




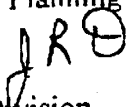
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

April 25, 2003

MEMORANDUM

TO: Planning, Housing and Economic Development Committee
Montgomery County Council

VIA: Charles R. Loehr, Director 
Department of Park and Planning

FROM: Joseph R. Davis, Chief 
Development Review Division

Ronald C. Welke, Supervisor
Countywide Planning Division-Transportation Planning

SUBJECT: Additional Information Concerning Transportation Analysis for Zoning
Text Amendment 03-06

In response to testimony presented at the County Council's public hearing on Text Amendment 03-06, staff has prepared the following to help clarify the transportation analysis performed at zoning and at subdivision to address adequate public facilities requirements. **This text amendment allows the County Council to consider an applicant's proposal to mitigate trips, in accordance with procedures in the AGP, in place of a traffic study focusing on possible intersection improvements.** This enables the Council to take official notice of provisions contained in the AGP as part of the zoning process. The local area transportation review (LATR) analysis prepared by the applicant, at the time of subdivision, remains important for helping to identify specific intersection improvements that may need to be added to the County's Capital Improvements Program (CIP) to be funded in whole or in part through the development impact tax payments that will be required for the project prior to issuance of the building permit(s).

Adequate Public Facilities Review As Part Of A Rezoning Application

As part of the review of a zoning map amendment application, an applicant is required to address the traffic effects expected to result from development under the requested rezoning. The analysis performed as part of a rezoning review has often been described as a "soft test" as compared to the "hard test" that is performed at the time of subdivision.

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING, 8787 GEORGIA AVENUE, SILVER SPRING, MARYLAND 20910
www.mncppc.org

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The County Council has traditionally been concerned with determining that the development resulting from the grant of a rezoning can be accommodated by the nearby intersections. This finding involves a determination that transportation improvements used in the traffic analysis are "reasonably probable of fruition". At subdivision, the applicant must submit a more detailed traffic study and the Planning Board must make more detailed findings that any required intersection and other transportation related improvements will be in place within five years of the approval of the subdivision.

As part of a zoning application, an applicant will normally submit a traffic study that examines the possible effects of the rezoning and proposed development on nearby intersections. The study is reviewed by transportation planning staff and staff from the Montgomery County Department of Public Works and Transportation and Maryland State Highway Administration, as appropriate, prior to preparation of the technical staff report. In addition, the transportation findings are reviewed by the Planning Board and the Hearing Examiner prior to consideration and final action on the rezoning application by the County Council.

The issue raised by the subject text amendment is the fact that at subdivision, the Planning Board's review of transportation adequacy can involve use of alternative review procedures that are contained in the Annual Growth Policy (AGP), as approved by the County Council. The Hearing Examiner noted as part of the review of a recent application that there was no provision in the Zoning Ordinance that allows the County Council to consider AGP alternative review procedures as part of a zoning application. The Alternative Review Procedures for Metro Station Policy Areas requires that the applicant must prepare a report that demonstrates how at least 50 percent of the project trips will be mitigated. The subject text amendment requires an applicant to submit a traffic study demonstrating how the trip mitigation requirement will be met and to further certify on the development plan that mitigation requirements will be met.

Adequate Public Facilities (APF) Review at Subdivision

The "hard test" required as part of the preliminary plan review process involves the submission and review of a detailed traffic study prepared in accordance with the APF requirements of Sec. 50-35 (k) of the Subdivision Regulations. In approving a preliminary plan, the Planning Board must consider policy guidelines contained in the AGP including alternative review procedures available in certain areas. For all preliminary plan applications involving 50 or more weekday peak hour vehicle trips, a LATR analysis must be submitted along with other studies that address AGP policy area transportation review procedures.

The *Local Area Transportation Review (LATR) Guidelines* require that any proposed development that has a "measurable traffic impact on a specific local area" must conduct a traffic study. "Measurable traffic impact" is defined as a development that generates 50 or more total, i.e. existing, new, pass-by and diverted, weekday trips during the peak hour

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of the morning (6:30 a.m. to 9:30 a.m.) and/or evening (4:00 p.m. to 7:00 p.m.) peak period of adjacent roadway traffic.

Alternative Review Procedures such as Metro Station Policy Areas, Expedited Non-Residential Development Approval, and Limited Residential Development, exempt the applicant from both Policy Area Transportation Review and Local Area Transportation Review. However, all information that would normally be necessary for LATR **must** be included in the application. In other words, if the development generates 50 or more total weekday trips during the morning and/or evening peak period, a traffic study **must** be conducted.

The scope of each traffic study is determined by Park and Planning staff, in consultation with the applicant's traffic consultant, prior to the initiation of such study. This would include the intersections to be included, the approved but unbuilt, (i.e. background) development, the trip generation, directional distribution and assignment of both the proposed development and the background development, mode split assumptions, and transportation improvements conditioned on other developers and/or fully funded for construction within five years in the County's CIP or the State's CTP.

Metro Station Policy Areas

The alternative review procedure for Metro Station Policy Areas, in addition to requiring a LATR study, also requires an applicant to agree in a **written contract** with the Planning Board and the County Department of Public Works and Transportation (DPWT) to:

- meet trip reduction goals established by the Planning Board as a condition of approving that subdivision, which will require the applicant to reduce at least 50% of the number of (peak hour) vehicle trips normally attributable to the subdivision, either by reducing trips from the subdivision itself or from other occupants of that policy area;
- participate in programs operated by, and take actions specified by, a transportation management organization (TMO) to be established by County law for that policy area (or a group of policy areas including that policy area) in order to meet the mode share goals established under the preceding paragraph;
- pay an ongoing annual contribution or tax to fund the TMO's operating expenses, including minor capital items such as busses, as established by County law; and
- pay the applicable development impact tax without claiming any credits for transportation improvements.

Trip mitigation agreements (TMAs) are binding documents that are negotiated with applicants when a specific trip reduction goal is to be achieved. Typically, they have a duration of 12 years, after which it is assumed that the public will take over responsibility for mitigating the trips, either with ongoing transportation demand management programs and/or by constructing local area improvements.

The 50% trip reduction required of applicants in Metro Station Policy Areas would be based on the trip generation rates contained in the *LATR Guidelines*. Options such as encouraging transit ridership through subsidy programs, carpooling and vanpooling, market rate parking charges, operating shuttle busses, providing real-time transit information at bus stops and kiosks, flexible work hours, and telework opportunities, all would be considered. An agreement would be signed by the applicant, the Planning Board and DPWT that would include a monitoring component to insure that the goals established by the Planning Board are met. The monitoring would be conducted by an independent consultant hired by the Planning Board and paid for by the applicant. If the goals are not met, then alternative actions would be considered and implemented by the applicant in consultation with Planning Board and DPWT staff.

Planning Board's Recommended Change to T. A. 03-06

The Planning Board met to discuss the subject text amendment at their regular meeting yesterday and recommended approval of the text amendment as introduced by the County Council. The Board believes that staff's proposed change to include the other areas where alternative review procedures are available would be appropriate if it is found by the Council to be within the scope of the advertised text amendment. We believe that expanding the text amendment to encompass these other review procedures represents the same basic policy decision as considering the Metro Station Policy Area alternative review procedures at the time of zoning. If this amendment is found to go beyond the scope of the advertised text amendment, then we recommend approving T. A. 03-06 as introduced and introducing a new text amendment for the other AGP areas that include alternative review procedures.

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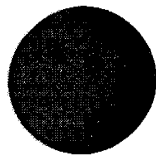
ZTA 03-06

RW
CC

Greater Colesville Citizens Association
P. O. Box 4087
Colesville, Maryland 20914

002278

Montgomery County Council
Attn.: President Michael L. Subin
100 Maryland Ave.
Rockville, MD 20850



April 9, 2003

Re: ZTA 03-06

Dear Council President Subin and Councilmembers:

The Greater Colesville Citizens Association (G.C.C.A.) reviewed the AGP language dealing with the Alternative Review Procedure and concludes that the language is not clear. At the beginning it indicates that the applicant need not submit any application or take any action under the PATR or LATR if certain conditions are met. On the other hand, the AGP indicates that the Planning Board must conduct a comprehensive local area transportation review and specify improvements that need to be added to the CIP.

In order for the Planning Board to fulfill its role, they require a traffic study from the applicant. The Planning Board is not typically in the position of doing traffic studies. Also, for the County to assess whether the applicant will reduce trips by 50%, some type of documentation is required from the applicant that identifies the number of trips his development will generate and contain a plan for achieving the required trip reduction. One way to look at the PATR and LATR statement is that the applicant need not develop and agree to pay for a solution that reduces the total number of trips that his development would produce.

Therefore, G.C.C.A. opposes ZTA 03-06 and urges the language be changed in the next AGP update to clarify this subject.

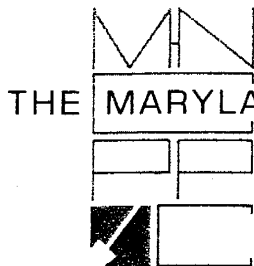
Sincerely,

David Michaels

David Michaels
Without Prejudice
GCCA President

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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

Montgomery County Planning Board
Office of the Chairman

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

September 10, 2004

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board on Zoning Ordinance Text Amendment No. 04-16

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Ordinance Text Amendment No 04-16, at its regular meeting on September 9, 2004. By a vote of 5-0, the Board recommends that the text amendment be approved as modified and included in the technical staff report.

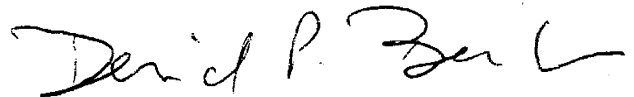
The text amendment as proposed would provide a process for an applicant for reclassification of property located in a Metro Station Policy Area to satisfy the applicant's burden of proof on certain traffic impact issues by meeting applicable requirements of the Alternative Review Procedure for Metro Station Policy Areas in the Annual Growth Policy (AGP). This text amendment would reinstate without expiration ZTA 03-06, adopted by the County Council in the spring of 2003 with a sunset date of December 31, 2003. The County Council included the expiration date in the ordinance with the expectation that the issue would be addressed during the 2003-2005 AGP Policy Element discussions in the Fall, but it was not. In addition to addressing traffic impact issues of development projects using the AGP's Alternative Review Procedure for Metro Station Policy Areas, the Board requests that this text amendment would expand the application of ZTA 04-16 to include projects using the Alternative Review Procedure for Strategic Economic Development Projects, and the Alternative Review Procedures for Corporate Support and Headquarters Facilities. This suggested change will probably affect only a modest number of subdivisions, but the very good arguments for the zoning text amendment in Metro station policy areas are equally applicable to AGP's other alternative review procedures.

The Board believes that the purpose of the Alternative Review Procedure in the AGP is to define the test for transportation adequacy in Metro Station Policy Areas, Strategic Economic Development Projects and Corporate Support and Headquarters Facilities in a way that strikes a balance between local and regional congestion concerns. In this case, it means that approved development will have to achieve a 50 percent trip reduction and make a payment to the County that will be used toward capacity-creating transportation infrastructure.

The Board supports Zoning Text Amendment 04-16 because it correctly clarifies how a development in the aforementioned three Alternative Review Procedure areas will be reviewed for traffic impact. As modified, the text amendment also makes it clear that traffic impact reviews will be done in accordance with the procedures in the Annual Growth Policy. As such, the Board believes that the proposed text amendment is a procedural clarification.

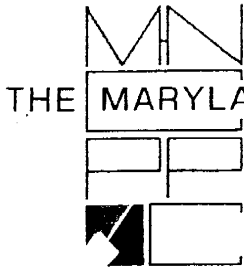
CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on a motion of Commissioner Bryant, seconded by Vice-Chair Perdue, with Commissioners Robinson, Bryant and Wellington, Vice-Chair Perdue and Chairman Berlage voting in favor of the motion, at its regular meeting held in Silver Spring, Maryland on Thursday, September 9, 2004.



Derick P. Berlage
Chairman

DB:gr



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MCPB
Item # 17
9/09/04

DATE: September 3, 2004
TO: Montgomery County Planning Board
VIA: Carlton Gilbert, Zoning Supervisor, Development Review *CG*
FROM: Greg Russ, Zoning Coordinator *GR*
Ronald C. Welke, Supervisor, Transportation Planning *RW*
Karl Moritz, Acting Chief, Research and Technology *KM*
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
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
PUBLIC HEARING: September 14, 2004; 1:30 p.m.

STAFF RECOMMENDATION: APPROVAL with modifications

PURPOSE OF THE TEXT AMENDMENT

This text amendment would reinstate without expiration ZTA 03-06, adopted by the County Council in the spring of 2003 with a sunset date of December 31, 2003. ZTA 03-06 provides a process for an applicant for reclassification of property to satisfy the applicant's burden of proof on certain traffic impact issues, when the applicant is located in a Metro station policy area. In addition to addressing traffic impact issues of development projects using the AGP's Alternative Review Procedure for Metro Station Policy Areas, staff requests that this text amendment would expand the application of ZTA 03-06 to include projects using the Alternative Review Procedure for Strategic Economic Development Projects, and the Alternative Review Procedures for Corporate Support and Headquarters Facilities.

BACKGROUND

Zoning Text Amendment (ZTA) 03-06

In the spring of 2003, the County Council adopted ZTA 03-06, which addressed how an applicant for a local map amendment for property located completely in a Metro station policy area and using the Annual Growth Policy's Alternative Review Procedures for Metro Station Policy Areas may satisfy the applicant's burden of proof on any traffic impact issue. The text amendment states that the applicant may satisfy traffic impact issues by:

- (a) showing that the applicant will satisfy the applicable trip reduction requirements of the Alternative Review Procedures for Metro Station Policy Areas contained in the Annual Growth Policy; and
- (b) including in the applicant's certified development or diagrammatic plan a binding element that commits the applicant to comply with all relevant requirements of the Alternative Review Procedures for Metro Station Policy Areas contained in the Annual Growth Policy.

The text amendment expired on December 31, 2003. The County Council included the expiration date in the ordinance with the expectation that the issue would be addressed during the 2003-2005 AGP Policy Element discussions in the fall, but it was not.

Prior to the adoption of ZTA 03-06, the test of traffic impact at rezoning for development in Metro station policy areas was not well-defined. As a result, the process contained uncertainties for both developers and neighbors. There were not clear guidelines for determining which intersections to analyze, what congestion standards to use, or what background traffic or planned improvements to count. Although this lack of clarity is a concern *outside* as well as *inside* Metro station policy areas (see Appendix/Reference located following Recommendation), development in Metro station policy areas provides the clearest example of how inconsistent traffic tests at various stages of the development process can undermine public policy.

A cornerstone of the County's land use policy is to encourage concentrations of mixed-use development at designated Metro stations. However, adequate public facilities requirements can create a regulatory barrier to these concentrations, the "smartest of smart growth." To make sure that didn't occur, the County Council created within the AGP the *Alternative Review Procedure for Metro Station Policy Areas*, which allowed subdivision applications to be approved even when a proposed development failed the standard traffic tests. However, because the traffic test at zoning was unchanged, a development project could be held up at the zoning stage for traffic problems that it could easily pass at the subdivision stage.

Both the Montgomery County Planning Board and Planning staff recommended the approval of ZTA 03-06. The Board and the staff has previously supported the AGP's

Alternative Review Procedure for Metro Station Policy Areas, and viewed the zoning text amendment as a necessary complement to it.

The Annual Growth Policy's Alternative Review Procedures

The Annual Growth Policy tests proposed subdivisions to determine if the transportation network is adequate to support the proposed development. The AGP contains a limited number of "Alternative Review Procedures" which, in essence, are procedures for allowing development to be approved when the project would not pass the standard review procedures. The alternative review procedures identify development types that provide transportation and/or non-transportation benefits to the County that outweigh their negative impact on traffic congestion.

Development types eligible for Alternative Review Procedure status are: development in close proximity to certain Metro stations ("Metro station policy areas"), development that serves or expands the headquarters of a major corporation, and development designated by the County Council as a "Strategic Economic Development Project."

Although there is an "Alternative Review Procedure" that concerns certain golf course communities, staff is not including that AGP provision in this discussion because the last development project to be eligible for this provision is through the zoning process.

Alternative Review Procedures for Metro Station Policy Areas

In planning for the growth of Montgomery County, staff has recognized that while concentrating development near Metro stations is a more efficient use of the transportation network than dispersed development, these benefits come at the cost of increased roadway congestion in the vicinity of the stations. In other words, concentrations of development at Metro stations are not achievable unless higher levels of roadway congestion are allowed. The Annual Growth Policy's Policy Area Transportation Review (in effect until July 1, 2004) and Local Area Transportation Review (intersection congestion test) have allowed higher levels of congestion in Metro Station Policy Areas for this reason.

Beginning in the early 1990s, concern was raised that the AGP's less-stringent congestion standards were not enough to keep the AGP and the adequate public facilities ordinance from being too great an impediment to concentrated development near Metro stations. In 1994, the County Council adopted the first "Alternative Review Procedure for Metro Station Policy Areas" which offered developers relief from Local Area Transportation Review upon agreement to make a "development approval payment." The procedure was used, perhaps most notably by the Conference Center, but by the late 1990s it had become clear that Policy Area Transportation Review was also a major barrier to development near Metro stations.

During the 2001-2003 AGP Policy Element review, the Planning Board proposed a new "Alternative Review Procedure for Metro Station Policy Areas" that would allow a developer to meet the requirements for both AGP transportation tests by making a payment and by providing an added component of affordable housing. The County Council agreed with the Planning Board's goal but not the means: the Council substituted a requirement for a 50 percent reduction in weekday peak hour trips for the requirement for added affordable housing. The new procedure went into effect on November 1, 2001.

In November 2003, the Montgomery County Council again reviewed the Annual Growth Policy and, for the AGP beginning July 1, 2004, eliminated Policy Area Transportation Review and retained Local Area Transportation Review. On the whole, the "new LATR" requires a more comprehensive traffic study than the previous version.

Additionally, the Council retained the Alternative Review Procedure for Metro Station Policy Areas. Since Policy Area Transportation Review is eliminated, a developer will avail himself of the Alternative Review Procedure only if his project fails the LATR test. The "new" Alternative Review Procedure for Metro Station Policy Areas, in addition to requiring a LATR-type traffic study to identify transportation infrastructure or trip mitigation measures to be considered by public agencies, requires an applicant to agree in a written contract with the Planning Board and the County Department of Public Works and Transportation (DPWT) to:

- meet trip reduction goals established by the Planning Board as a condition of approving that subdivision, which requires the applicant to reduce at least 50% of the number of weekday (peak hour) vehicle trips normally attributable to the subdivision, either by reducing trips from the subdivision itself or from other occupants of that policy area;
- participate in programs operated by, and take actions specified by, a transportation management organization (TMO) to be established by County law for that policy area (or a group of policy areas including that policy area) in order to meet the mode share goals established under the preceding paragraph;
- pay an ongoing annual contribution or tax to fund the TMO's operating expenses, including minor capital items such as busses, as established by County law; and
- pay double the applicable development impact tax without claiming any credits for transportation improvements.

Trip mitigation agreements (TMAs) are legally-binding documents that are negotiated with applicants when a specific trip reduction goal is to be achieved. Agreements must be at least 12 years in duration but can be as long as 15 years, after which it is assumed that the public will take over responsibility for mitigating the trips, either with ongoing transportation demand management programs and/or by constructing local area improvements.

The 50% trip reduction required of applicants in Metro Station Policy Areas is based on the trip generation rates contained in the LATR Guidelines. Options such as

encouraging transit ridership through subsidy programs, carpooling and vanpooling, market rate parking charges, operating shuttle busses, providing real-time transit information at bus stops and kiosks, flexible work hours, and telework opportunities, are all considered. A legally-binding agreement is signed by the applicant, the Planning Board and DPWT that includes a monitoring component to insure that the goals established by the Planning Board are met. The monitoring is conducted by an independent consultant hired by the Planning Board and paid for by the applicant. If the goals are not being met, then alternative actions are considered and implemented by the applicant in consultation with Planning Board and DPWT staff.

Other "Alternative Review Procedures"

As was the case last spring with ZTA 03-06, staff recommends that the text amendment apply to two other alternative review procedures in the Annual Growth Policy. This suggested change will probably affect only a modest number of subdivisions, but the very good arguments for the zoning text amendment in Metro station policy areas are equally applicable to AGP's other alternative review procedures. These procedures are:

- The Special Provisions for Corporate Support and Headquarters Facilities; and
- Strategic Economic Development Projects

The purpose of these procedures is to provide certain desired development projects with an alternative and/or reduced requirement for meeting transportation adequacy tests. Just as in the case of the Alternative Review Procedure for Metro Station Policy Areas, it does not make sense to reduce transportation requirements in the AGP only to impose standard transportation requirements at zoning.

As stated above, the number of subdivisions that might seek approval under the three procedures is modest. There have been no approvals as yet under either of them.

Master and Sector Plan Conformance

The Community-Based Planning Division reports that the proposed text amendment would not affect the goals and objectives of any master and sectors plans.

RECOMMENDATION

Staff recommends that Zoning Text Amendment No. 04-16 be approved as modified to include the additional two alternative review procedures.

The purpose of Alternative Review Procedures in the AGP is to define the test for transportation adequacy for certain highly-desirable development projects (in Metro areas, corporate headquarters, and strategic economic development projects) in a way that strikes a balance between competing objectives.

In the case of Metro station area development, the Alternative Review Procedure strikes a balance between local and regional congestion concerns. Approved development will have to achieve a 50 percent trip reduction and make a payment to the County that will be used toward capacity-creating transportation infrastructure. The purpose of the Alternative Review Procedure for Metro Station Policy Areas would be undermined if additional transportation test requirements are layered over top of that required by the AGP at preliminary plan.

The other Alternative Review Procedures strike a balance between traffic congestion concerns and economic development objectives. The purpose of these procedures would be undermined if a traffic test at the zoning stage were more stringent than the traffic test at subdivision.

If, in fact, it is in the best interest of the County to subject these development types to more stringent transportation adequacy tests, staff believes it would be more appropriate to strengthen the test at subdivision.

Requirements for a Traffic Study

For applicants using the alternative review procedures, staff continues to recommend against requiring a traffic study at the time of local map amendment. As ZTA 03-06 provided, the applicant should instead show that their satisfaction of the requirements of the AGP procedure they are using has a "reasonable probability of fruition." In the case of the Alternative Review Procedure for Metro Station Policy Areas, those requirements are to:

- (a) show that the applicant will satisfy the applicable trip reduction requirements of the Alternative Review Procedure for Metro Station Policy Areas contained in the Annual Growth Policy; and
- (b) include in the applicant's certified development or diagrammatic plan a binding element that commits the applicant to comply with all relevant requirements of the Alternative Review Procedure for Metro Station Policy Areas in the Annual Growth Policy.

A traffic study is required of Metro Station Policy Area development projects using the "Alternative Review Procedure for Metro Station Policy Areas" as part of the review of the application for a preliminary plan. The purpose of this traffic study is to help public officials identify transportation improvements needed to support area development. It is not necessary or particularly useful to have another traffic study done at the time of local map amendment.

The proposed Zoning Text Amendment is included as Attachment 1. A copy of Ordinance No. 15-06, adopting ZTA 03-06, is provided as Attachment 2.
Attachments:

1. Zoning Text Amendment No. 04-16 (as modified by staff)
2. Ordinance No 15-06 (ZTA 03-06)
3. Planning Board Transmittal Letter for reinstatement of ZTA 03-06