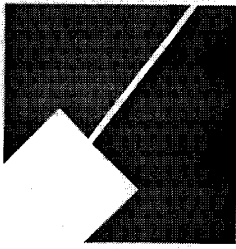


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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MCPB
Item # 1
1/29/04

DATE: January 23, 2004
TO: Montgomery County Planning Board
VIA: Joseph Davis, Chief, Development Review *JRD*
FROM: Greg Russ, Zoning Coordinator *GR*
Ronald C. Welke, Supervisor, Transportation Planning *RW*
Karl Moritz, Research Manager *KM*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To provide a process for an applicant for reclassification of property located in Metro Station Policy Areas, or for property qualifying as a Corporate Support and Headquarters Facility or a Strategic Economic Development Project, to satisfy the applicant's burden of proof on certain traffic impact issues
TEXT AMENDMENT: Not until introduced by County Council.
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY:
INTRODUCED DATE:
PLANNING BOARD REVIEW: January 29, 2004
PUBLIC HEARING:

STAFF RECOMMENDATION: Transmit to the County Council for Introduction

PURPOSE OF THE TEXT AMENDMENT

This text amendment would extend without expiration ZTA 03-06, adopted by the County Council in the spring of 2003 with a sunset date of December 31, 2003. ZTA 03-06 provides a process for an applicant for reclassification of property to satisfy the applicant's burden of proof on certain traffic impact issues, when the applicant is located in a Metro station policy area. In addition to addressing traffic impact issues of development projects using the AGP's Alternative Review Procedure for Metro Station Policy Areas, this text amendment would expand the application of ZTA 03-06 to include projects using the Alternative Review Procedure for Strategic Economic

Development Projects, and the Alternative Review Procedures for Corporate Support and Headquarters Facilities.

BACKGROUND

Zoning Text Amendment (ZTA) 03-06

In the spring of 2003, the County Council adopted ZTA 03-06, which addressed how an applicant for a local map amendment for property located completely in a Metro station policy area and using the Annual Growth Policy's Alternative Review Procedures for Metro Station Policy Areas may satisfy the applicant's burden of proof on any traffic impact issue. The text amendment states that the applicant may satisfy traffic impact issues by:

- (a) showing that the applicant will satisfy the applicable trip reduction requirements of the Alternative Review Procedures for Metro Station Policy Areas contained in the Annual Growth Policy; and
- (b) including in the applicant's certified development or diagrammatic plan a binding element that commits the applicant to comply with all relevant requirements of the Alternative Review Procedures for Metro Station Policy Areas contained in the Annual Growth Policy.

The text amendment expired on December 31, 2003. The County Council included the expiration date in the ordinance with the expectation that the issue would be addressed during the 2003-2005 AGP Policy Element discussions in the fall, but it was not.

Prior to the adoption of ZTA 03-06, the test of traffic impact at rezoning for development in Metro station policy areas was not well-defined. As a result, the process contained uncertainties for both developers and neighbors. There were not clear guidelines for determining which intersections to analyze, what congestion standards to use, or what background traffic or planned improvements to count. Although this lack of clarity is a concern *outside* as well as *inside* Metro station policy areas (see Appendix/Reference located following Recommendation), development in Metro station policy areas provides the clearest example of how inconsistent traffic tests at various stages of the development process can undermine public policy.

A cornerstone of the County's land use policy is to encourage concentrations of mixed-use development at designated Metro stations. However, adequate public facilities requirements can create a regulatory barrier to these concentrations, the "smartest of smart growth." To make sure that didn't occur, the County Council created within the AGP the *Alternative Review Procedure for Metro Station Policy Areas*, which allowed subdivision applications to be approved even when a proposed development failed the standard traffic tests. However, because the traffic test at zoning was unchanged, a development project could be held up at the zoning stage for traffic problems that it could easily pass at the subdivision stage.

Both the Montgomery County Planning Board and Planning staff recommended the approval of ZTA 03-06. The Board and the staff has previously supported the AGP's Alternative Review Procedure for Metro Station Policy Areas, and viewed the zoning text amendment as a necessary complement to it.

The Annual Growth Policy's Alternative Review Procedures

The Annual Growth Policy tests proposed subdivisions to determine if the transportation network is adequate to support the proposed development. The AGP contains a limited number of "Alternative Review Procedures" which, in essence, are procedures for allowing development to be approved when the project would not pass the standard review procedures. The alternative review procedures identify development types that provide transportation and/or non-transportation benefits to the County that outweigh their negative impact on traffic congestion.

Development types eligible for Alternative Review Procedure status are: development in close proximity to certain Metro stations ("Metro station policy areas"), development that serves or expands the headquarters of a major corporation, and development designated by the County Council as a "Strategic Economic Development Project."

Although there is an "Alternative Review Procedure" that concerns certain golf course communities, staff is not including that AGP provision in this discussion because the last development project expected to be eligible for this provision is currently before the Hearing Examiner.

Alternative Review Procedures for Metro Station Policy Areas

In planning for the growth of Montgomery County, staff has recognized that while concentrating development near Metro stations is a more efficient use of the transportation network than dispersed development, these benefits come at the cost of increased roadway congestion in the vicinity of the stations. In other words, concentrations of development at Metro stations are not achievable unless higher levels of roadway congestion are allowed. The Annual Growth Policy's Policy Area Transportation Review (in effect until July 1, 2004) and Local Area Transportation Review (intersection congestion test) have allowed higher levels of congestion in Metro Station Policy Areas for this reason.

Beginning in the early 1990s, concern was raised that the AGP's less-stringent congestion standards were not enough to keep the AGP and the adequate public facilities ordinance from being too great an impediment to concentrated development near Metro stations. In 1994, the County Council adopted the first "Alternative Review Procedure for Metro Station Policy Areas" which offered developers relief from Local Area Transportation Review upon agreement to make a "development approval payment." The procedure was used, perhaps most notably by the Conference Center, but by the late

1990s it had become clear that Policy Area Transportation Review was also a major barrier to development near Metro stations.

During the 2001-2003 AGP Policy Element review, the Planning Board proposed a new "Alternative Review Procedure for Metro Station Policy Areas" that would allow a developer to meet the requirements for both AGP transportation tests by making a payment and by providing an added component of affordable housing. The County Council agreed with the Planning Board's goal but not the means: the Council substituted a requirement for a 50 percent reduction in weekday peak hour trips for the requirement for added affordable housing. The new procedure went into effect on November 1, 2001.

In November 2003, the Montgomery County Council again reviewed the Annual Growth Policy and, for the AGP beginning July 1, 2004, eliminated Policy Area Transportation Review and retained Local Area Transportation Review. On the whole, the "new LATR" will require a more comprehensive traffic study than the current version.

Additionally, the Council retained the Alternative Review Procedure for Metro Station Policy Areas. Since Policy Area Transportation Review is eliminated, a developer will avail himself of the Alternative Review Procedure only if his project fails the LATR test. The "new" Alternative Review Procedure for Metro Station Policy Areas, in addition to requiring a LATR-type traffic study to identify transportation infrastructure or trip mitigation measures to be considered by public agencies, requires an applicant to agree in a written contract with the Planning Board and the County Department of Public Works and Transportation (DPWT) to:

- meet trip reduction goals established by the Planning Board as a condition of approving that subdivision, which requires the applicant to reduce at least 50% of the number of weekday (peak hour) vehicle trips normally attributable to the subdivision, either by reducing trips from the subdivision itself or from other occupants of that policy area;
- participate in programs operated by, and take actions specified by, a transportation management organization (TMO) to be established by County law for that policy area (or a group of policy areas including that policy area) in order to meet the mode share goals established under the preceding paragraph;
- pay an ongoing annual contribution or tax to fund the TMO's operating expenses, including minor capital items such as busses, as established by County law; and
- pay double the applicable development impact tax without claiming any credits for transportation improvements.

Trip mitigation agreements (TMAs) are legally-binding documents that are negotiated with applicants when a specific trip reduction goal is to be achieved. Agreements must be at least 12 years in duration but can be as long as 15 years, after which it is assumed that the public will take over responsibility for mitigating the trips,

either with ongoing transportation demand management programs and/or by constructing local area improvements.

The 50% trip reduction required of applicants in Metro Station Policy Areas is based on the trip generation rates contained in the LATR Guidelines. Options such as encouraging transit ridership through subsidy programs, carpooling and vanpooling, market rate parking charges, operating shuttle busses, providing real-time transit information at bus stops and kiosks, flexible work hours, and telework opportunities, are all considered. A legally-binding agreement is signed by the applicant, the Planning Board and DPWT that includes a monitoring component to insure that the goals established by the Planning Board are met. The monitoring is conducted by an independent consultant hired by the Planning Board and paid for by the applicant. If the goals are not being met, then alternative actions are considered and implemented by the applicant in consultation with Planning Board and DPWT staff.

Other "Alternative Review Procedures"

As was the case last spring, staff recommends that the text amendment apply to two other alternative review procedures in the Annual Growth Policy. This suggested change will probably affect only a modest number of subdivisions, but the very good arguments for the zoning text amendment in Metro station policy areas are equally applicable to AGP's other alternative review procedures. These procedures are:

- The Special Provisions for Corporate Support and Headquarters Facilities; and
- Strategic Economic Development Projects

The purpose of these procedures is to provide certain desired development projects with an alternative and/or reduced requirement for meeting transportation adequacy tests. Just as in the case of the Alternative Review Procedure for Metro Station Policy Areas, it does not make sense to reduce transportation requirements in the AGP only to impose standard transportation requirements at zoning.

As stated above, the number of subdivisions that might seek approval under the three procedures is modest. There have been no approvals as yet under either of them.

Master and Sector Plan Conformance

The Community-Based Planning Division reports that the proposed text amendment would not affect the goals and objectives of any master and sectors plans.

RECOMMENDATION

Staff recommends that the proposed Zoning Text Amendment be transmitted to County Council for introduction.

The purpose of Alternative Review Procedures in the AGP is to define the test for transportation adequacy for certain highly-desirable development projects (in Metro areas, corporate headquarters, and strategic economic development projects) in a way that strikes a balance between competing objectives.

In the case of Metro station area development, the Alternative Review Procedure strikes a balance between local and regional congestion concerns. Approved development will have to achieve a 50 percent trip reduction and make a payment to the County that will be used toward capacity-creating transportation infrastructure. The purpose of the Alternative Review Procedure for Metro Station Policy Areas would be undermined if additional transportation test requirements are layered over top of that required by the AGP at preliminary plan.

The other Alternative Review Procedures strike a balance between traffic congestion concerns and economic development objectives. The purpose of these procedures would be undermined if a traffic test at the zoning stage were more stringent than the traffic test at subdivision.

If, in fact, it is in the best interest of the County to subject these development types to more stringent transportation adequacy tests, staff believes it would be more appropriate to strengthen the test at subdivision.

Requirements for a Traffic Study

For applicants using the alternative review procedures, staff continues to recommend against requiring a traffic study at the time of local map amendment. As ZTA 03-06 provided, the applicant should instead show that their satisfaction of the requirements of the AGP procedure they are using has a "reasonable probability of fruition." In the case of the Alternative Review Procedure for Metro Station Policy Areas, those requirements are to:

- (a) show that the applicant will satisfy the applicable trip reduction requirements of the Alternative Review Procedure for Metro Station Policy Areas contained in the Annual Growth Policy; and
- (b) include in the applicant's certified development or diagrammatic plan a binding element that commits the applicant to comply with all relevant requirements of the Alternative Review Procedure for Metro Station Policy Areas in the Annual Growth Policy.

A traffic study is required of Metro Station Policy Area development projects using the "Alternative Review Procedure for Metro Station Policy Areas" as part of the review of the application for a preliminary plan. The purpose of this traffic study is to help public officials identify transportation improvements needed to support area development. It is not necessary or particularly useful to have another traffic study done at the time of local map amendment.

The proposed Zoning Text Amendment is included as Attachment 1. A copy of Ordinance No. 15-06, adopting ZTA 03-06, is provided as Attachment 2.

Appendix/Reference: Adequate Public Facilities Reviews at Zoning and Subdivision

Although the proposed text amendment addresses the testing of traffic impact at rezoning only for projects using the AGP's alternative review procedures, there is a larger issue. The larger issue is the relationship between the traffic test at zoning and the traffic test at subdivision for all development projects not using the alternative review procedures.

Adequate Public Facilities Review As Part Of A Rezoning Application

The traffic test performed as part of a rezoning review has often been described as a "soft test" as compared to the "hard test" that is performed at the time of subdivision. The difference between a soft test and a hard test is:

- The "soft test" (at zoning) means that a developer must show that the transportation improvements needed to support the development project have a "reasonable probability of fruition."
- The hard test (at subdivision) means that the Planning Board must make more detailed findings that any required intersection and other transportation related improvements will be in place within five (or four, beginning in July) years of the approval of the subdivision.

As part of a zoning application, an applicant currently must submit a traffic study that meets all requirements for local area transportation review (LATR), as established in the Planning Board's published LATR Guidelines. The traffic study is reviewed by Transportation Planning staff and staff from the Montgomery County Department of Public Works and Transportation and Maryland State Highway Administration, as appropriate, prior to preparation of the technical staff report. In addition, the transportation findings are reviewed by the Planning Board and the Hearing Examiner prior to consideration and final action on the rezoning application by the County Council.

Over the past several years, questions have arisen about the most appropriate procedures to apply for zoning reviews, and how to define the variables involved, such as background development, intersections to be studied, and/or transportation improvements provided by others. The guidelines generally used to determine the scope of traffic studies conducted at various stages of the development process are contained in the *Local Area Transportation Review (LATR) Guidelines* adopted by the Planning Board. The scope will vary depending on the size of the development, the visibility of the project, and the stage of the development, i.e., zoning, subdivision, special exception, mandatory referral.

Recommendation

Park and Planning staff recommend that the Hearing Examiner consider changing the Rules of Procedure regarding the evaluation of traffic impact at zoning. The new procedure would include a pre-hearing conference with the applicant, appropriate Planning staff, the People's counsel, and interested groups or individuals in cases as deemed appropriate by the Hearing Examiner to establish the framework for the hearing, including the scope of the traffic analysis if required.

Discussion

Zoning is established through the adoption of Master Plans and Sector Plans by the County Council. Typically, more recent master and sector plans have included a comprehensive traffic analysis to support the recommended zoning. Subsequent requests for zoning or rezoning are either consistent with the master plan-approved zoning or seek to change it. The Hearing Examiner has suggested that zoning stage review should be more comprehensive and discerning than that done at subdivision. In a written opinion, the Hearing Examiner has stated that the County Council "has broader discretionary powers than the Planning Board and must remedy the cumulative impact of the proposed development and require mitigation. The County Council exercises wide legislative discretion in the zoning evaluation, particularly in zoning requests with significant impact that suggests more than the traffic analysis done at subdivision. The Planning Board operates with less discretion than the District Council, in that the AGP and APFO provide the Planning Board with a structure and standards for their analysis of traffic issues; a two-step transportation review including Policy Area review and Local Area Transportation Review (LATR)."

As a result, the Hearing Examiner desires to have some flexibility in determining the need for and scope of a traffic analysis done at zoning. Based on discussions between staff and the Hearing Examiners, it has been agreed that a pre-hearing conference will be held with the applicant, appropriate Planning staff, and interested representatives of groups or individuals in cases as deemed appropriate by the Hearing Examiner to establish the framework for the hearing, including the scope of the traffic analysis if required.

The following questions are to be considered at a pre-hearing conference before the Hearing Examiner to ascertain the need for a traffic analysis with a specific zoning request and to determine its scope when a traffic analysis is required.

1. Is the request for rezoning consistent with an approved master or sector plan that
 - (a) included a comprehensive transportation analysis, and
 - (b) is considered current in terms of its recommendations?

2. Is the infrastructure included in the analysis of the project considered to be reasonably probable of fruition, i.e., in a project planning study, programmed but not fully funded in a capital budget of a public agency, or has it been made a condition of approved, future development?
3. Does the proposed zoning generate 50 or more peak hour trips?
4. What is the traffic impact of the proposed zoning; i.e., local or regional?

Satisfaction of Adequate Public Facilities (APF) would be decided by the Planning Board at subdivision in accordance with the Adequate Public Facilities Ordinance (APFO) using the existing two-tiered test of Policy Area Review, i.e., staging ceiling, and Local Area Transportation Review (LATR), i.e., future congestion levels at nearby intersections. Local area transportation improvements identified at zoning would be made conditions of approval at subdivision unless they have been implemented or other improvements of similar benefit are identified to mitigate the traffic impact of the development.

In some instances, it may be appropriate for the test at zoning to count more of the pipeline as background traffic than the test at subdivision. The justification for this:

- o Because zoning occurs before subdivision, there is a longer time horizon from the rezoning stage to the construction stage, than between the subdivision stage and the construction stage.
- o A finding of adequate public facilities at zoning does not expire, whereas the finding of adequate public facilities at subdivision does expire – typically after 5 years and rarely longer than 12 year after subdivision.

Adequate Public Facilities (APF) Review at Subdivision

The “hard test” required at subdivision also involves the submission and review of a traffic study that meets all requirements for Local Area Transportation Review (LATR), as established in the Planning Board’s published LATR Guidelines. In approving a preliminary plan of subdivision, the Planning Board must consider policy guidelines contained in the AGP including alternative review procedures available in certain areas. Beginning in July 2004, the LATR analysis must be submitted for all preliminary plan applications involving 30 or more weekday peak-hour trips.

The Local Area Transportation Review (LATR) Guidelines require that any proposed development that has a “measurable traffic impact on a specific local area” must conduct a traffic study. “Measurable traffic impact” is defined by the AGP as a development that generates 30 or more total, i.e. existing, new, pass-by and diverted, weekday trips during the peak hour of the morning (6:30 a.m. to 9:30 a.m.) and/or evening (4:00 p.m. to 7:00 p.m.) peak period of adjacent roadway traffic.

Each of the three Alternative Review Procedures; Metro Station Policy Areas, Corporate Support and Headquarters Facilities, and Strategic Economic Development Projects, exempt the applicant from both Policy Area Transportation Review (until July 1, when PATR will be eliminated) and Local Area Transportation Review. However, in each case, the developer must submit all information that would be necessary if the requirements for LATR applied. In other words, if the development generates 30 or more total weekday trips during the morning and/or evening peak period, a traffic study must be conducted.

The scope of each traffic study is determined by Park and Planning staff, in consultation with the applicant's traffic consultant, prior to the initiation of such study. This would include the intersections to be included, the approved but unbuilt, (i.e. background) development, the trip generation, directional distribution and assignment of both the proposed development and the background development, mode split assumptions, and transportation improvements conditioned on other developers and/or fully funded for construction within five years (four, beginning in July) in the County's CIP or the State's CTP.

Attachments:

1. Proposed Zoning Text Amendment
2. Ordinance No 15-06 (ZTA 03-06)