



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #12
June 16, 2011

MEMORANDUM

DATE: June 9, 2011
TO: Montgomery County Planning Board
VIA: Rollin Stanley, Director *RS*
FROM: Jacob Sesker, Planner Coordinator *JS*
Director's Office
SUBJECT: White Flint Staging—Council update

UPDATE

The County Council is beginning work on the amendments to the Subdivision Staging Policy associated with implementation of the White Flint Sector Plan, transmitted to the Council by the Planning Board on March 17, 2011. The amendments as proposed create an Alternative Review Procedure that would be implemented through Planning Board guidelines. Those guidelines have been the subject of significant discussions at the Planning Board over the last several months.

The PHED committee has one scheduled work session on the Subdivision Staging Policy amendments, and could schedule an additional work session as necessary. The Planning Board guidelines do not need to be approved by the Council; however, the PHED committee would like to have a copy of the latest draft of the guidelines available to assist its review of the proposed amendments. The Planning Board will be approving the guidelines in late June or early July.

Attachment A: Updated draft of Chapter 3 of the White Flint Implementation Guidelines
Attachment B: Letter transmitting the Subdivision Staging Policy Amendment to the Council

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Attachment A: Updated draft of Chapter 3 of the White Flint Implementation Guidelines

3. Transportation Approval Mechanism

The streamlined transportation infrastructure delivery described on Page 54 of the White Flint Sector Plan directs the County to “establish an alternative adequate public facilities (APF) review procedure with an exaction process based on the planned transportation infrastructure as proportioned to the traffic generated by each development.” The alternative adequate public facilities review procedure is also referenced indirectly in the Sector Plan’s staging plan, which required the County to create public entities or financing mechanisms necessary to implement the Sector Plan, and required the Planning Board to “develop a transportation approval mechanism and monitoring program within 12 months of adopting the sectional map amendment.” The transportation approval mechanism and monitoring program replaces traditional transportation APF (PAMR and LATR) within the Special Taxing District. New development within the Sector Plan boundary but outside the Special Taxing District will be subject to traditional transportation APF, and will also count against the staging caps established in the Sector Plan.

The intent of the above-referenced language from the Sector Plan was fulfilled by the implementing legislation contained in Appendix A that established the Special Taxing District and the Alternative Review Procedure within the Subdivision Staging Policy. These Implementation Guidelines provide the operational details of the transportation approval mechanism authorized and described in the Alternative Review Procedure, and implement the staging plan described on pages 67 to 71 of the approved and adopted Sector Plan.

3.1. Staging Allocation Request Process

Under the White Flint Sector Plan, staging capacity in Phase 1 will be allocated based on the order in which requests are received. The advantages of this approach include fairness, predictability, and efficiency. Such a system potentially creates a “race for capacity,” which will accelerate new development and therefore the build-up of additional tax revenues that can be used to fund the infrastructure projects that are triggers under the Staging Plan. The biennial monitoring reports will provide the Planning Board with the information it needs to determine whether this approach is achieving the Sector Plan vision.

3.1.1. Staging Allocation Request

A Staging Allocation Request is a request for staging capacity under the White Flint Sector Plan. The contents of a Staging Allocation Request and the effect of submitting a completed Staging Allocation Request will be established in these Implementation Guidelines.



3.1.2. Contents of Staging Allocation Request

A Staging Allocation Request must include a statement by the applicant that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, or site plan approvals. The request should indicate the number of buildings proposed as well as the amount of residential and non-residential staging capacity requested, the gross amount of new development, and the net amount of new development if there will be demolition of existing structures. If demolition occurred before the submission of the Staging Allocation Request, the applicant must furnish information showing the amount of demolition that occurred after the adoption of the Sector Plan. Each Staging Allocation Request must include a Staging Allocation Request Form (see Appendix 2).

3.1.3. Planning Board Review of Staging Allocation Request

The Planning Board must approve the Staging Allocation Request if sufficient staging capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request.

3.1.4. Effect of Staging Allocation Request

In order to be deemed complete, a Staging Allocation Request must contain all information required under the Subdivision Staging Policy (Section TA6, Alternative Review Procedure for the White Flint Policy Area), and comply with these Implementation Guidelines. Once a Staging Allocation Request has been deemed complete, the capacity requested must be placed in reserve. The Planning Board must not allocate to any other applicant the reserved capacity, unless the Staging Allocation Request is rejected by the Planning Board or withdrawn by the applicant or unless a Staging Allocation Approval becomes void or expires under these guidelines. Under Section 3.1.3 above, a Staging Allocation Request that has been deemed complete must be approved by the Planning Board if sufficient capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request. If sufficient capacity is not available to accommodate the applicant's entire request, the Staging Allocation Request will be placed in a queue and will be scheduled for Planning Board action when capacity becomes available.

3.1.5. Staff approval of Staging Allocation Requests for zero net staging capacity

3.1.5.1. No net draw on capacity

A Staging Allocation Request will always be approved, regardless of available staging capacity, if the Request is for an amount equal to or less than any development being removed. In such cases, the Staging Allocation Approval may be granted by staff without Planning Board review.

3.1.5.2. Development approvals that pre-date the approval of the Sector Plan

A Staging Allocation Request will always be approved, regardless of available staging capacity, for a project that has a valid Adequate Public Facilities approval or development plan approval that predates the approval of the White Flint Sector Plan. In such cases, the Staging Allocation Approval may be granted by staff without Planning Board review.

3.1.5.3. Procedures for staff approval of Staging Allocation Requests

Staging Allocation Requests that can be approved by staff under 3.1.5.1 or 3.1.5.2 must be approved by the Planning Director or designee. Such staff approvals must be included in the biennial monitoring report.

3.1.5.4 Projects approved by staff under 3.1.5 not subject to certain provisions of these guidelines

A Staging Allocation Approval that can be issued by staff under 3.1.5 is not subject to the requirements of the following subsections: 3.1.6 (Contents of Staging Allocation Approval); 3.1.7 (Requirement to obtain timely acceptance of building permit applications); 3.1.8 (Reporting requirement); 3.1.9 (Effect of failure to obtain timely acceptance); and 3.1.10 (Validity).

3.1.6. Contents of Staging Allocation Approval

A Staging Allocation Approval must incorporate all information included in the Staging Allocation Request. The Staging Allocation Approval must also specify, as established in these guidelines, (1) the deadline for completion and acceptance of a building permit application under 3.1.7, and (2) the Staging Allocation Approval expiration date under 3.1.10.

3.1.7. Requirement to obtain timely acceptance of building permit applications

An applicant who has received a Staging Allocation Approval resolution from the Planning Board must present that Staging Allocation Approval to the Department of Permitting Services when applying for a building permit. The Staging Allocation Approval becomes void if a completed building permit application for at least core and shell is not accepted within 90 days from the date of the Planning Board's Resolution granting the Staging Allocation Approval. An applicant who has received a Staging Allocation Approval for multiple buildings has up to 180 days to have building permit applications accepted for at least the core and shell of all buildings.

3.1.8. Reporting Requirement

The applicant must present evidence of acceptance to the Planning Board within 15 business days after a building permit application is accepted.

3.1.9. Effect of failure to obtain timely acceptance

Any failure to obtain timely acceptance of a building permit application results in the loss of staging capacity allocated for which no building permit application has been accepted. The portion of the Staging Allocation Approval that is not perfected by obtaining timely acceptance by the Department of Permitting Services is void if the building permit is accepted by close of business on the 90th day as specified in 3.1.7

3.1.10. Validity

A Staging Allocation Approval that has not become void due to failure to satisfy the requirement for timely acceptance of a building permit application remains valid for 2 years from the date of the Planning Board's Resolution granting the Staging Allocation Approval. All core and shell building permits necessary to construct the capacity allocated by the Planning Board must be issued within that 2-year validity period. An applicant who receives a Staging Allocation Approval for multiple buildings has a period of up to 3 years to have building permits issued for the core and shell of all buildings.

3.1. 11. Joint Staging Allocation Requests

Multiple property owners may submit a Joint Staging Allocation Request if those property owners also submitted a joint sketch plan application, which was approved by the Planning Board, and which included conditions establishing a phasing schedule for demolition and construction on all subject properties.

3.2. Staging queue management

The Planning Department will maintain a White Flint Sector Plan staging queue.

- Any Staging Allocation Request for which there is not sufficient capacity (see also 3.1.4) will be placed in the queue.
- The queue will track dates on each Staging Allocation Request submitted and accepted as complete.
- The queue will be managed based on the order in which projects are placed in the queue. The oldest eligible application(s) in the queue will be placed on the consent agenda calendar at such time as staging capacity exists for both the full residential and commercial development proposed in the application.
- Adjustments to queue position may be granted by the Planning Board, but only after receipt of a proposal jointly submitted by all applicants whose positions in the queue would be affected. The Planning Board would not be a party to any negotiations between applicants who agree to change queue positions.

3.3. Exemptions from Staging Allocation

3.3.1. Development approvals predating approval of the Sector Plan

The Sector Plan states:

“Any development approvals that predate the approval of this Sector Plan are considered to be in conformance with this Plan. For such approvals, only the difference between the amount of the prior approval and any requested increase would be subject to the phasing caps.”

While the language in the Sector Plan refers specifically to the staging caps, the intent was that these projects would not be subject to the staging allocation process generally. Therefore, while staff approval of a Staging Allocation Request remains an option for such property owners (e.g. to prove to other agencies that they can move forward with their development), such approvals should not be subject to the other requirements or limitations set forth in these Implementation Guidelines (see 3.1.5.4).

On December 9, 2010 the Planning Board confirmed its intent that four specific projects should not be subject to the phasing caps up to the amount of development approval that predated the adoption of the Sector Plan.

- 1) North Bethesda Center (LCOR)
1,350 dwelling units
1.14 million square feet of office
202,037 square feet of commercial
Zone: TSM
- 2) North Bethesda Market (JBG)
440 dwelling units
223,000 square feet of non-residential
Zone: TSM
- 3) White Flint View (Quantum/Noland Plumbing)
183 dwelling units
29,500 square feet of non-residential
Zone: C-2
- 4) Metro Pike (BF Saul)
247 dwelling units
201,822 square feet of non-residential
Zone: TSM

3.3.2. Affordable housing units

Affordable housing units that are in addition to those required by Chapter 25A and which are provided under the CR Zone incentives are not to be counted against staging plan limits for residential development.

3.3.3 Public facilities and staging



A public facility is a facility that is owned or operated by a governmental body or an instrumentality of a governmental body and which serves a public purpose.

3.3.3.1 Public facilities subject to mandatory referral are exempt from staging

A public facility that is subject to the mandatory referral provisions of Article 28, section 7-112 is not subject to staging.

3.3.3.2 Public facilities provided as a proffer are exempt from staging

A public facility that is to be owned or operated by a public entity and that is provided in a private project as a proffer (e.g. in exchange for a density award) is not subject to staging, if such public facility will be conveyed to the public entity in fee simple, by perpetual exclusive easement, or by a long-term lease in excess of fifty years. The terms and method of any such conveyance must be acceptable to the public entity that will own or lease the facility prior to the Planning Board's approval of the Staging Allocation Request for the private elements of the project. The private elements of a project that includes a public facility are subject to the staging allocation requirements.

3.3.3.3 Effect on traffic analysis of development outside the special taxing district

Traffic generated by public facilities must be included in any analysis of development that is proposed to occur outside the special taxing district, as described below.

3.4. Relationship to other transportation related processes and requirements

The Subdivision Staging Policy states that any property in the Special Taxing District is exempt from the requirements of Local Area Transportation Review and Policy Area Mobility Review. The intent of this requirement is to remove the need for any individual applicant to prepare transportation studies for the purposes of determining APF validity.

3.4.1. Development outside the special taxing district

For the purpose of assessing the transportation impacts of new development, the White Flint Special Taxing District will be treated in a manner similar to the way a separate jurisdiction such as Rockville is treated. In general, applicants inside and outside of the Special Taxing District will be responsible only for improvements on their side of the Special Taxing District boundary. Applicants outside of the Special Taxing District will be tested for APF compliance and intersection improvements (if needed) outside of the Special Taxing District boundary.

Applications outside the White Flint Special Taxing District must submit LATR and PAMR transportation studies, if applicable, that reflect development within the Special Taxing District as part of their background traffic. Further, applicants outside the district may be required to submit additional information by amendments to the Subdivision Staging Policy. The Planning Board will provide guidance on trip generation and distribution assumptions as part of the biennial Comprehensive Local Area Transportation Review (CLATR)—it is expected that the first biennial CLATR will be completed prior to completion and application of these guidelines. Applicants outside the Special Taxing District who must submit transportation studies (e.g. to

satisfy the requirements of the LATR and PAMR Guidelines) will conduct traffic assignment consistent with the CLATR. Applicants outside the Special Taxing District will be responsible only for transportation improvements outside the Special Taxing District.

Within the White Flint Special Taxing District, an applicant will be responsible only for constructing improvements required by Section 50-24, such as streets interior or adjacent to the site, making any additional improvements necessary for safe access and circulation (other than those associated with APF) and providing the funds for shared projects identified through the taxing district mechanism.

3.4.2. Privatization of Traffic Carrying Streets

Page 51 of the Plan identifies four specific business street segments that are required to be open to general vehicular use as part of the robust street grid needed to disperse traffic. Page 52 of the Plan identifies eight conditions for potential construction and operation of these streets as private streets. All eight conditions must be incorporated within the Planning Board's subdivision approval opinion for any project that proposes such a private street.

3.4.3. Transportation Information Required From Applicants

The Subdivision Staging Policy states that any property in the Special Taxing District is exempt from the requirements of Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). The intent of this requirement is to remove the need for any individual applicant to prepare transportation information for the Planning Board whose sole purpose is to assess transportation system adequacy as required by the Subdivision Staging Policy.

Applicants will still be required to provide information to State or County agencies as needed to fulfill other requirements of the law. Such information may include, but not be limited to:

- Parking space requirements
- Sight distance evaluations



ATTACHMENT B



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

March 17, 2011

The Honorable Nancy Floreen
Chair, Planning, Housing and Economic Development Committee
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Councilmember Floreen:

On behalf of the Planning Board, I am pleased to transmit a proposed amendment to the Subdivision Staging Policy that will create the necessary framework for the Planning Board to manage staging capacity in White Flint in a way that is consistent with the approved and adopted Sector Plan. The proposed amendment has been developed through extensive dialog and enjoys broad support from stakeholders.

The amendment we are proposing represents part of the "transportation approval mechanism" required by the White Flint Sector Plan as a prerequisite for approving the amount of development allocated to Phase 1 of the approved Staging Plan, 3,000 dwelling units and 2 million square feet of non-residential development.

The proposed amendment to the Subdivision Staging Policy accomplishes two objectives:

1. Create an alternative review procedure for new development in White Flint while maintaining the exemptions from policy area mobility review (PAMR) and local area transportation review (LATR) afforded by the creation of the White Flint Special Taxing District; and
2. Consolidate and clarify the language of sections TP 2.2.1 and TL 2 as amended by the Council as part of the 2010 White Flint Growth Policy Amendments (Resolution 16-1324).

The Planning Board is proposing an alternative review procedure under which the scope of Planning Board review will be limited to determining whether sufficient master plan staging capacity exists to accommodate the developer's request for staging capacity. The Planning Board proposes to determine whether there is sufficient staging capacity prior to application for a building permit, rather than at preliminary plan or site plan, as is typical with PAMR and LATR review. There is broad consensus among stakeholders that delaying the commitment of

The Honorable Nancy Floreen

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staging capacity to the building permit stage will serve to discourage property owners from hoarding limited capacity.

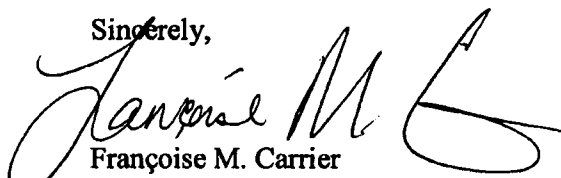
This recommendation was developed in consultation with the Department of Permitting Services. (DPS) Under Chapter 8-31 of the County Code, DPS may not issue a building permit unless the Planning Board has made a determination that public facilities will be adequate to serve the proposed development. The alternative review procedure, in combination with this requirement in Chapter 8, will serve as the mechanism for ensuring that development stays within the limits established in the Sector Plan.

The Planning Board's proposed consolidation and clarification of the 2010 White Flint Growth Policy amendment is consistent with the Council's Resolution 16-1324, but makes the following minor changes:

- Clarifies that the exemption from PAMR and LATR is effective on July 1, 2011, the date on which the County will begin collecting the White Flint Special Tax.
- Clarifies that all new development within the White Flint Special Taxing District is exempt from PAMR, including new development that is not required to file a preliminary plan of subdivision.
- Clarifies that all new development within the White Flint Special Taxing District is exempt from LATR even though the financing mechanism ultimately selected by the Council was a special taxing district rather than a development district or an impact tax district.

We believe that the attached proposal provides the framework for an efficient approach to the complex problem of managing staging capacity in the White Flint Sector Plan, and look forward to working with you to ensure that this staging prerequisite is satisfied in accordance with the requirements established in the Sector Plan.

Sincerely,


Françoise M. Carrier
Chair

FMC/js/cm
Attachment

(10)

Attachment A: Planning Board Amendment to Subdivision Staging Policy

TP2.2.1 Geographic Areas

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Policy Area Mobility Review if that development, as a condition of approval of a preliminary plan of subdivision, will be required to provide substantial funds to a new development district, new impact tax or special taxing district, or another comprehensive financing mechanism, to finance transportation improvements for that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Policy Area Mobility Review calculation for any development that is not exempt under this paragraph.]

TL 2 Metro Station Policy Area LATR Standards

[Any proposed development located in the White Flint Metro Station Policy Area is exempt from Local Area Transportation Review if the development will be required to provide substantial funds to new development district or new impact tax district to finance master-planned public improvements in that Policy Area. However, the traffic impact of any development in that Policy Area must be considered in any Local Area Transportation Review calculation for any development elsewhere.]

TA 6 Alternative Review Procedure for the White Flint Policy Area

TA 6.1 Exemption from PAMR and LATR

Effective July 1, 2011, an applicant for APF for any development that will be built within the White Flint Special Taxing District established under County Code Chapter 68C is exempt from TP Policy Area Mobility Review and TL Local Area Transportation Review.

TA 6.2 Effect on development outside of the White Flint Special Taxing District

The traffic impact of such development within the White Flint Special Taxing District must be considered in any TP Policy Area Mobility Review or TL Local Area Transportation Review calculations for any development outside the White Flint Special Taxing District.

TA 6.3 Planning Board to establish staging allocation guidelines

The Planning Board will approve guidelines establishing the protocol for allocating staging capacity under the White Flint Sector Plan.

TA 6.4 Staging Allocation Approval

A Staging Allocation Approval is a resolution from the Planning Board granting an applicant staging capacity under the White Flint Sector Plan. The contents of a Staging Allocation Approval, the effect of a Staging Allocation Approval, and any associated protocols will be established in Planning Board guidelines.



TA 6.5 Relationship to adequate public facilities in White Flint Policy Area

An applicant within the White Flint Policy Area must obtain a Staging Allocation Approval from the Planning Board. The applicant must submit a valid Staging Allocation Approval to the Department of Permitting Services with any application for a footing to grade or core and shell building permit. A Staging Allocation Approval and an APF approval have separate validity periods, and the expiration of one does not affect the validity of the other.

TA 6.5.1 Relationship to adequate public facilities in White Flint Special Taxing District

To the extent that the Department of Permitting Services is required under law to validate adequate public facilities for transportation, the Staging Allocation Approval shall satisfy this determination in the White Flint Special Taxing District.