



CORRECTED

December 2, 2010

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief *JK*
Vision/Community-Based Planning Division

FROM: Jacob Sesker, Planner Coordinator (301) 650-5619 *JS*
Vision/Community-Based Planning Division

SUBJECT: White Flint Staging Allocation Policy Report

STAFF RECOMMENDATION

1. Approve a general approach to White Flint Sector Plan staging allocation, as outlined in this memorandum.
2. Confirm that four specific projects will not count against the Sector Plan staging limits
3. Clarify two typographic errors in the Council's resolution.

SUMMARY

A staging allocation policy must be developed so that the Planning Board can begin granting approvals and so that all stakeholders will understand the meaning of those approvals. The role of the Planning Board in managing the staging of the White Flint Sector Plan is to:

- grant approvals;
- count those approvals against staging capacity; and,
- make sure that certain infrastructure projects or performance metrics have been satisfied prior to releasing the capacity of the subsequent stage.

The Planning Board directed staff to develop a process in which staging capacity can be allocated at building permit, because not all developments would be subject to any single Planning Board approval process (e.g. preliminary plan or site plan), and because developers who proceed to building permit are likely to move forward. There is no existing Planning Board approval that occurs just prior to the issuance of building permit. As such, a new approval must be created; this memo outlines the issues associated with that new approval.

1. Staging Allocation Policy

a. Description of the proposed staging allocation process

An applicant for staging allocation must submit to the Planning Board a Staging Allocation Request application stating intent to apply for a building permit. The request should state that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, site plan approvals, development plan approvals, or any other Planning Board or Council approval. The request should indicate both the gross amount of new development and the net amount if there is demolition.

Once a complete staging allocation application has been received by the Planning Department, the request for capacity is placed in a queue and that capacity will not be available to other applicants unless and until the request expires. The application will then be processed as a consent agenda item. Planning Board approval of an application for staging capacity will be valid for 90 days, i.e. the applicant has 90 days to move from getting Planning Board approval of staging capacity to DPS acceptance of a building permit application. If DPS has not accepted the application for a building permit within the 90-day validity period, then the capacity previously allocated becomes available to the next applicant in the queue. In such a case, the property owner would have to return to the Planning Board and re-file the application for staging allocation.

This process is part of the Transportation Approval Mechanism for which the Sector Plan specifies a one-year timeframe (due July 23, 2011). During the next few months staff should develop a sample application for staging approval and any necessary guidelines, including diagrammatic representations of the process. Staff should continue to meet internally and with DPS, and MCPS if necessary, to refine the staging allocation process.

Implementing this process will require changes to Section 8 of the county code.

b. Issues raised on/since November 4th that will not to be addressed at this time.

During and following the Planning Board's discussion of this issue on November 4th, the following additional issues were raised:

- 1) Tracking and monitoring the new development in White Flint;
- 2) What happens if a development receives its staging allocation from the Planning Board and then fails to utilize the allocated capacity; and
- 3) The relationship between school APF and transportation staging capacity.

With respect to tracking and monitoring, internal meetings and meetings with the Department of Permitting Services have begun or have been scheduled. *Status updates on this issue will be part of subsequent work sessions on the entire transportation approval mechanism and monitoring program, of which this staging allocation policy is just one part. The Planning Board will need*

to find that a transportation approval mechanism and monitoring program is in place prior to July 23, 2011—if one is not in place at that time the Planning Board must not allow development to proceed.

Staff recommends keeping this staging allocation process as simple as possible. With respect to the second issue above, few projects will get as far as building permit and not move forward. This was, in fact, one of the justifications used to support this timing. *If capacity hoarding proves to be a significant problem in the future, a subsequent biennial monitoring report can recommend changes to law and process that would be necessary in order to effectively track whether projects that have received staging allocations have used those allocations.*

With respect to the relationship between staging allocation and school APF, staff points out that the Council added specific language to the resolution indicating an intent that no change occur with respect to the current schools adequacy test in White Flint:

- “Residential development must pass the school adequacy Test in the Growth Policy. This test is assessed annually.”

Additionally, staff points out that stakeholders have generally opposed allocating staging at preliminary plan or site plan (when APF approvals are granted) or moving APF in White Flint to the pre-building permit timeframe. *Staff recommends exploring, though not resolving at this time, potential complications with respect to the relationship between staging allocation and schools APF.*

c. Staging/phasing of White Flint Sector Plan

The White Flint Sector Plan’s staging plan requires the following triggers be met before any additional development can be approved.

1. Approval and adoption of the Sector Plan. (done)
2. Approval of sectional map amendment. (done)
3. Amend the Growth Policy to expand the White Flint Metro Station Policy Area (MSPA) to encompass the Sector Plan boundary, and to exempt development within White Flint from the Policy Area review test. The traffic from existing and approved development in the White Flint MSPA would still be counted in the Policy Area Review of all other Policy Areas, including North Bethesda. (done)
4. Establish the Sector Plan area as a State of Maryland Bicycle Pedestrian Priority Area. (in process)
5. Initiate development of plans for through-traffic access restrictions and other appropriate protective measures for the residential neighborhoods abutting the Sector Plan area, including traffic from future development in White Flint, and implement these plans if sufficient neighborhood consensus is reached. (in process)

The Sector Plan further states that “additional development may proceed subject to existing regulatory requirements (including LATR and Policy Area Review, when appropriate)” and subject to the following additional requirements.

1. Create public entities or financing mechanisms necessary to implement the Sector Plan within six months of adopting the sectional map amendment (i.e. must be in place by January 2011).
2. Develop a transportation approval mechanism and monitoring program within 12 months of adopting the sectional map amendment (must be in place by July 2011).
 - a. Planning Board must develop a biennial monitoring program. This program must include a periodic assessment of development approvals, public facilities and amenities, the status of new facilities, and the Capital Improvements Program and Growth Policy as they relate to White Flint. The biennial monitoring report must be submitted to the Council and Executive prior to the development of the biennial CIP.
 - b. The program should conduct a regular assessment of the staging plan and determine if any modifications are necessary.
 - c. The program must include a Comprehensive Local Area Transportation Review (or comparable analysis) that will identify and recommend for Council approval and action specific projects and services necessary to promote adequate transportation service.
 - d. The Planning Board must establish an advisory committee...to evaluate the assumptions made regarding congestion levels, transit use, and parking. The committee's responsibilities should include monitoring the Plan recommendations, identifying new projects for the Amenity Fund, monitoring the CIP and Growth Policy, and recommending action by the Planning Board and County Council to address issues that may arise.

Once the first five staging triggers are met, development can proceed under the "old rules." However, if the calendar triggers are not satisfied by specified dates (public entities/financing mechanism and transportation approval/monitoring) then additional development may not proceed.

In short, it is possible that White Flint could be "open for business" for some part of the period between now and July 2011 and then subsequently closed for business due to a failure to either meet the six month deadline (public entities or financing mechanisms) or the 12 month deadline (transportation approval and monitoring).

d. Meaning of "approve"

The language of the Sector Plan clearly refers to Planning Board approvals. According to the Sector Plan, additional development may not be approved until certain triggers are met, and the quantity of development that can be approved by the Planning Board in each phase is set forth in the plan. It is assumed that the word "approved" has the same meaning in each place that it appears in the Staging Plan.

Of the five triggers that must be met prior to approving new development, the first three have already been satisfied and the fourth doesn't require completion. The fifth, establishing the area as a State of Maryland Bicycle and Pedestrian Priority Area, however, has proven somewhat problematic. This trigger involves the agreement of the State Highway Administration and the

Maryland Department of Transportation. While staff has been pursuing closure of this issue, the time line doesn't favor a speedy resolution.

By moving the approval (for staging purposes) to later in the development process, the Planning Board would essentially postpone the deadline for resolution of the issue of the State of Maryland Bicycle and Pedestrian Priority Area. Based on staff's interpretation, this extends the time available until such time as the first Staging Allocation Request is before the Board. This should be sufficient time for the SHA to fully ascertain the implications of the proposed Priority Area on their public road commitments and budget and, if necessary, request that the County Council amend the language of the sector plan accordingly.

e. Meaning of “proceed”

The language of the Sector Plan states that “additional development may proceed subject to existing regulatory requirements” subject to two calendar triggers being met—those triggers are the creation of public entities or financing mechanisms (by January 23, 2011) and the development of a transportation approval mechanism and monitoring program (by July 23, 2011).

These calendar triggers must be met in order for development to proceed, and are requirements in the Sector Plan that are independent of the other staging prerequisites. Approval, for purposes of staging, occurs when the staging allocation is made by the Planning Board. Planning Board approvals of sketch plans, preliminary plans, and site plans do not constitute approvals for staging. *If the calendar triggers are not met, then projects may not advance through any process, i.e. if the Planning Board finds that a calendar trigger has not been met then the Planning Board must not grant further approvals of sketch plans, preliminary plans, site plans, or staging allocations.*

f. Biennial Monitoring and Staging

The Planning Board may approve up to 3,000 dwelling units and two million square feet of non-residential development when the first phase is opened. During Phase 1 (and subsequent phases) the biennial monitoring program will provide updates and make recommendations, including whether modifications to the staging plan are necessary. Presumably, any such modifications would be effective at the commencement of the subsequent stage/phase.

Recommendations that the Council modify the staging plan could originate either at the Planning Board or the Advisory Committee.

g. White Flint Sector Plan Implementation Guidelines

The staging policy recommended herein is linked to the transportation approval and monitoring program required by the Sector Plan. *Because traditional transportation APF tests will not apply, staff suggests that the best place for all of these policies is not the LATR/PAMR Guidelines, but rather a separate White Flint Sector Plan Implementation Guidelines document.*

This staging policy will be incorporated into that document. The guidelines should be completed prior to July 23, 2011.

h. Next Steps

If the Planning Board approves the general approach outlined herein, then the following actions will need to be taken at later dates:

- 1) Open Phase One of development (January 2011). Planning Board may begin reviewing sketch plans, preliminary plans, and site plans.
- 2) Confirm that public entities or financing mechanisms necessary to implement the Sector Plan have been created by January 23, 2011.
- 3) Develop a transportation approval and monitoring program. Planning Board must determine that the transportation approval and monitoring program is in place prior to July 23, 2011.
- 4) If either (2) or (3) above are not satisfied by the specified dates, then the Planning Board must not take any action on any sketch plan, preliminary plan, or site plan in the Sector Plan area.
- 5) Develop tracking systems and databases necessary to manage the staging allocation and track master plan implementation.
- 6) Continue to pursue clarification of issues related to school APF and its relationship to staging allocation.
- 7) Determine that all staging prerequisites have been satisfied prior to granting the first of the staging approvals.

If the Planning Board does not approve the proposed approach, then staff recommends against opening Phase One of development until outstanding issues are resolved. Staff has already scheduled a Board item in January to recommend action by the Planning Board to open Phase One for development and allow development to proceed, on an interim basis, until such time as the transportation approval and monitoring program is completed, or until July 23, 2011 (whichever comes first).

2. Projects not counted against the staging limits

The Council's resolution of adoption states the following:

- “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 prior approval and any requested increase would be subject to the phasing caps.”

Four approved projects that should not to be counted against the staging limits are the following:

- 1) North Bethesda Center (LCOR)
1,350 dwelling units
1.14 million square feet of office
202,037 square feet of commercial
Zone: TSM
Zoning Application: G-801; County Resolution No. 15-151
Preliminary Plan: 120040490
Site Plans: 820050340; 820080110
- 2) North Bethesda Market (JBG)
440 dwelling units
223,000 square feet of non-residential
Zone: TSM
Zoning Application G-830
Preliminary Plan: 120060310
Site Plan: 820060170
- 3) White Flint View (Quantum/Noland Plumbing)
183 dwelling units
29,500 square feet of non-residential
Zone: C-2
Preliminary Plan: 120070380
- 4) Metro Pike (Holladay)
247 dwelling units
201,822 square feet of non-residential
Zone: TSM
Zoning Application: G-860; Resolution No. 16-430

Staff recommends that the Planning Board confirm, for the benefit of all stakeholders, that the projects specified above are not to be counted against the staging limits and that the Guidelines include references to the four projects for the benefit of future reviewers.

Other projects not subject to staging include both (a) public projects submitted under the mandatory referral process and (b) any additional smaller private projects which can still be found to have a valid APF approval or Development Plan approval at the time of building permit without having been conditioned to submit a Staging Allocation Request.

3. Minor typographical errors in the Council's resolution

Two minor issues related to the language of the staging/phasing section of the resolution have been identified and brought to the attention of Council staff, who concur with the following reading of the resolution.

Page 23 of the resolution contains the first error. The language in the paragraph under Phase 1 is inconsistent with the bullets underneath, which were changed by the Council. The following is the language in the resolution, with the incorrect language in brackets and in bold.

- Work-around road projects west of Rockville Pike, including the streets for the civic core, should be contracted for construction during Phase 1 [**and completed before commencement of Phase 2**].

Page 24 of the resolution contains the second error. According to the resolution, the Phase 3 cap is set at 1.9 million square feet of non-residential development. That number is inconsistent with the number in the plan, which was derived from the transportation analysis. This typographical error has resulted in an inadvertent change in Phase 3 non-residential capacity from 1.69 million square feet to 1.9 million square feet.

The corrected language should say:

- Phase 3: 3,800 dwelling units and 1.69 million square feet non-residential development.

The Approved and Adopted Sector Plan has been published and is available on line. Staff can post an errata sheet. Staff also recommends that the Guidelines include references to these errors for the benefit of future reviewers.

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Attachments:

- A. Draft Outline of Relationship between Staging Allocation and Development Process

Draft Outline of Relationship between Staging Allocation and Development Process

1) Projects subject to staging: what happens at preliminary plan (APF, conditions, etc.)

- a. Findings (not APF related)
 - 1. Conformance with sketch plan
- b. Applicant must submit sufficient information to identify on-site or frontage-related transportation adequacy as related to topics such as traffic control devices, sight distances, internal access and circulation, queuing, etc.
- c. APF finding, conditioned upon
 - 1. Payment in Special Taxing District to address LATR/PAMR, subject to Section 50 validity periods
 - 2. Findings regarding schools, fire/rescue, WSSC, public utilities, still subject to Section 50 validity periods
 - 3. Staged on-site infrastructure
 - 4. Staging Allocation Approval at Building Permit

2) Projects subject to staging: what happens at site plan (APF, conditions, conditions related to timely delivery of sketch plan proffered benefits, etc.)

- a. Findings (not APF related):
 - 1. Conformance with sketch plan and conditions of preliminary plan
- b. For projects that did not go through preliminary plan, APF finding, conditioned upon
 - 1. Payment in Special Taxing District to address LATR/PAMR, subject to Section 50 validity periods
 - 2. Findings regarding schools, fire/rescue, WSSC, public utilities, still subject to Section 50 validity periods
 - 3. Staged on-site infrastructure
 - 4. Staging Allocation Approval at Building Permit

3) Projects subject to staging: what happens at pre-building permit staging allocation approval

- a. Timing of application – use typical consent agenda process
- b. Planning Department acceptance of complete application places allocation in queue
- c. Finding – sufficient staging capacity available at time of Board approval for new development proposed (net of any demolition)
- d. Timing of validity period
 - 1. 90 days from staging allocation approval to DPS acceptance of complete building permit application
 - 2. DPS copies Planning Department on acceptance of building permit application
 - 3. If Staging Allocation Approval validity period expires without DPS acceptance of building permit application, Planning Department returns capacity allocation to the pool

4) Potential changes to law that will be necessary to implement this policy

- a. Amendments to Section 8-24 to establish Planning Board Staging Allocation Approval and require valid Staging Allocation Approval for DPS to accept a building permit application in White Flint MSPA. This requirement would apply to all new development other than new development that has APF approval or development plan approval that predates the adoption of the Sector Plan.
- b. Planning Board adoption of *Guidelines for White Flint Master Plan Implementation* to include Staging Allocation (because staging allocation is a master plan mandate, not a Subdivision Staging Policy mandate)