



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

MCPB
ITEM # 2
2/24/11

MEMORANDUM

DATE: ~~December 16, 2010~~
Revised January 13, 2011 Feb 17, 2011 JS

TO: Montgomery County Planning Board

VIA: Rollin Stanley, Director RS

FROM: Jacob Sesker, Planner Coordinator (301-650-5619) JS
Office of the Planning Director

SUBJECT: White Flint Staging-Subdivision Staging Policy Amendments

Overview

Amendments to the Subdivision Staging Policy (formerly "Growth Policy") are necessary in order to manage staging under the White Flint Sector Plan. In addition, the Planning Board will adopt guidelines to implement the White Flint Sector Plan which may address in greater detail the protocols that will be applied to manage a staging capacity queue.

This memorandum introduces and summarizes the proposed changes to the Subdivision Staging Policy. All proposed changes will be part of a new "alternative review procedure" that would apply to all new development within the White Flint Policy Area. Staff has broken the proposed alternative review procedure into eleven parts. As appropriate, staff has included a discussion of background, the language of the proposed amendment, and any additional notes or comments. Attachment A assembles the language from each of the eleven parts into the proposed Subdivision Staging Policy ("Growth Policy") amendment.

Staff will be meeting with several stakeholders after this memorandum is posted but before the Planning Board's discussion on February 24, 2011. If consensus can be reached on changes to the language as proposed, staff will present a red-line to the Board that reflects that consensus and how it differs from the text proposed below.

Planning Board action to approve and transmit these amendments to the Council is currently scheduled for March 3, 2011.

1. Exemption from PAMR and LATR

Council Resolution 16-1324 (adopted April 27, 2010) amended the Growth Policy to reflect certain specific recommendations of the White Flint Sector Plan. However, that language was adopted before the Council's deliberations on White Flint infrastructure finance had even begun. As such, some future modification to that language was anticipated. At the time of the amendment, the exemptions from PAMR and from LATR were included in separate sections (TP 2.2.1 and TL2, respectively).

Staff recommends consolidating the PAMR and LATR exemptions into one sentence—this approach is consistent with the overall approach of consolidating all amendments into an alternative review procedure. Staff proposes that the exemption language should now read:

Exemption from PAMR and LATR
Effective July 1, 2011, an applicant for APF for any development that will be built within the White Flint Special Taxing District established under County Code Chapter 68C is exempt from TP Policy Area Mobility Review and TL Local Area Transportation Review.

2. Effect on development elsewhere

Effect on development elsewhere was addressed in Council resolution 16-1324. As above, the issue was addressed in TP 2.2.1 for Policy Area Mobility Review and in TL2 for Local Area Transportation Review.

Staff recommends consolidating the language into one sentence. Staff proposes that the language addressing the effect on development outside of White Flint should now read:

Effect on development outside of the White Flint Special Taxing District
The traffic impact of such developments must be considered in any TP Policy Area Mobility Review or TL Local Area Transportation Review calculations for any development elsewhere.

3. Relationship to requirement for adequate public facilities

The Council's intent was that development that occurs within the special taxing district will be exempt from the current APF tests for transportation (PAMR and LATR) and that non-transportation APF requirements would remain unchanged. An alternative review procedure for White Flint should address how or whether development in White Flint will be tested for adequate transportation facilities, as well as the relationship between the allocation of staging capacity and APF validity periods.

As background, County Code Chapter 8-31 (requirement for timely adequate public facilities determination; applicability) does not allow the Department of Permitting Services to issue a building permit unless the Planning Board has made a timely determination of public facilities. The language of that section is as follows:

“(a) As provided in subsection (b), the Director may issue a building permit only if the Planning Board has made a timely determination that public facilities will be adequate to serve the proposed development encompassed by the permit application under:

- (1) Chapter 50, if required;
- (2) Chapter 59 for project plans or site plans, if required; or
- (3) Section 8-32 for development if the Planning Board or its designee finds that a new adequate public facilities determination is required under this Article, Section 50-20, or other applicable law.

The work performed after the permit is issued must conform to the uses and amount of development for which the adequacy of public facilities was reviewed.

(b) *Applicability.* This Article applies to each applicant for a building permit on a recorded lot for which no valid finding of adequate public facilities has been made, including any recorded lot for which an original finding of adequate public facilities has expired.”

Chapter 8-31 applies the adequate public facilities requirement to all projects that must go through subdivision (Chapter 50) or through site plan (Chapter 59), and also catches other projects that could otherwise proceed directly to building permit through the language in 8-31 (a)(3) that refers to Section 8-32.

Chapter 8-32 (administrative procedures) contains the following language:

(a) *Initial referral of applications.* The Director must refer each building permit application to which this Article applies to the designee of the Planning Board to conduct an adequate public facilities analysis for the Board’s review.

Together, sections 8-31 and 8-32 require that the Department of Permitting Services review applications for building permit for a timely finding of adequate public facilities. That finding is typically made at preliminary plan, though in some instances it is made at site plan or at building permit.

Staff does not recommend changing the time at which a finding of adequate public facilities is made. Staff does recommend that a finding of transportation APF be conditioned on a subsequent finding that adequate staging capacity is available—in essence this means that a Staging Allocation Approval is a proxy for transportation APF. The Staging Allocation Approval validity period should not change or in any way affect current APF validity periods. Staff proposes that the following language be included in the alternative review procedure:

Relationship to requirement for adequate public facilities
In addition to any other applicable requirements of this Subdivision Staging Policy necessary to obtain APF approval, an applicant within the White Flint Policy Area must obtain a Staging Allocation Approval from the Planning Board. The applicant must submit a valid Staging Allocation Approval to the Department of Permitting Services with any application for a building permit. A Staging Allocation Approval that expires after the expiration of Adequate Public Facilities does not extend the validity of APF.

4. Contents of Staging Allocation Request

The applicant should provide the Planning Board with all relevant information as part of the Staging Allocation Request. If all required information is present, the item will be handled as a consent agenda item.

Staff proposes the following language outlining the contents of the Staging Allocation Request:

Contents of Staging Allocation Request

A Staging Allocation Request must include a statement by the applicant that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, site plan approvals, or development plan approvals. The request should indicate the number of buildings as well as the amount of residential and non-residential staging capacity requested, the gross amount of new development, and the net amount if there will be demolition of existing structures.

As a note, because the requirement to submit a Staging Allocation Approval to DPS would apply to all applications for building permits, even development applications requesting no allocation of staging capacity must submit a Staging Allocation Request to the Planning Board (e.g. a request to replace 10,000 square feet of retail with 10,000 square feet of other non-residential use). Obviously, such requests could be approved even in the absence of staging capacity.

5. Planning Board review of Staging Allocation Request

Previously the Planning Board has discussed the pro forma nature of the Board's review of Staging Allocation Requests, which is critical if the allocation is to remain a consent agenda item.

Staff proposes the following language to establish the standard of review:

Planning Board review of Staging Allocation Request

The Planning Board must approve the Staging Allocation Request if sufficient staging capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request.

6. Effect of Staging Allocation Request

In order to protect applicants from the vagaries of Planning Board schedules or processing times, capacity requested will be held for the applicant from the time a completed Staging Allocation Request is submitted and accepted. When insufficient capacity exists to accommodate the entire request, the Staging Allocation Request will be placed in a queue. The Planning Board will manage that queue on a first-in, first-out basis.

Staff proposes the following language:

Effect of Staging Allocation Request

In order to be deemed complete, a Staging Allocation Request must contain all information required under TA 6 Alternative Review Procedure for the White Flint Policy Area. If sufficient capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request, the Planning Board must not allocate capacity requested under a complete Staging Allocation Request to any other applicant until the Staging Allocation Request is rejected by the Planning Board or withdrawn by the applicant, or until a Staging Allocation Approval becomes void or expires under TA 6 Alternative Review Procedure for the White

Flint Policy Area. If sufficient capacity is not available to accommodate the applicant's entire request, the Staging Allocation Request will be placed in a queue and will be scheduled for Planning Board action when capacity becomes available.

7. Contents of Staging Allocation Approval

The Planning Board's resolution of approval (Staging Allocation Approval) must provide stakeholders and implementing agencies with appropriate guidance. In the Planning Board's work session on February 10, the Department of Permitting Services stressed the importance of having all relevant dates (deadlines and validity periods) clearly designated in the Staging Allocation Approval.

Staff proposes that the contents should be outlined as follows:

Contents of Staging Allocation Approval

A Staging Allocation Approval must incorporate all information included in the Staging Allocation Request. The Staging Allocation Approval must also specify the (1) deadline for completion and acceptance of a building permit application and (2) the Staging Allocation Approval expiration date.

8. Requirement for timely submission of application for building permit

Staff, DPS, and stakeholders are in general agreement that there should be a requirement that the applicant perfect the Staging Allocation Approval by demonstrating that is taking substantial steps towards completing the development within a short period of time following the Planning Board action to grant the Staging Allocation Approval.

Staff previously proposed that a completed building permit application must be submitted and accepted within 90 days from the date of the Planning Board action to grant the Staging Allocation Approval. The Planning Board has acknowledged (though not decided) that single-phase, multi-building projects may require a longer period of time to file all building permit applications.

Staff proposes the following language to require that an applicant submit a building permit application that is accepted by the Department of Permitting Services within 90 days (180 days in the case of multi-building requests) from the date that the Planning Board approved the Staging Allocation:

Requirement for timely submission of application for building permit

An applicant who has received a Staging Allocation Approval from the Planning Board must present that Staging Allocation Approval to the Department of Permitting Services when applying for a building permit. The Staging Allocation Approval becomes void if a completed building permit application for core and shell is not accepted within 90 days from the date the Planning Board granted the Staging Allocation Approval. The Planning Board may allow an applicant who submits a Staging Allocation Request for multiple buildings a period of up to 180 days to have building permit applications for the core and shell of each building accepted.

Note that the requirement is not merely that an applicant must submit the application, but that the application must be accepted. This is in part to prevent applicants from hoarding capacity, and in part to ensure that the building permit applications received by DPS contain the information necessary for a review and do not waste the time of DPS review staff. The requirement is called a requirement for timely submission of the application rather than a requirement for acceptance of the application because DPS will accept the applications if all required materials are present, and will not be required to approve the permit application by these changes to the growth policy.

9. Reporting requirement

All stakeholders are concerned with accurate accounting of Staging Allocation Approvals. A reporting requirement adds certainty that Staging Allocation Approvals that are not perfected by timely submission of a building permit will be identified and properly represented in any accounting of remaining staging capacity.

Staff proposes the following language describing the reporting requirement.

Reporting requirement

The applicant must present evidence of acceptance to the Planning Board within 5 business days after the building permit application is accepted.

10. Effect of failure to timely submit

The requirement to timely submit a building permit application is an important one, and failure to meet the requirement should result in the applicant's loss of staging capacity. No Planning Board action should be necessary to revoke the capacity.

Staff proposes the following language:

Effect of failure to timely submit

Any failure to timely submit a building permit application results in the loss of staging capacity allocated for which a building permit application has not been accepted. The portion of the Staging Allocation Approval that is not perfected by timely submission, and acceptance by the Department of Permitting Services, is thereafter void.

11. Validity

The Staging Allocation Approval must be valid for a limited time to prevent capacity hoarding. However, the Planning Board has acknowledged (though not decided) that single-phase, multi-building projects may require a longer period of time to receive all building permits.

Staff proposes the following language:

Validity

A Staging Allocation Approval that has not become void for failure to satisfy the requirement to timely submit a building permit application remains valid for 2 years from the date of the Planning Board action to approve the Staging Allocation. The core and shell building permits necessary to construct the capacity allocated by the Planning Board must be issued within that 2 year validity period. The Planning Board may allow an applicant who submits a Staging Allocation Request for multiple buildings a period of up to 3 years to have building permits issued for the core and shell of each building.

Outstanding issues

Several additional issues may be identified in the coming weeks that need to be addressed in either the amendments to the Subdivision Staging Policy or in the Planning Board's White Flint Implementation Guidelines. Due to the legislative schedule, changes that are not identified and incorporated before March 10 will not be included in the Planning Board's proposed amendments that are submitted to the Council.

One outstanding issue that should be resolved is the question of how to account for non-residential density that is demolished and replaced with less non-residential density. This is an issue because the Sector Plan staging element addresses square feet of non-residential and residential units as separate accounting exercises.

A simple example, and one surrounding which there should be little controversy, is the following:

- Existing structure with 100,000 square feet of non-residential uses
- Redeveloped with 200,000 square feet of non-residential uses and 500 dwelling units (excluding bonus MPDU)
- Counts as 100,000 (net) square feet of non-residential capacity and 500 dwelling units

A second illustrative example, more complicated than the first, is the following:

- Existing structure with 100,000 square feet of non-residential uses
- Redeveloped with 50,000 square feet of non-residential uses and 500 dwelling units (excluding bonus MPDU)
- No additional non-residential in any approved sketch plan, preliminary plan, or site plan
- Counts as 500 dwelling units, and (presumably) returns 50,000 square feet of non-residential capacity to the total amount available under the White Flint Sector Plan

A third illustrative example, even more complicated, is the following:

- Existing structure with 100,000 square feet of non-residential uses
- Redeveloped with 50,000 square feet of non-residential uses and 500 dwelling units (excluding bonus MPDU)
- With additional 200,000 square feet of non-residential in an approved sketch plan, preliminary plan, or site plan but not part of the Staging Allocation Request
- Counts as 500 dwelling units, but how should the Planning Board treat the non-residential capacity?

Staff will be exploring with stakeholders how to address this issue and whether the issue must be addressed in these amendments.

Attachment A: Proposed Subdivision Staging Amendment
TA 6 Alternative Review Procedure for the White Flint Policy Area

TA 6.1 Exemption from PAMR and LATR

Effective July 1, 2011, an applicant for APF for any development that will be built within the White Flint Special Taxing District established under County Code Chapter 68C is exempt from TP Policy Area Mobility Review and TL Local Area Transportation Review.

TA 6.2 Effect on development outside of the White Flint Special Taxing District

The traffic impact of such developments must be considered in any TP Policy Area Mobility Review or TL Local Area Transportation Review calculations for any development elsewhere.

TA 6.3 Relationship to requirement for adequate public facilities

In addition to any other applicable requirements of this Subdivision Staging Policy necessary to obtain APF approval, an applicant within the White Flint Policy Area must obtain a Staging Allocation Approval from the Planning Board. The applicant must submit a valid Staging Allocation Approval to the Department of Permitting Services with any application for a building permit. A Staging Allocation Approval that expires after the expiration of Adequate Public Facilities does not extend the validity of APF.

TA 6.4 Contents of Staging Allocation Request

A Staging Allocation Request must include a statement by the applicant that the applicant has received any necessary sketch plan approvals, preliminary plan approvals, site plan approvals, or development plan approvals. The request should indicate the number of buildings as well as the amount of residential and non-residential staging capacity requested, the gross amount of new development, and the net amount if there will be demolition of existing structures.

TA 6.5 Planning Board review of Staging Allocation Request

The Planning Board must approve the Staging Allocation Request if sufficient staging capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request.

TA 6.6 Effect of Staging Allocation Request

In order to be deemed complete, a Staging Allocation Request must contain all information required under TA 6 Alternative Review Procedure for the White Flint Policy Area. If sufficient capacity remains available, under the White Flint Sector Plan, to accommodate the applicant's entire request, the Planning Board must not allocate capacity requested under a complete Staging Allocation Request to any other applicant until the Staging Allocation Request is rejected by the Planning Board or withdrawn by the applicant, or until a Staging Allocation Approval becomes void or expires under TA 6 Alternative Review Procedure for the White Flint Policy Area. If sufficient capacity is not available to accommodate the applicant's entire request, the Staging Allocation Request will be placed in a queue and will be scheduled for Planning Board action when capacity becomes available.

TA 6.7 Contents of Staging Allocation Approval

A Staging Allocation Approval must incorporate all information included in the Staging Allocation Request. The Staging Allocation Approval must also specify the (1) deadline for completion and acceptance of a building permit application and (2) the Staging Allocation Approval expiration date.

TA 6.8 Requirement for timely submission of application for building permit

An applicant who has received a Staging Allocation Approval from the Planning Board must present that Staging Allocation Approval to the Department of Permitting Services when applying for a building permit. The Staging Allocation Approval becomes void if a completed building permit application for core and shell is not accepted within 90 days from the date the Planning Board granted the Staging Allocation Approval. The Planning Board may allow an applicant who submits a Staging Allocation Request for multiple buildings a period of up to 180 days to have building permit applications for the core and shell of each building accepted.

TA 6.9 Reporting requirement

The applicant must present evidence of acceptance to the Planning Board within 5 business days after the building permit application is accepted.

TA 6.10 Effect of failure to timely submit

Any failure to timely submit a building permit application results in the loss of staging capacity allocated for which a building permit application has not been accepted. The portion of the Staging Allocation Approval that is not perfected by timely submission, and acceptance by the Department of Permitting Services, is thereafter void.

TA 6.11 Validity

A Staging Allocation Approval that has not become void for failure to satisfy the requirement to timely submit a building permit application remains valid for 2 years from the date of the Planning Board action to approve the Staging Allocation. The core and shell building permits necessary to construct the capacity allocated by the Planning Board must be issued within that 2 year validity period. The Planning Board may allow an applicant who submits a Staging Allocation Request for multiple buildings a period of up to 3 years to have building permits issued for the core and shell of each building.