



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

MCPB
ITEM NO. 9
04-10-2008

April 4, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Dan Hardy, Acting Chief *DKH*
Transportation Planning
County-wide Planning Division

FROM: David Paine, Coordinator (301) 495-2191 *DP*
Transportation Planning
County-wide Planning Division

SUBJECT: Establish Planning Board delegation to Staff of APF at time of Building Permit.

RECOMMENDATION – Adopt procedure delegating certain APF findings to staff at time of Building Permit.

BACKGROUND

With adoption of the 2007-2009 Growth Policy, the threshold for adequate public facilities findings was reduced to the equivalent of a development that generates four or more new peak hour vehicle trips, or a single new student for schools. After several months of gearing up to implement the new Growth Policy, staff now faces several challenges with it. This update concerns the transportation part of the Growth Policy test, specifically Policy Area Mobility Review (PAMR) tests that are not attached to a Preliminary Plan, Site Plan, or Special Exception where a finding of Adequate Public Facilities (APF) must be made. As Chapter 8 of the County Code is written, only the Planning Board can make a finding of Adequate Public Facilities for building permits.

However, Chapter 8 allows the Planning Board to delegate the ability to make an APF finding at the time a building permit is sought if procedures for delegation are adopted. Section 8-32 (c) (4) provides that "The Planning Board may establish procedures to carry out its responsibilities under this Section, including procedures to delegate the review of certain applications to a designee of the Board." Staff has proposed that this authority be delegated as part of the LATR/PAMR guidelines, so this agenda requests specific delegation of this authority from the Planning Board.¹ This memo discusses the need for delegation of authority in certain small cases, and includes a recommended procedure.

¹ "The LATR and PAMR Guidelines may also apply to building permit review for cases requiring an APF without subdivision, though in limited cases (i.e. less than 12 months vacancy, no increase in square footage, fewer than 30 peak hour trips) the APF test may be approved administratively by staff." P.1. LATR/PAMR 2008.

DISCUSSION OF ISSUES

Need for Delegation of APF Review for Small Developments

Because the threshold for the APF test was lowered as of November 13, 2007, a number of building permit applications now require analysis and in some cases trip mitigation. In these cases, the APF finding needs to be presented to, and adopted by, the Planning Board. For small projects, this need for Planning Board action seems excessive. For example, the “de minimis” finding for PAMR is 3 trips, compared to 30 trips for LATR. Therefore, 300 square feet of retail space, 4 or more new single family dwellings, or any size child care facility each require PAMR analysis under the current Growth Policy and a finding by the Planning Board or its designee. Even in cases where an application meets the APF standards so that no mitigation is required, the APF finding must be made.

Where PAMR mitigation is required for small cases, it could be something as minor as a hundred feet of sidewalk (one vehicle trip credit in a CBD) or an ADA ramp (currently 4 vehicle trip credits in a CBD), raising the question of how much staff and Planning Board time should be spent on the public hearing for such a case. We have a concern that given the lowered threshold of the new Growth Policy a separate Planning Board Hearing for all building permit applications is inefficient. The time and delay spent scheduling and noticing building permit reviews before the Planning Board is not justified by the scope of these small projects.

A threshold of 4 or fewer trips requiring mitigation is proposed as the upper level for APF finding delegation to staff because of the proportionality of the mitigation item. To use the example above (a 4 trip credit ADA ramp costing perhaps a thousand dollars), we believe the level of mitigation would not merit the cost and time delay for staff and Planning Board members associated with formal Planning Board action.

RECOMMENDED PROCEDURE

To optimize building permit review efficiency, we recommend the following procedure:

- a. For a building permit where the PAMR test is not needed, or when the test is conducted and/or a finding of no mitigation is required, the Transportation Planning supervisor can make an APF finding and authorize release of the building permit.
 - b. For a building permit where the PAMR test requires mitigation between 1 and 4 trips, the Transportation Supervisor may authorize release of building permit with an email or letter if:
 - i. The supervisor concurs with the proposed trip mitigation AND
 - ii. DPWT and DPS have been notified of the method of mitigation that is accepted by staff, and do not explicitly object, AND
 - iii. Interested parties and the applicant have been given sufficient notice of the pending case, and sufficient time (2 weeks) has expired for the applicant or interested parties to contend the finding has elapsed (see below, Noticing). AND
 - iv. A copy of a permit for construction within the ROW for the mitigation item has been received from DPS (see below, Enforcement and Inspection) by the building permit coordinator.
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- c. For cases requiring mitigation of more than 4 vehicle trips, the item will be scheduled for an APF finding at a public hearing before the Planning Board after i, ii, and iv, above are met. Notice of the Hearing will be given by staff. A staff member will present the needed findings to the Planning Board for deliberation.

Noticing

Even though this procedure is recommended for staff level APF finding for small cases, an applicant for a building permit or other interested person must be given the opportunity for a hearing before the Board acts under Section 8-32 (C) (2). Staff would, therefore, have notice of the application and intended mitigation, if any, be given to confronting and adjacent property owners, and Community and Homeowners Associations (following the procedure in the adopted Development Review Manual) as indicated in part (b) of the procedure outlined above. If no objections are raised within two weeks, the application noticing would be considered satisfied and staff would act upon the APF. Should an interested party have concerns about the proposal, or should the Applicant contest a finding or condition of staff's recommendation, the item will be scheduled for an APF finding by the Planning Board as part of a public hearing.

Enforcement and Inspection

Currently, M-NCPPC staff has no mechanism or resource to inspect or enforce mitigation once a building permit is released. Nor does staff think a separate mechanism would be cost-effective for cases *reducing or mitigating* fewer than 30 vehicle trips, as indicated in the LATR/PAMR Guidelines. However, the current Public ROW Permit application process by DPS is an existing process that can vet, inspect, and if need be enforce construction within the Right of Way. DPS will permit only improvements that conform to County standards, however some flexibility on the part of DPS to permit the physical requirement to avoid a physical obstacle, for example is assumed. The process is funded through fees, and requires bonding for the cost of construction before the DPS permit is approved, and inspection before the bond is released. The application for permit duration is approximately 3 weeks. The cost is approximately \$115 plus a percentage of the construction cost of the improvement. For example, a bond for an ADA ramp, currently mitigating 4 vehicle trips, is currently about \$750. Based on their website, the application fee for that would be about \$200, meaning the cost of mitigating a single ramp is about \$950. **We propose that when mitigation is required this process with DPS be the method for Enforcement and Monitoring.**

The 2007-2009 Growth Policy resolution is found online at:

http://www.montgomerycountymd.gov/content/council/pdf/res/growth_policy07.pdf

Details on the DPS Public ROW Permit application process are found online at:

<http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/r/nfdp.asp>

DP:tc

mimo to mcpcb re APF at building permit 040208.doc