



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

MCPB
Item #14
1/11/07

DATE: January 2, 2007
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RK*
Ralph Wilson, Acting Zoning Supervisor *RW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance to exempt existing commercially and industrially zoned land at the time of rezoning application from a development plan finding of substantial compliance with the use and density recommended by a master plan or sector plan

TEXT AMENDMENT: No. 06-26
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Knapp
INTRODUCED DATE: December 12, 2006

PLANNING BOARD REVIEW: January 11, 2007
PUBLIC HEARING: January 16, 2007; 1:30pm

STAFF RECOMMENDATION: DENIAL

Staff recommends denial of the proposed Zoning Text Amendment (ZTA) for the following reasons:

- Inconsistency with long-standing zoning and development review process
- De-emphasizes guidance in the applicable Master or Sector Plan
- Broader scope with potential unintended consequences

In order for a rezoning application to be approved for a number of floating zones, a finding is required that the Development Plan be in substantial compliance with the use and density recommended in the applicable master or sector plan. The "substantial compliance" standard is now uniformly applied to all properties subject to Development Plan review. ZTA 06-26 would modify this requirement

by establishing as exception for existing commercial or industrial zoned properties. In staff's view, exempting commercial and industrial properties from the "compliance" finding lacks rational justification, de-emphasizes the importance of land use and zoning policies established in approved and adopted master and sector plans, and potentially has widespread unintended consequences.

PURPOSE OF THE TEXT AMENDMENT

To amend the Zoning Ordinance to exempt existing commercially and industrially zoned land at the time of rezoning application from a development plan finding of substantial compliance with the use and density recommended by a master plan or sector plan

BACKGROUND/DISCUSSION

There is some interest in eliminating the substantial compliance finding, as it would apply to the Webb Tract. The Webb Tract includes 134 acres of I-4 zoned property currently undeveloped and located on Snouffer School Road, north of the Montgomery County Airpark. Although the Webb tract is not the only property that could potentially benefit from the text amendment, it should be noted that the owners of this property have signaled their intention to apply for reclassification of the property to the PRC zone, a zone that requires development plan approval as part of the reclassification process. Because the Gaithersburg master plan specifically recommends against residential development on the Web Tract, the current requirement that a rezoning involving a Development Plan be in substantial compliance with the applicable master plan would render reclassification to a residential zone highly questionable. (see excerpt in Attachment 2).

ANALYSIS

Analyses of the aforementioned reasons for recommending denial are discussed below.

Planning/Zoning Process

Zoning Text Amendment 06-26 (Attachment 1) would exempt existing commercially and industrially zoned land at the time of rezoning application from a development plan finding of substantial compliance with the use and density recommended by a master plan or sector plan. Zones that require development plan approval include:

- P-D-Planned development
- MXPD-Mixed use planned development
- Town sector

- Planned neighborhood
- P-R-C-Planned retirement community
- PCC-Planned cultural center
- R-4plex-Residential, fourplex
- R-MH-Planned mobile home development
- TS-R-Transit station, residential
- TS-M-Transit station, mixed
- Country inn
- Mineral resource recovery

As seen above, 12 zones are impacted by the proposed text amendment. At least four of these zones (P-D, MXPD, TS-R, TS-M and the Mineral resource recovery zone—possibly several others) include language that requires some form of master plan or sector plan recommendation prior to reclassification to the zone. **Staff has major concerns with conflicting zoning policy being established by permitting the development plan process to exempt certain zones from master plan compliance although several of these zones specifically require a master plan recommendation to be established. In effect, this circumvents the master planning and zoning process (see excerpt—Attachment 2 as an example).**

Conformance with the Applicable Master Plans or Sector Plans

A master plan provides a comprehensive guide for the physical development of the area. It does not take the place of existing comprehensive zoning nor does it compel either the grant or denial of requested rezoning. The master plan embodies a set of publicly adopted guidelines and policies regarding land use and public facilities that are considered by the County Council in the process of making planning and zoning decisions. A plan is developed through a number of steps, with provision for citizens to express their views at various stages, including a citizens advisory committee that helps in producing plans that are sensitive to community needs. In many cases, master plans have specific written recommendations for properties or areas within the plan resulting from the citizen/public official collaborations. In these cases, it is clear that the subject text amendment could circumvent the land use and density policies established for the properties. In addition, there are more circumstances where the master plan is “silent” in terms of specific text recommendations but provides zoning recommendations on the “Proposed Zoning” maps that maintain the current zoning on the property. **Under these circumstances, it would not be unreasonable to assume that the proposed text amendment could impact most County master plans or sector plans since most have both commercial and industrial properties within their areas. Staff does not support such a broad scope recommendation, especially with the possibility of unintended consequences throughout the County.**

Broader Implications/Further Unintended Consequences

In addition to the issues as discussed above, it is unclear how providing an exception from the master plan or sector plan compliance for existing commercial or industrial properties that request reclassification to a development plan zone relates to those properties that also must adhere to the subdivision review procedures. More specifically as stated below, a preliminary plan must substantially conform to the applicable master plan unless the Planning Board finds reasons that the recommendations are no longer appropriate. Again, this provision further adds to the unintended confusion of the subject request.

Sec. 50-35. Preliminary subdivision plans—Approval procedure

(l) Relation to Master Plan. *In determining the acceptability of a preliminary plan submitted under this Chapter, the Planning Board must consider the applicable master plan, sector plan or an urban renewal plan. A preliminary plan must substantially conform to the applicable master plan, sector or an urban renewal plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan, sector plan or an urban renewal plan recommendation no longer appropriate.*

RECOMMENDATION

Based on the analysis as discussed above, staff recommends that ZTA 06-26 be denied. If the Council proceeds with this Zoning Text Amendment, it would need to be more limited in scope.

GR

Attachments

1. Proposed Text Amendment No. 06-26
2. Excerpt from Memorandum to Greg Russ from Community-Based Planning on ZTA 06-18

ATTACHMENT 1

Zoning Text Amendment No: 06-26
Concerning: Development Plan Findings
Draft No. & Date: 1 – 12/12/06
Introduced: December 12, 2006
Public Hearing: 1/16/07; 1:30 pm.
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 Knapp

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

- exempting existing commercially and industrially zoned land from a development plan finding of substantial compliance with the use and density recommend by a master plan or sector plan; and
- generally amending development plan requirements.

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

DIVISION 59-D-1	“DEVELOPMENT PLAN”
Section 59-D-1.6.	“Approval by district council”
Section 59-D-1.61	“Findings”

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:

Sec.1. DIVISION 59-D-1 is amended as follows:

DIVISION 59-D-1. DEVELOPMENT PLAN.

* * *

59-D-1.6. Approval by district council.

59-D-1.61. Findings.

Before approving an application for classification in any of these zones, the District Council must consider whether the application, including the development plan, fulfills the purposes and requirements in Article 59-C for the zone. In so doing, the District Council must make the following specific findings, in addition to any other findings which may be necessary and appropriate to evaluate the proposed reclassification:

- (a) The zone applied for substantially complies with the use and density indicated by the master plan or sector plan and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies, except that a finding of substantial compliance with the use and density indicated by the master plan or sector plan is not required if the existing zoning is a commercial or industrial zone. However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a development plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within

the constraints of any applicable density or height limit. If the Committee finds that the development would not be financially feasible, the Planning Board must recommend to the District Council which if any of the following measures authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:

- (1) exceeding an applicable height limit, lower than the maximum height in the zone, that was recommended in a master plan or sector plan,
- (2) exceeding an applicable residential density limit, lower than the maximum density in the zone, that was recommended in a master plan or sector plan, or
- (3) locating any required public use space off-site.

* * *

Sec. 2. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Airpark Land Use Policy and Webb Tract Background

The Montgomery County Airport is operated by the County Revenue Authority, which must maintain compliance with Federal Aviation Administration (FAA) regulations for both navigational safety and the protection of people and property on the ground. For over 40 years, land use policy and planning around the Airpark has emphasized the importance of compatibility and safety by creating parkland at either ends of the runway and non-residential zoning adjacent to the airport. The Webb Tract is the last undeveloped parcel of significant size near the airport. The current owners of the Webb Tract, residential builders Miller and Smith, have indicated their support for the proposed ZTA and their plans to apply for rezoning of the property from I-4 to the P-R-C Zone. In light of an expected Local Map Amendment to rezone the Webb Tract, it is imperative that decision makers be aware that applying a residential zone to this property will reverse a long-standing land use policy for parcels around the airport and for this property specifically. If this land use policy is altered, the viability of the airport at this location may become a consideration for the County.

The airport operates without a control tower to guide landings, which are governed by the pilot's visual perception of the airport runway, radio communications with other pilots as well as airport personnel on the ground, and observation of federal aviation laws. As land around the airport developed, adjustments to flight operations were made to minimize direct flights over residential neighborhoods. These maneuvers were described in the 1985 *Gaithersburg Vicinity Master Plan* and are still in effect today: *"Pilots taking off toward the northwest usually make a tight, 20-degree right turn over Snouffer School Road in order to avoid overflight of the existing residential area. This atypical flight path, known as the "Gibson turn" (or "noise abatement turn") was established as residential development began to appear around the airport."* (page 37) This atypical turn essentially has flights making a U-turn over the Webb Tract, rather than going straight off the runway, which would quickly place planes at low elevations over residences. Due to these flight operations, the impact of the Airport on the Webb Tract is greater than other parcels in the area. (See Figure 2.)

When the Airpark was established at its current location off Woodfield Road in 1960, the land immediately surrounding the Airport to the north and south was rezoned from rural residential (R-R, which became R-200) to industrial. In 1965, the County Council reclassified 43 acres on the east side of Woodfield Road from R-R to I-1, stating that due to the proximity of the land to the airport: *"the subject tract cannot reasonably and economically be expected to be developed as single family residential and it will provide a logical 'rounding out' of light industrial zoning surrounding the Airpark."* (Resolution #5-2001, County Council Opinion.)

The 1971 *Gaithersburg Vicinity Master Plan* discussed the Airpark, specifically mentioning that the property to the northwest of the airport (i.e., the Webb Tract) was still a concern: *The control of development off the northwest end of the runway still remains of concern. Because of the noise and hazard factors and interference with radio and TV operation associated in such a location, no*

residential uses should be authorized. Therefore, the Plan recommends that uses be limited to appropriate public or semipublic uses, as shown on the Plan. (page 21)

In 1978, the owners of the Webb Tract submitted an application for a sewer service category change to permit development of a residential subdivision. The sewer service application was denied due to concerns for the safety of future residents living adjacent to the airport. The property owners pursued other options, including rezoning the property to light industrial, which occurred through the 1985 Gaithersburg Master Plan process.

The 1985 *Gaithersburg Vicinity Master Plan* and its Technical Appendix had a lengthy discussion of the Airport and its influence upon land uses in the area. It recommended non-residential land use in areas most affected by airport noise. The Plan created a new light industrial zoning category, the I-4 Zone, for properties impacted by the Airport and the Sectional Map Amendment applied the I-4 Zone to land north and south of the airport runway (which had been zoned I-1 and I-2) and to the Webb Tract (which had been zoned R-200).

In September 1991, the Planning Board approved a Preliminary Plan (#1-86225) for the Webb Tract for 1.2 million square feet of light industrial uses in the I-4 Zone, conditioned upon a number of phased road improvements. In 1994 the Planning Board granted an extension to the Preliminary Plan, but it eventually expired. In July 2004, the Planning Board approved another Preliminary Plan (#1-04018) for the Webb Tract for 1.2 million square feet of light industrial development with numerous conditions, including the widening of Snouffer School Road.