scale builders receive approval for plans more quickly than small builders do. Counties can give small builders a leg up by offering them the use of preapproved residential building plans to expedite their approval process.

In collaboration with local small-scale builders, county planners can publish standardized, pre-approved plans that align with builders’ competencies and the county’s development and design interests. A builder who submits a building permit application using a preapproved plan should receive approval the same day.

Recommendation 8: Codify early vesting for development entitlements.

Maryland is a “late-vesting” state, which means development entitlements for housing projects may be revoked or modified because of changes in the law up until the commencement of construction.¹⁴ This is set by common law with no applicable Maryland statute governing the time by which development rights become irrevocable. As a result, new local laws passed after the developer purchases land but before the developer receives a permit and breaks ground can halt projects that have been through years of planning and permitting.

By contrast, Virginia has codified “early vesting” of development rights, meaning that developmental approvals cannot be withdrawn because of changes in the law when (1) there has been a “significant affirmative governmental act” allowing the development, (2) the developer has relied on that governmental act in good faith, and (3) the developer has incurred substantial expense or obligations in diligent pursuit of the development.¹⁵ Early vesting protects developers from arbitrary or even targeted changes in the law and provides administrative efficiency in the approval of development projects.

Maryland lawmakers should pass a similar early-vesting statute that codifies protected rights for development proposals after “significant government approvals” and once they have undertaken

substantial expense pursuant to that approval. Permitting reform in the absence of early vesting is like building sandcastles on the beach. Maryland must act to create meaningful and lasting approvals in the entitlement process.

Track Housing Production and Target Growth

How will Maryland policymakers know if reforms are working to increase affordable housing? Currently, there is a noticeable absence of relevant data regarding the number of development proposals submitted and housing units approved each year, and there is even less data on the timeliness of such approvals. To write this brief, we had to rely on personal experience and anecdotes from interviewees. Both planners and petitioners agree that plan approvals take longer than they should and are unpredictable—but no one can quantify it.

During the 2024 session, the Maryland General Assembly passed House Bill 131, which imposed local reporting requirements on jurisdictions with at least 150,000 residents. Local jurisdictions must report data related to the number of housing units submitted for approval as well as the mean and median processing time for permit applications and the standard deviation from the mean.¹⁶ House Bill 131 is the first Maryland law that will allow public access to data on state housing permits and processing time. State lawmakers can build on this by using the data collected to evaluate housing market outcomes across the state.

Recommendation 9: Publish housing data.

House Bill 131 will require local planning departments to report relevant information to DHCD. To build on this requirement, DHCD should supplement these reports with data related to housing demand, housing costs, housing types (i.e., apartment, townhome, single-family detached), and below-market, affordable units. Together, these data should be made available and kept up to date so that officials, advocates, researchers, and builders can better inform their respective efforts. These data will also be valuable for guiding future housing and zoning legislation.

Recommendation 10: Create state housing targets.

Maryland can follow the lead of California, Massachusetts, New Jersey, Oregon, and Washington and set housing-market targets for local governments. Those peer states have varying types of targets and varying consequences for local governments that fail to meet their targets. The Metropolitan Washington Council of Governments, which includes 14 Maryland jurisdictions, also sets regional housing targets,¹⁷ which have been an effective framing device for officials who choose to embrace them.¹⁸ Setting targets throughout Maryland would help county and city officials justify the sometimes difficult political decisions necessary to unlock homebuilding.

However, in the likely event that housing targets are ignored or dismissed by some jurisdictions, a future legislature could implement a California-style “builder’s remedy,”¹⁹ or condition some state-provided capital funding for roads and schools in localities where housing targets are met. These state dollars come from taxpayers across the state and should not be distributed to counties that are intentionally making housing inaccessible to those same citizens.

Conclusion

In response to high home prices and rent, Maryland leaders have introduced legislative solutions to reduce barriers to building new housing. For these efforts to bear fruit in the near term, state and local lawmakers must reform the processes that place a drag on permitting approvals. In addition to the suggestions for streamlining presented in this brief, legislators should also consider targeted preemption of local zoning, like that in Governor Moore’s HEA, to further expedite housing development.

The ultimate focus of any housing policy decision should be to align efforts between state and local governments so that lawmakers are not seeking to pursue new housing opportunities while local governments are fighting against them. These policy recommendations honor the important role local planning departments play in managing growth while elevating state priorities for new housing development. Streamlining the permitting process will accelerate project timelines and reduce costs, helping the state to meet its housing needs more efficiently.

About the Authors

Tom Coale is an experienced attorney and lobbyist with the Annapolis firm of Perry Jacobson. Coale’s expertise in real estate and housing matters has been featured in numerous publications, including *The Baltimore Sun*, *Money* magazine, *Maryland Matters*, and *Greater Greater Washington*. He lives in Ellicott City with his wife and four children.

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Notes

1. Maryland Department of Housing and Community Development, *Maryland Housing Needs Assessment and 10-Year Strategic Plan*, December 2020.
2. Sid Kapur, “Maryland” (database based on US Census Building Permits Survey), accessed January 22, 2024, <https://housingdata.app/states/Maryland>.

3. This assumes Maryland's housing stock follows the US average. Office of Policy Development and Research, "Changes in the US Housing Stock and Rental Market Dynamics," *PD&R Edge*, September 28, 2020.
4. The US population is likely to grow about 0.5 percent per year this decade, but the number of households will grow faster because of aging, low birth rates, and rising affluence. Salim Furth and Emily Hamilton, "Expanding Maryland's Housing Stock: A Roadmap to Meeting Housing Targets" (Mercatus Policy Brief, Mercatus Center at George Mason University, February 2024).
5. Josh Kurtz, "State Leaders Promise Vigorous Housing Agenda but Tenant Advocates Sweat the Details," *Maryland Matters*, December 22, 2023.
6. Building Industry Association of Washington, *Cost of Permitting Delays*, November 2022.
7. Stuart Gabriel and Edward Kung, "Development Approval Timelines, Approval Uncertainty, and New Housing Supply: Evidence from Los Angeles," Research Paper, June 18, 2024, <https://ssrn.com/abstract=4872147> or <http://dx.doi.org/10.2139/ssrn.4872147>.
8. The authors conducted interviews with the following people:
 - Casey Anderson, Rodgers Consulting
 - Chuck Boyd, Maryland Department of Planning
 - Jeff Bronow, Howard County Department of Planning and Zoning, Research Division
 - Lynda Eisenberg, Howard County Department of Planning and Zoning
 - Jason Hessler, Baltimore City Department of Housing and Community Development
 - Terry Hickey, Baltimore County Department of Housing and Community Development
 - Karlen Jimenez, Harkins Builders
 - Tim Martin, Bay Engineering
 - Amy Moredock, Queen Anne's County Department of Planning
 - Dan Reed, Greater Greater Washington
 - Eric Saul, Saul Architects
 - Christina Sorrento, Montgomery County Planning
 - Nick Stewart, We The People
 - Judd Ullhom, Standard Communities
 - Charles Van Horn, VH Services, Inc.
 - Rob Vogel, Timmons Engineering
 - Matthew Wessel, Rodgers Consulting
9. Katherine Levine Einstein, David M. Glick, Maxwell Palmer, *Neighborhood Defenders* (Cambridge University Press, 2019).
10. Preapplication community input meetings or public hearings are required for by-right subdivisions in the following counties: Anne Arundel, Baltimore, Charles, Harford, Howard, Montgomery, Prince George's, Queen Anne's, and Talbot. Frederick County has a public comment period during the Planning Commission approval process of by-right subdivisions.
11. Md. CODE ANN. § 3-2C-02.
12. Eli Kahn and Salim Furth, "Breaking Ground: An Examination of Effective State Housing Reforms in 2023" (Mercatus Policy Brief, Mercatus Center at George Mason University, August 2023).
13. Could the state simply adopt a single environmental standard in each area? We do not think this would be constructive. In our interviews with local planners, they noted that each jurisdiction has unique environmental challenges and priorities, from flooding to reforestation to agricultural preservation. A statewide set of regulations might impose

the strictest possible regulation and would prevent local governments from meeting the unique interests of their constituents.

14. Prince George's County v. Sunrise Development Ltd. Partnership, 330 Md. 297, 314 (1993). (“[I]n order for rights to be vested before a change in the law, the work done must be recognizable, on inspection of the property by a reasonable member of the public, as the commencement of construction of a building for a use permitted under the then current zoning.”).
15. VA. CODE ANN. § 15.2-2307.
16. H.B. 131, 2024 Leg. Sess. (Md. 2024).
17. Metropolitan Washington Council of Governments, “Officials Set Regional Housing Targets, Call for Collaboration to Address Production and Affordability Challenges,” news release, September 11, 2019.
18. Jimmy Alexander, “Bowser Breaks Housing Goal: ‘There Are Now over 65,000 DC Residents Living in Their New Homes,’” *WTOP News*, July 30, 2024.
19. Christopher S. Elmendorf, *A Primer on California’s “Builder’s Remedy” for Housing-Element Noncompliance*, Lewis Center for Regional Policy Studies, 2022.