

# ATTACHMENT 1

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**

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By: Councilmember Silverman

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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, or for property qualifying as a Corporate Support and Headquarters Facility or a Strategic Economic Development Project, 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]]~~ Alternative Review Procedures

*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.*

18

*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:*

1           Sec. 1. Division 59-H-2 is amended as follows:

2   **DIVISION 59-H-2. MAP AMENDMENTS - APPLICATIONS.**

3   \*       \*       \*

4   **59-H-2.6. Local Map Amendments– Metro Station Policy Areas.**

5           An applicant for a local map amendment for property that: is located  
6 completely in a Metro station policy area, is a Corporate Support and Headquarters  
7 Facility, or is designated as a Strategic Economic Development Project, [[that]]  
8 and will be subject to the Alternative Review Procedures [[for Metro Station  
9 Policy Areas]] contained in the Annual Growth Policy, may satisfy the applicant’s  
10 burden of proof on any traffic impact issue by:

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

18  
19 **[59-H-2.6] 59-H-2.7 Sectional and district map amendments.**

20   \*       \*       \*

21           **Sec. 2. Effective date.** This ordinance becomes effective immediately upon  
22 Council adoption.

23  
24 This is a correct copy of Council action.

25  
26 \_\_\_\_\_  
27 Mary A. Edgar, CMC

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28: Clerk of the Council

Ordinance No: 15-06  
Zoning Text Amendment No: 03-06  
Concerning: Local Map Amendments -  
Metro Station Policy Area  
Draft No. & Date: 2 - 4.29/03  
Introduced: 3/18/03  
Public Hearing: April 21, 2003; 7:00 PM  
Adopted: April 29, 2003  
Effective: April 29, 2003

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

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By: District Council

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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, and **[.]**
- including a December 31, 2003, expiration date.

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.*

## OPINION

Zoning Text Amendment (ZTA) No. 03-06 was introduced by the District Council on March 18, 2003. ZTA 03-06 clarifies an issue raised by the Hearing Examiner in Local Map Amendment G-801, that a zoning text amendment arguably is needed if the Annual Growth Policy traffic mitigation process is to be applied as a method of traffic review at the zoning stage. Under ZTA 03-06, an applicant for local map amendment for property located within a Metro station policy area may satisfy traffic impact issues by meeting applicable trip reduction requirements of the Alternative Review Procedure for Metro Station Policy Areas.

The Montgomery County Planning Board in its report to the Council recommended that ZTA 03-06 text amendment be approved, as introduced. However, the Board believes that some future action should be taken to address the same policy issued raised by the Hearing Examiner for other development circumstances subject to an alternative review procedure under the Annual Growth Policy.

The County Council held a public hearing on April 21, 2003, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on April 28, 2003 to review the amendment. The Committee addressed a number of questions raised at the public hearing on ZTA 03-06:

1) What Policy Issue does ZTA 03-06 Address?

ZTA 03-06 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. It was the view of the Committee 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. The Committee supports allowing applicant for rezoning in a Metro Station Policy Area to 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 03-06?

Contrary to much of the public hearing testimony, ZTA 03-06 would not allow a developer to avoid providing a traffic study at the zoning stage. 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. The Committee noted that, 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.

After a full discussion of issues raised at the public hearing and the comments of the Montgomery County Planning Board, the Committee recommended that ZTA 03-06 be approved as introduced.

The District Council reviewed Zoning Text Amendment No. 03-06 at a worksession held on April 29, 2003, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee. The Council added a provision that will sunset ZTA 03-06 on December 31, 2003. It is the intent of the Council to review, before December 31, 2003, the Alternative Review Procedure for Metro Station Policy Areas and its relationship to the type of traffic analysis an applicant must provide at the zoning stage.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 03-06 will be approved as introduced.

*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:*

1. Sec. 1. Division 59-H-2 is amended as follows:

2. **DIVISION 59-H-2. MAP AMENDMENTS - APPLICATIONS.**

3. \* \* \*

4. **59-H-2.6. Local Map Amendments– Metro Station Policy Areas.**

5. An applicant for a local map amendment for property located completely in  
6. a Metro station policy area, that will be subject to the Alternative Review  
7. Procedure for Metro Station Policy Areas contained in the Annual Growth Policy,  
8. may satisfy the applicant’s burden of proof on any traffic impact issue by:

9. (a) showing that the applicant will satisfy the applicable trip reduction  
10. requirements of the Alternative Review Procedure for Metro Station  
11. Policy Areas contained in the Annual Growth Policy; and

12. (b) including in the applicant’s certified development or diagrammatic  
13. plan a binding element that commits the applicant to comply with all  
14. relevant requirements of the Alternative Review Procedure for Metro  
15. Station Policy Areas contained in the Annual Growth Policy.

16.  
17. **[59-H-2.6] 59-H-2.7 Sectional and district map amendments.**

18. \* \* \*

19. **Sec. 2. Effective date.** This ordinance becomes effective immediately upon  
20. Council adoption.

21. **Sec.3 Expiration Date.** This ordinance expires on December 31, 2003.

22.  
23. This is a correct copy of Council action.

24.  
25. Mary A. Edgar  
26. Mary A. Edgar, CMC

27. Clerk of the Council

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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Chairman, Montgomery County Planning Board

January 29, 2003

The Honorable Steven Silverman  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Mr. Silverman:

This letter and accompanying staff reports address two issues related to the Annual Growth Policy's Alternative Review Procedures. The first responds to a directive that was included in the Annual Growth Policy adopted by the County Council last fall:

"The Planning Board must submit to the Council by February 1 an AGP amendment proposing a specific maximum number of unmitigated trips for each Metro Station Policy Area under the Alternative Review Procedure for Metro Station Policy Areas, considering its current number of jobs and housing units and its current congestion levels."

The second is a proposed zoning text amendment which would reinstate and modestly expand ZTA 03-06, which sunset on December 31, 2003. The zoning text amendment clarifies the requirements of a traffic test at zoning for development projects using the AGP's Alternative Review Procedures.

*AGP Amendment: Unmitigated Trips*

Although we have prepared the requested AGP amendment, the Planning Board does not recommend that it be adopted because the Planning Board does not believe that limiting use of the Alternative Review Procedure for Metro Station Policy Areas is 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 recommendations on the 2003-2005 AGP Policy Element, 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 Metro station areas to support that development.

Metro station development is the smartest of smart growth. The County as a whole is much better off if development, when it occurs, locates near a Metro station

because the impact on the overall transportation network is less than if the same development located elsewhere in the County. Additionally, Montgomery County will not be able to take full advantage of our enormous investment in Metrorail if we do not locate higher density, mixed use development within walking distance of the stations.

Even though Metro-accessible development generates fewer automobile trips, increased density in these locations causes increased congestion. This means that if we do not allow higher levels of congestion near Metro stations, we will not achieve the desired densities. We can justify allowing the additional congestion because in these areas people have a high-quality alternative to the automobile: Metro.

When development proposals in Metro station areas will result in unacceptable levels of congestion, the Planning Board believes the appropriate public response is to provide the transportation improvements and programs to solve the congestion issue, rather than halting development approvals. The Planning Board recommends that the County Council give priority to Metro station areas when allocating scarce transportation dollars so that undesirable levels of congestion do not result from new development in these areas.

The AGP adopted by the County Council requires the Planning Board to prepare an Annual Development Approval Report. This report will include a review of approved and pending development projects that will impact road and school capacity. The report must include a prioritized list of road and intersection improvements based on current and projected congestion patterns. In the Annual Development Approval Report, the Planning Board will track development approved under the Alternative Review Procedure for Metro Station Policy Areas and recommend transportation improvements needed to support those projects.

If the County Council would like to pursue a limit on use of the Alternative Review Procedure for Metro Station Policy Areas, the Planning Board agrees with the methodology proposed in the accompanying staff report. The suggested approach would say that a development project could not use the Alternative Review Procedure for Metro Station Areas if its Local Area Transportation Review showed that it would cause any intersection to exceed its standard by more than 200 critical lane movements.

The two major benefits to this approach are that it does not require a large additional analytical burden on either the applicant or the Planning Board, and that the LATR-type analysis would be more accurate than attempting to set areawide unmitigated trip limits for each Metro station policy area. The negative aspect of this approach is that desired development could be held back by congestion at a single intersection.

The Planning Board received a letter from the Garrett Park Estates – White Flint Citizens' Association suggesting a different method for setting the intersection congestion standard that would be used to determine eligibility for the Alternative Review Procedure for Metro Station Policy Areas. Instead of allowing a proposed development project to exceed the LATR standard by 200 CLV, they suggest allowing

proposed development to exceed the standard by a certain percentage. The effect of the Garrett Park Estates – White Flint Citizens’ Association recommendation would be to make eligibility for the Alternative Review Procedure for Metro Station Policy Areas more sensitive to traffic congestion at intersections outside the Metro station policy area. The Planning Board agreed with the staff’s assertion that the absolute number of 200 – rather than a percentage – is a better approach, as it would limit eligibility for the Alternative Review Procedure at the point when an intersection is still operating, but congestion has reached unacceptably high levels.

*Traffic Test at Zoning for Development Using the AGP’s Alternative Review Procedures*

The Montgomery County Planning Board recommends that the County Council amend the zoning ordinance to reinstate Zoning Text Amendment 03-06 and expand its scope to apply, not only to development projects using the AGP’s Alternative Review Procedure for Metro Station Policy Areas, but also the Alternative Review Procedure for Strategic Economic Development Projects, and the Alternative Review Procedures for Corporate Support and Headquarters Facilities. The Planning Board recommends that the zoning text amendment be adopted without a sunset provision.

The Planning Board makes this recommendation because the Planning Board believes it is important to have specific traffic test parameters in the zoning ordinance and because the Planning Board continues to support the three Alternative Review Procedures. The Planning Board believes the County Council agrees with this position, since the Council retained these provisions when it reviewed the AGP last fall. The purpose of these procedures will be undermined if a traffic test at the zoning stage were more stringent than the traffic test at subdivision.

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

The Planning Board received a letter from the Garrett Park Estates – White Flint Citizens’ Association noting that if the AGP amendment regarding unmitigated trips is adopted, the zoning text amendment would need to be reworded to be consistent. We believe the proposed amendment already requires the applicant to show that his project is eligible to use the Alternative Review Procedure, but we would not oppose making that more explicit.

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We hope that you find the enclosed information helpful. The Montgomery County Planning Board and staff are at your disposal as you consider these two issues.

Sincerely,



Derick P. Berlage  
Chairman

DPB:KWM

Enclosures