



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
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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