



Proposed Amendment to the Local Area Transportation Review and Policy Area Mobility Review Guidelines

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Completed 1/12/12

Description

In response to a situation that arose with respect to the approved Goddard School daycare center in Clarksburg, Councilmember Nancy Floreen recommended an amendment to the Subdivision Staging Policy that would exclude daycare centers from the required transportation adequacy tests (LATR and PAMR). At the public hearing held on July 12, 2011, Planning Board Chair Francoise Carrier and others spoke in opposition. In response, the Goddard School has proposed a different change to the Subdivision Staging Policy. Specifically, their proposed modification creates options for development projects that would generate less than 51% of the peak hour trips that will cause an intersection to fail to make a contribution toward their share of the necessary improvements prior to the issuance of a building permit, as opposed to being obligated to construct those improvements. Staff has been working with the Goddard School but is not in agreement with some of their proposed changes. Since the PHED committee has scheduled a worksession on this matter for January 23, 2012, staff is seeking guidance from the Board.

Summary

Staff recommends disapproval of any amendment to the Subdivision Staging Policy, and instead, recommends approval of proposed changes to the Planning Board’s Local Area Transportation Review and Policy Area Mobility Review Guidelines that would provide an opportunity to accomplish similar objectives while still ensuring that needed road improvements would be built.

The County Subdivision Staging Policy resolution describes the methods and criteria that the Planning Board and its staff must use in determining the adequacy of public facilities to accommodate new development. These include the guidelines for reviewing adequacy of transportation facilities. Included in the transportation tests are Policy Area Mobility Review (PAMR) and Local Area Transportation Review (LATR). In administering LATR review the Planning Board must not approve a subdivision if it finds that it will generate an unacceptable peak hour level of service after existing roads, programmed roads, and available or programmed mass transportation are taken into account unless improvements that are necessary to restore service to an acceptable level are provided for. To determine the improvements needed, nearby intersections are examined as part of a traffic study. Once the improvement(s) have been ascertained, the Board must condition any development that will generate enough traffic (critical lane volumes) to cause an intersection to fail to pay their pro-rata share toward their construction.

Currently, the Planning Board's policy for implementing this Staging Policy requirement is to require the first applicant to seek a building permit for a project that triggers a need for specific intersection improvements to build those improvements and be reimbursed by other applicants as they move ahead with their projects that affect the same intersection. This avoids the issue of waiting indefinitely for the improvement since others may not move ahead in a timely way and/or if the County (or State Highway Administration) does not wish to undertake a project due to scheduling or budget issues. The disadvantage is that the first applicant may bear only a small part of the responsibility for a complex or expensive project.

This is the situation that has occurred with respect to the Goddard School, a daycare center for 283 children in Clarksburg that has already been approved, but now has an application for an amendment pending. Trips generated by the school, which is to be located on Rt. 355, will cause the nearby intersection of Rt. 355 and Old Baltimore Road to fail. Although other projects, including Cabin Branch, Linthicum West, and eventually Tapestry (when it is approved) will also be responsible for the necessary improvements to the intersection, the Goddard School is the first project to seek a building permit. Not surprisingly, they are unable to obtain financing if they are the party responsible for designing and building the intersection improvement. As a result, various parties have sought a way to resolve this impasse, particularly since daycare is greatly needed in the Clarksburg area and Goddard has the support of the community.

The Council originally proposed that all daycare centers be exempted from the required transportation adequacy tests. The Goddard School has since proposed an alternative change to the Subdivision Staging Policy that would add language to the Standards and Procedures for LATR that would allow any preliminary plan approved on or after January 1, 2011, for which an applicant's pro rata share of the required intersection or roadway improvements is projected to be less than 51% of the total improvement costs, to have the following options:

- 1) Pay its pro rata share of the improvements to a road club established by agreement among the applicants responsible for 100% of the intersection or roadway improvement, provided the road club is established prior to issuance of building permits;
- 2) Pay its pro rata share into a Capital Improvements Program account maintained by MCDOT, provided payment is made prior to issuance of building permits; or
- 3) Construct the intersection or roadway improvement and obtain reimbursement on a pro rata basis from other applicants responsible for the intersection or roadway improvement.

Additional proposed language stipulates that payments made pursuant to these options must fully satisfy the LATR mitigation required with respect to the implementation of the required intersection or roadway improvement.

Discussion

The Board has already testified to the effect that it would not be a good idea to exempt daycare centers altogether from transportation adequacy tests. Likewise, although staff agrees that there may be merit to providing options to permit a smaller development project to move forward without having to incur the major costs associated with road improvements for which they are partly responsible, the solution proposed by Goddard results in the following issues:

- There is no date certain when the necessary road improvements will be made.
- The unfavorable road conditions caused by the initial development(s) could extend for long periods of time until other applicants are required to move ahead with the improvements or the County chooses to complete them.
- MCDOT does not currently maintain a Capital Improvements Program (CIP) to support option 2.
- If a CIP were created, it would need to be managed in such a way that the county will be able to hold funds for a specific project for multiple years and be able to complete the project when all funds were collected.
- Even if all of the developer funding is available, the County (or State Highway Administration) may not be ready to move ahead if additional funding, design, or right of way acquisition has not been resolved.
- It is possible that each project that has to contribute to an improvement would generate less than 51% of the total costs. Who would be responsible for building the necessary improvement(s) in that situation?

Instead of the proposed change to the Subdivision Staging Policy resolution, staff proposes changes to the language on page 19 (as it pertains to LATR requirements) of the LATR and PAMR Guidelines as shown below:

III. Method and Preparation of Local Area Transportation Review Traffic Study

A. General Criteria and Analytical Techniques

When development is conditioned upon intersection and/or roadway improvements by more than one application, those improvements must be permitted and bonded¹, under construction, or under contract for construction prior to the issuance of building permits for any new development. If an applicant's trip contribution to an intersection and/or roadway that requires improvement is less than 25% of the total trips², this requirement may be fulfilled by the creation of a road club or other mechanism approved by the Planning Board that ensures that:

¹ This condition is satisfied if the project is included in the first six years of the County's Capital Improvement Program and the developers' contribution is applied to that project.

² Trip total is the sum of the total peak-hour trips generated by all developments required by the Planning Board to participate in the construction of the particular improvement.

1. the terms, conditions and responsibilities for design approval, funding, right-of-way acquisition and construction of the improvements are agreed upon by the applicants responsible for 100% of the intersection or roadway improvements, and each will contribute their share,
2. the improvements are either permitted and bonded or under contract for construction within three years of the first building permit issued for any of the developments that are dependent on the required improvements, and
3. the improvements are substantially complete and open to traffic within five years of the first building permit issued for any of the developments that are dependent on the required improvements.

In the event that conditions 2 or 3 have not been met, no other participant in the road club (or other agreement) may receive a building permit (as specified in their APFO approval) until the conditions are met.

Construction of an improvement by one applicant does not relieve other applicants who have been conditioned to make the same improvement of their responsibility to participate in the cost of that improvement. The final percentage of the construction cost contribution is determined by the participating applicants.

Although this is not an ideal solution, it will help smaller projects move forward in a timely manner while still insuring that the needed improvement(s) will be “substantially complete and open to traffic” within five years. Should this not occur, no other development that is obligated to contribute to the intersection improvement(s) can obtain a building permit.

Staff also believes that it is preferable to change the LATR and PAMR guidelines rather than the subdivision staging policy for the very reason that they are guidelines and can be more easily adjusted should other issues similar to those experienced by the Goddard School arise.

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney
Glenn Orlin, Deputy Council Staff Director *mfhill*

SUBJECT: **Public Hearing:** Amendment to County Subdivision Staging Policy regarding child day care centers

The Council is scheduled to hold a public hearing on an Amendment to the County Subdivision Staging Policy regarding child day care centers on July 12, 2011. A Planning, Housing, and Economic Development Committee worksession is tentatively scheduled for July 18 at 9:30 a.m.

The Amendment would exempt a development that will consist only of a child day care center from the transportation adequacy tests under the Subdivision Staging Policy. The Planning Board was scheduled to discuss this item at its July 7, 2011 meeting. The Planning Board staff memorandum is attached at ©3.

This packet contains:	<u>Circle #</u>
Subdivision Staging Policy amendment	1
Planning Board staff memo	3

Resolution No. _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Floreen

SUBJECT: Amendment to County Subdivision Staging Policy regarding child day care centers

BACKGROUND

- 1. Under County Code §33A-15(h), the County Council may amend an adopted County Subdivision Staging Policy by resolution after notifying certain agencies and holding a public hearing.
- 2. A public hearing was held on this resolution on (date).
- 3. This amendment is necessary to encourage the provision of child day care in the County by removing certain disincentives to opening new child day care centers..

ACTION

The County Council for Montgomery County, Maryland approves the following resolution:

The 2009-2011 County Subdivision Staging Policy (formerly the County Growth Policy), as adopted by Resolution 16-1187, is amended as follows:

* * *

Guidelines for Transportation Facilities

* * *

TP2.2.2 Determination of Adequacy

* * *

An applicant for a preliminary plan of subdivision need not take any action under TP Policy Area Mobility Review if the proposed development will generate 3 or fewer peak-hour trips, or if the development will consist only of a child day care center, as defined in Chapter 59.

* * *

TL Local Area Transportation Review (LATR)

TL1 Standards and Procedures

* * *

Local area transportation review must be completed for any subdivision that would generate 30 or more peak-hour automobile trips unless that subdivision consists only of a child day care center, as defined in Chapter 59. For any subdivision that would generate 30-49 peak-hour automobile trips, the Planning Board after receiving a traffic study must require that either:

* * *

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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

MCPB
Item #10
July 7, 2011

MEMORANDUM

DATE: June 30, 2011

TO: Montgomery County Planning Board

FROM: Mary Dolan, Acting Chief, Functional Planning Division *MD*
Rose Krasnow, Chief, Area 1 Division *RK*

SUBJECT: Proposed Amendment to the Subdivision Staging Policy: Exclusion of Day Care Centers from the Local Area Transportation and Policy Area Mobility Review Requirements

Recommendation: Transmit Comments to the County Council

Instead of amending the Subdivision Staging Policy to exempt day care uses, staff recommends amending the Planning Board's Local Area Transportation Review and Policy Area Mobility Review guidelines to provide smaller development projects with options for providing their share of combined mitigation requirements, without being obligated to construct the entire improvement if they are the first project to begin.

Background

The Montgomery County Subdivision Staging Policy, formerly the Growth Policy, is established by the County Council through a resolution every four years in the second year of a Council term. Pursuant to the Policy, the Planning Board must not approve a subdivision if it finds that an unacceptable weekday peak-hour level of congestion will result after considering existing roads, programmed roads, available or programmed mass transportation, and physical improvements or trip mitigation measures to be provided by the applicant. If it is shown that a subdivision that generates more than 30 new peak-hour vehicle trips will have an adverse affect on traffic at a nearby intersection for which congestion is already unacceptable, then the subdivision may only be approved if conditions are added to ensure that improvements will be made that improve the situation. This analysis is done as part of Local Area Transportation Review and the subdivision staging resolution goes further to state that all preliminary plans of those projects generating more than three new peak-hour trips must also comply with the requirements of Policy Area Mobility Review (PAMR). In other words, these reviews determine, based on the levels of congestion that are deemed acceptable at affected intersections, if mitigation should be required for any percentage of the trips generated. An amendment has been proposed by Councilmember Floreen to exclude day care centers from these reviews.

The LATR/PAMR test is based on a traffic study completed by the applicant that analyzes vehicle trips generated by the development and their affect on nearby intersections. When traffic from the site increases the amount of traffic (critical lane volumes) to a level that, either alone or combined with other projected projects, would cause intersections to fail, the applicant must provide funding for the necessary improvements on a pro-rata basis, and the improvements must be constructed before the development is complete. If more than one project is responsible for the same intersection, the first project to move forward is required to build the improvements at the applicant's expense. The applicant would then be reimbursed by other applicants for their pro-rata share as they move ahead with their projects. This ensures that the improvements are in place before any new trips are on the road and avoids the issue of waiting indefinitely for an improvement since one or more of the other projects may not move forward in a timely way. The disadvantage is that the first applicant may have only a small part of the responsibility for a complex or expensive project.

This is the case with the Goddard School, which is required not only to participate in the improvement of the intersection of MD 355 and Old Baltimore Road but also, as the first project to move forward, to design and build the improvements, even though the project is complex and expensive and will require State Highway Administration participation in right of way acquisition and design work that is not yet underway. The Goddard School project would be held hostage to the design and construction schedule of the intersection improvements.

The solution proposed by the proposed resolution (see Exhibit A) is to exempt all day care facilities from the requirement to mitigate their traffic impacts. While this would resolve the issue for the Goddard School, the following issues remain:

- Day Care facilities, especially of the size proposed by the Goddard School, generate many peak hour trips, adding to critical lane volumes at congested intersections.
- The conditions caused by these additional peak hour trips could extend for long periods of time until another applicant is required to construct the necessary improvements or the government chooses to move ahead with them.
- Other types of uses that may generate more than three peak-hour trips but do not create severe congestion would also want to be excluded from the LATR and PAMR requirements.
- Even if all of the funding is available, the County (or State Highway Administration) may not be ready to move ahead if funding, design, or right of way acquisition is not resolved.

In staff's opinion, all development that may negatively impact existing road conditions should be subject to the LATR/PAMR requirements. Rather than exempting day care facilities, staff recommends that an effort be undertaken to explore amending the Planning Board's Local Area Transportation Review and Policy Area Mobility Review guidelines to provide smaller development projects with options for providing their share of combined mitigation requirements without being obligated to construct the entire improvement if they are the first project to begin.