



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

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**Completed 2/2/12**

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**Description**

Currently, the Local Area Transportation Review and Policy Area Mobility Review Guidelines require that when more than one development has been approved that results in congestion beyond the accepted level, the first project to apply for a building permit must build the improvement(s) specified in the Planning Board’s approval. When that first project cannot build the improvement(s), due either to their small size or unresolved design or property issues, their development is held up until the improvement is constructed, bonded or in the Capital Improvement Program. This was exemplified recently by the approved Goddard School daycare center in Clarksburg which has not been able to obtain a building permit both because of it size and unresolved property issues related to the required improvements at the intersection of Old Baltimore Road and Rt. 355. Councilmember Nancy Floreen has recommended an amendment to the Subdivision Staging Policy that would exclude daycare centers from the required transportation adequacy tests (LATR and PAMR).

**Summary**

**Staff recommends against amending the Subdivision Staging Policy to exclude specific uses. In order to provide an interim solution to the Goddard School situation, staff 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 intersection improvements through a Road Club or similar legal agreement among the private parties responsible for the needed improvements. Staff also recommends that a permanent solution be found for future projects that would place developer-funded projects in the Capital Improvement Program as suggested by the PHED Committee and the County Executive and/or by creating a revolving fund that would allow the County to construct necessary projects and be reimbursed by those private parties that will benefit from the 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 (see attached testimony to the County Council). Further background on the issue is provided in the attached staff memo from July 7, 2011.

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 *Local Area Transportation Review and Policy Area Mobility Review Guidelines* as shown below (proposed additional language is underlined):

### 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 bonded<sup>1</sup>, under construction, or under contract for construction prior to the issuance of building permits for any new development except as outlined below:

If an applicant's trip contribution to an intersection and/or roadway is less than 25% of the sum of total trips<sup>2</sup>, this requirement may be fulfilled by the creation of a road club or other mechanism approved by the Planning Board that:

1. Includes the terms, conditions and responsibilities for funding (based on the respective shares) 100% of the cost for design approval, right-of-way acquisition and construction of the intersection or roadway improvements as set forth in the individual project APFO approvals and ensures that, collectively, all parties contribute in accordance with their respective shares the total cost of the improvements,
2. ensures 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. ensures 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 any building permit that is conditioned upon construction of the improvements until the condition is met<sup>3</sup>. In the event that a road club or other mechanism is formed, but not all parties responsible for the improvements join, such non-participating parties will not be permitted to proceed with platting or construction of their projects until they either join the road club or if the improvements have been completed, reimburse the other road club participants for their share of the total road club costs. "Non-participating parties" include those with projects having preliminary plan approvals which have obligations to participate in the same improvements whether the approval occurred before or after the road club formation.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> In certain APFO approvals, an applicant is not required to build an improvement until a certain number of building permits have already been released. For example, Cabin Branch is not responsible for the improvements at Rt. 355 and Old Baltimore Road until they need their 1401<sup>st</sup> building permit. This language tries to capture this fact, i.e. that the applicant would be able to obtain the first 1400 permits but could not get the 1401<sup>st</sup> permit if conditions 2 and 3 have not been 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.

Staff 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 issues similar to those experienced by the Goddard School arise.

### **Permanent Solution Needed**

The situation that faces the Goddard School is not unique, and on previous occasions the Planning Board has attempted to rely on Road Clubs and other methods to achieve transportation improvements that are the responsibility of more than one developer. These attempts have been less than satisfactory and do not always result in the timely provision of improvements as could be achieved if the same projects were undertaken by the County under the CIP process.

This year, the Planning Board and the County Council will debate the use of the Transportation Policy Area Review (TPAR) test that is intended to replace the current Policy Area Mobility Review (PAMR) test in the Subdivision Staging Policy. In February of 2011, the Planning, Housing and Economic Development Committee (PHED) received a briefing by the Department of Transportation on TPAR. The Committee suggested that the Council include road or transit projects or services in the CIP that are needed to serve development if 10% of the private sector's share of such project or service has been collected in TPAR payments. The Executive agreed and recommended programming the engineering and design of a project in the CIP at an earlier point in the life of a TPAR project. If this mechanism were in place, the improvements needed for the Goddard School would not be an issue. Goddard would pay its share for the necessary improvements and could obtain a building permit because the guidelines allow the condition for construction to be satisfied if the project is programmed in the first six years of the CIP. Review of the TPAR methodology and the Subdivision Staging Policy are scheduled for this year, but until then the current policy and guidelines apply.

The staff strongly recommends that the Council ask the Executive to implement a facility planning element for these projects and place these projects in the CIP if 10% of the private sector's share of such project or service has been collected. The Council should also consider creating a revolving fund that would allow the County to construct necessary projects and be reimbursed by the private parties whose projects are conditioned upon its completion.



**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

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**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.

Resolution No. \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Councilmember Floreen

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**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)**

**Exhibit A**

**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.

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Linda M. Lauer, Clerk of the Council

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**Testimony of Francoise M. Carrier, Chair, Montgomery County Planning Board**

**Montgomery County Council Public Hearing June 14, 2011**

For the record I am Francoise Carrier, Chair of the Montgomery County Planning Board. On behalf of the Planning Board I am pleased to testify in support of our proposed amendments to the County's Subdivision Staging Policy.

The approved and adopted White Flint Sector Plan directs the Planning Board to establish a transportation approval mechanism and monitoring program within 12 months of the adoption of the Sectional Map Amendment. That deadline is coming up on July 13 of this year. These requirements must be met before the Planning Board can allow new development to move forward in White Flint. Council adoption of the proposed amendments to the Subdivision Staging Policy will allow the Planning Board to adopt implementation guidelines that we have reviewed in draft form, and to satisfy the approval and monitoring requirements in the Sector Plan.

The Planning Board has held more than a dozen work sessions over the past 8 months to develop a framework for implementing the Sector Plan's staging elements. The growth policy amendments before you today represent a key part of that effort, as they establish an alternative review procedure for new development in White Flint.

After receiving input from affected stakeholders including property owners, residents and government agencies, the Planning Board directed staff to create a transportation approval mechanism that prevents property owners from hoarding capacity that could instead be allocated to another property owner who is more ready to move forward. Doing so required that we establish a system in which capacity was not allocated at either preliminary plan or site plan, but at the building permit stage. Under this approach, capacity is not allocated to a project until the developer is ready to make the considerable investment in obtaining a building permit, and therefore can be expected to move forward within a short period of time.

Like the PAMR and LATR tests that apply everywhere outside of White Flint, the alternative review procedure proposed in these amendments would be administered by the Planning Board pursuant to Planning Board -approved guidelines. In the case of the White Flint alternative review procedure, the Planning Board is finalizing guidelines that establish the protocols for allocating capacity in a way that is consistent with the staging limits in the White Flint Sector Plan. As a result of staff's extensive engagement with affected stakeholders, there is broad consensus in support of those guidelines. We anticipate approving the guidelines in late June or early July.

The Planning Board urges the adoption of the Subdivision Staging Policy amendments as proposed, and looks forward to declaring White Flint open for business sometime in the coming weeks.

Thank you.