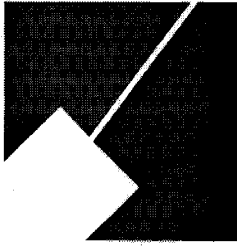


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
Item # 2
11/08/04

DATE: November 5, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor, Development Review *CG*
FROM: Greg Russ, Zoning Coordinator *GR*
Karl Moritz, Acting Chief, Research and Technology *KWM*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To provide a process for an applicant for reclassification of property located in Metro Station Policy Areas to satisfy the applicant's burden of proof on certain traffic impact issues; **PHED Committee Request for Additional Planning Board Comment**

TEXT AMENDMENT: No. 04-16
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Silverman
INTRODUCED DATE: July 27, 2004

PLANNING BOARD REVIEW: September 9, 2004; November 4, 2004
PUBLIC HEARING: September 14, 2004; 1:30 p.m.

STAFF RECOMMENDATION: APPROVAL with modifications (as previously recommended)

SUMMARY

The County Council's Planning, Housing, and Economic Development (PHED) Committee requested that the Planning Board review its recent recommendation to approve Zoning Text Amendment 04-16 in light of the testimony of Garrett Park Estates - White Flint Park Citizens Association (Appendix 1).

The Planning Board may either confirm its earlier recommendation or make a new recommendation for the Council to consider as it evaluates this zoning text amendment. Staff recommends that the Planning Board confirm its earlier position.

BACKGROUND

Zoning Text Amendment (ZTA) 04-16 defines the traffic test at the rezoning stage for a limited set of development applications: those located entirely within Metro Station Policy Areas and using the growth policy's Alternative Review Procedure for Metro Station Policy Areas. The ZTA assures that the traffic test at zoning is the same as the traffic test at subdivision for these properties.

ZTA 04-16 reinstates ZTA 03-06, which had a sunset date of December 31, 2003. The Planning Board has reviewed and recommended approval of this provision several times, twice in 2004 (January and September). The most recent Planning Board action was to recommend, by a vote of 5-0, that the County Council adopt ZTA 04-16.

During the County Council's public hearing on ZTA 04-16, the Council received testimony from the Garrett Park Estates – White Flint Park Citizens Association that in opposition to ZTA 04-16. The testimony used material in the Planning Board's Approved Development And Congestion (ADAC) report to highlight the fact that different Metro station areas have different levels of roadway congestion. The testimony quoted the following passage from the ADAC report:

“The remaining Metro Station Policy Areas, Shady Grove, Twinbrook, Grosvenor, and Glenmont, have higher levels of congestion. These areas do not have the street grid density necessary to adequately disperse and handle the corresponding level of automobile trips when compared with the first group of MSPAs above. They also lack the critical mass of transit-supportive and accessible land uses that encourage travelers to take Metrorail, which in turn takes trips off the network within the MSPA.”

On October 21, 2004, the County Council's PHED Committee discussed ZTA 04-16. Councilmember Praisner requested that the Planning Board respond to the Garrett Park Estates – White Flint Park Citizens Association testimony. Specifically, the Board is being asked if it believes that the ADAC report contains information which causes the Board to reconsider its recommendation that ZTA 04-16 apply equally to all of the Metro Station Policy Areas where the Alternative Review Procedure for Metro Station policy Areas applies.

RECOMMENDATION

Staff recommends that the Planning Board continue to recommend that ZTA 04-16 apply in all of the Metro Station Policy Areas where the Alternative Review Procedure for Metro Station policy Areas applies.

Staff's recommendation comes in three parts: (1), that the zoning ordinance is not the place to address this issue; and (2), the Planning Board already addressed the issue of treating different Metro Station areas differently for the purposes of applying the Alternative Review Procedure and recommended against it.

(1) *Appropriateness of the Zoning Ordinance to Determine Eligibility to Use the Alternative Review Procedure*

Staff believes that the zoning ordinance is not the place to address what could properly be defined as an eligibility issue: under what conditions should a development project be able to make use of the Alternative Review Procedure for Metro Station Policy Areas? If the County would like to limit the use of the Alternative Review Procedure for Metro Station Areas, the most appropriate means to do that would be to amend the relevant provision in the growth policy. The proposed ZTA only seeks to make the traffic test at zoning consistent with the traffic test at subdivision for projects that are eligible to use this provision of the growth policy. Staff continues to strongly support this consistency.

(2) *Varying Eligibility to Use the Alternative Review Procedure for Metro Station Policy Areas*

Staff notes that the Planning Board specifically addressed a very similar question in January 2004 when it reviewed a proposal to set limits on the number of “unmitigated trips” that could result from use of the Alternative Review Procedure for Metro Station Policy Areas. Essentially, that proposal was also based on the concept of limiting eligibility for the Alternative Review Procedure based on that area’s congestion levels. The Planning Board did not recommend the proposal.

The Planning Board, instead, said that “limiting use of the Alternative Review Procedure for Metro Station Policy Areas is not the best public response to unacceptable congestion levels near Metro stations. The Board believes, instead, that the County should support Metro area development approvals with transportation infrastructure, transit service, and traffic demand management programs. As the Board made clear in its 2003-2005 AGP Policy Element recommendations, because the County as a whole benefits by directing a high proportion of development to Metro stations, the County should also direct a high proportion of the County’s transportation budget to support that development.”

The Planning Board further noted that one of the purposes of the upcoming annual development report (the ADAC report was released the following summer) would be to help identify and prioritize the transportation improvements needed to support approved development near Metro stations. The Planning Board’s comments suggest that the Board expected the ADAC report to identify congestion near Metro stations, and recommended that the best public response would be to fund infrastructure and programmatic transportation improvements to relieve that congestion, not to further limit development approvals in those locations.

The contents of the ADAC report does show varying levels of congestion at the various Metro station and does identify transportation improvements to support approved development in those areas. Staff would like to clarify that the ADAC report showed that there is not intersection within a Metro Station Policy Area that is experiencing a

congestion level in excess of the 1800 CLV standard. There are, however, 29 intersections in other parts of the County that exceed 1800 CLV. Some of these are near Metro stations, but they are not concentrated in North Bethesda. The two policy areas with the most intersections with greater than 1800 CLV are Bethesda/Chevy Chase and Kensington/Wheaton (both with 5), followed by Fairland/White Oak, Gaithersburg City, and Rockville City (with 3 each). North Bethesda has two intersections above 1800 CLV: Montrose Road at East Jefferson Street and Randolph Rd at Gaynor/Rockinghorse.

APPENDICES:

Attached for the Planning Board's information are:

1. Testimony of the Garrett Park Estates – White Flint Park Citizens Association
2. PHED Committee packet of October 21, 2004, which includes previous Planning Board positions on ZTA 04-16 and its predecessor, ZTA 03-06.

GARRETT PARK ESTATES-WHITE FLINT PARK CITIZENS' ASSOCIATION

11111 Jolly Way
Kensington, Md. 20895
Sept. 14, 2004

Re: Zoning Text Amendment 04-16,
Local Map Amendment Traffic Test – Metro Station Policy Areas

President Silverman, members of the County Council. My name is Natalie Goldberg and I am speaking today on behalf of the Garrett Park Estates/ White Flint Park Citizens Association. We are opposed to Zoning Text Amendment 04-16.

Our Citizen Association represents a down county community sandwiched between the Grosvenor/ Strathmore Metro Station and the White Flint Metro Station. We are dependant upon Rockville Pike for the majority of our trips. We are increasingly more and more frustrated by the everyday congestion that we experience

We believe it is wrong to allow additional unmitigated trips on major congested corridors, especially Rockville Pike. We believe that the Metro Station Policy areas in our community, especially Grosvenor and White Flint, are unable to handle additional congestion generated by the Alternative Review Policy and by the extension of this policy to the rezoning stage; these policy areas lack the grid pattern and the alternative routes common in larger Metro Policy areas and most of their additional traffic will either enter or cross Rockville Pike.

Our Citizen Association has testified on this issue before, both during consideration of the Annual Growth Policy and when Zoning Text Amendment 03-06 was considered. Our arguments remain the same. Our mobility continues to be threatened by the increased congestion caused by continued development; our quality of life is deteriorating.

What is new for this testimony, is the Annual Development and Congestion (ADAC) Report, published July 2004. This report was requested by the Council and prepared by Park & Planning. This report contains two very important points:

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GARRETT PARK ESTATES~WHITE FLINT PARK CITIZENS' ASSOCIATION

1. Rockville Pike is different from all other corridors in the County. The congestion there is not confined to peak hours during the week, but is continuous. At Rockville Pike and Old Georgetown Road, weekend two-way hourly volumes exceeded weekday two-way hourly volumes
2. Not all Metro Station Policy areas are equal and not all of them can handle the congestion caused by Smart Growth policies.

Section 5 of the ADAC Report discusses current congestion based on observed data. The section points out that within Metro Station Policy Areas (MSPAs), Wheaton, Silver Spring, Bethesda and Friendship Heights CBDs have most of their intersections below the CLV standard of 1800. The report goes on to state on page 28:

“The remaining Metro Station Policy Areas, Shady Grove, Twinbrook, White Flint, Grosvenor, and Glenmont, have higher levels of congestion. These areas do not have the street grid density to adequately disperse and handle the corresponding level of automobile trips when compared with the first group of MSPAs above. They also lack a critical mass of transit-supportive and accessible land uses that encourage travelers to take Metrorail, which in turn takes auto trips off the network within the MSPA.”

In other words, some Metro Station Policy areas are already at their congestion levels and can't handle the additional unmitigated trips proposed by the Alternative Review Policy and by this Zoning Text Amendment. These additional unmitigated trips in our area will clearly negatively affect Rockville Pike, an already continuously congested major corridor.

We ask that you not adopt a comprehensive zoning text amendment which treats all Metro Station policy areas alike ignoring the data presented in the ADAC report. We ask instead that you study this ADAC report and reconsider the overall application of Alternative Review procedures in light of existing traffic conditions.


Thank you for listening to our concerns.

PHED COMMITTEE #6
October 21, 2004

MEMORANDUM

October 20, 2004

TO: Planning, Housing, and Economic Development Committee

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: ZTA 04-16, Local Map Amendment Traffic Test – Metro Station Policy Area

ZTA 04-16 was introduced by Councilmember Silverman to reinstate the Annual Growth Policy traffic mitigation process in place of the traffic test that customarily takes place at the rezoning stage. Under ZTA 04-16, an applicant for local map amendment for property located entirely within a Metro Station Policy area may satisfy traffic impact issues by meeting applicable trip generation requirements of the Alternative Review Procedure for Metro Station Policy Areas.

The traffic test for a project seeking reclassification within a Metro Station Policy Area was established in ZTA 03-06 which was approved by the Council in April 29, 2003. The ZTA included a December 31, 2003 sunset date. The ZTA was seen by some Councilmembers as a change in zoning policy and having the effect of putting in place a process that would allow reclassification without full knowledge about the development's impact on traffic and specific impacts on nearby intersections.

The Planning Board has since recommended that the alternative review procedure be reinstated, without an expiration provision. The Board believes it is important that the traffic test for projects in a Metro Station Policy Area be clarified in the Zoning Ordinance. Otherwise, the zoning stage traffic test will be more stringent than the traffic test at subdivision.

A number of questions were discussed by the Committee when this issue was last before you.

1) What policy issue does ZTA 04-16 address?

ZTA 04-16 addresses a policy issue raised by the Hearing Examiner pertaining to how traffic is to be evaluated for Metro station area projects at the zoning and subdivision stages. The Annual Growth Policy provides an alternative to the customary traffic test for development located entirely within a Metro Station Policy area. The Hearing Examiner correctly pointed out

that, under existing zoning law, the Alternative Review Procedure for Metro Station Areas is applied at subdivision and was not designated to be used to satisfy the standard of traffic mitigation at zoning. There may be some disagreement on this point, but in staff's view, if it is the intent of the Council to have a consistent traffic test for Metro Station development, it makes sense to clarify this intent in the Zoning Ordinance. **If ZTA 04-16 is enacted, an applicant for rezoning in a Metro Station Policy Area may satisfy the burden of proof for traffic by meeting the requirements of the Alternative Review Procedure for Metro Station Areas.**

2) *Is the requirement for a traffic study at the zoning stage eliminated by ZTA 04-16?*

The customary traffic study at the zoning stage requires the applicant to demonstrate that any adverse impacts caused by the proposed project will be mitigated by public or private improvements that are "reasonably probable of fruition in the foreseeable future". For the adverse impact test to be evaluated, a local area traffic analysis is usually required to assure that the proposed development will not cause additional congestion.

Under ZTA 03-06, an applicant for development in a Metro Station Policy Area at the zoning stage would be required to provide a traffic study sufficient to demonstrate that 50 percent of the trips from the development can be mitigated and must certify on the Development Plan that mitigating requirements will be met. However, unlike the customary traffic study at zoning, the Alternative Review Procedure traffic study would not necessarily contain information about the capacity of the road system to absorb the level of traffic generated from the project. As had been pointed out by the Hearing Examiner, the assumption that a traditional traffic study conducted at the zoning stage is a more desirable method of determining the impact on roads is not necessarily valid. The Alternative Review Procedure provides a scheme that makes traffic mitigation reasonably certain of fruition, since the analysis occurs later in the development process when the true impact of development is more predictable.

3) *What traffic mitigation obligations are required for subdivision in a Metro Station Policy Area?*

An applicant for subdivision under the Alternative Review Procedure must agree in a contract with the Planning Board to: (1) mitigate at least 50 percent of the trips, (2) make a payment toward transportation improvements, and (3) participate in the area's transportation management organization. **A traffic study is required of the applicant that demonstrates compliance with the Board's trip reduction goals and must include a Local Area Transportation Review (LATR) analysis, if 50 or more total weekday trips during the morning or evening peak period would result from the project.** A comprehensive local area review report must also be prepared to enable the Planning Board to identify any transportation improvements needed to support the subdivision. The Alternative Review Procedure was established to meet smart growth objectives by providing an incentive for Metro Station development. A primary objective of the Alternative Review Procedure is to mitigate traffic by decreasing automobile use and increasing transit ridership, instead of intersection and road improvements, which are not always feasible in Metro Station areas. AGP policy permits greater congestion in policy areas with greater transit accessibility.

Attached is a memorandum prepared by Planning Board staff to clarify the transportation analysis performed at zoning and at subdivision to address adequate public facility requirements. (Circles 4-7).

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Zoning Text Amendment No: 04-16
Concerning: Local Map Amendment Traffic
Test - Metro Station Policy Area
Draft No. & Date: 1 – 7/20/04
Introduced: 7/27/04
Public Hearing: 9/14/04; 1:30 p.m.
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Silverman

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- providing a process for an applicant for reclassification of property located in a Metro Station Policy Area to satisfy the applicant's burden of proof on certain traffic impact issues.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-H-2 "MAP AMENDMENTS—APPLICATIONS"

Add a new section

59-H-2.6 Local Map Amendments – Metro Station Policy Areas

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

