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Rockville
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Planning Commission Staff Report: Proposed Revisions to the Adequate Public Facilities Standards (APFS) and Proposed Zoning Text Amendment to Article 20

MEETING DATE: July 12, 2017

REPORT DATE: July 7, 2017

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APPLICANT: Mayor and Council of Rockville

The Mayor and Council will hold a public hearing on proposed revisions to the Adequate Public Facilities Standards and the accompanying text amendment

FILING DATE: June 12, 2017

RECOMMENDATION: Staff recommends approval of the proposed revisions and the text amendment

EXECUTIVE SUMMARY: The Mayor and Council have authorized a public hearing to consider revisions to the Adequate Public Facilities Standards (APFS). These revisions have resulted from discussions over the past six months on the provision of fire and emergency services protection and from revisions to the school facilities test resulting from the County's changes to the Subdivision Staging Policy. The recommended changes would modify the City's school capacity test to follow the County's school capacity changes which include an individual school test at the elementary and middle school levels and a seat deficit figure. In addition, the recommendation is to delete the fire and emergency services protection provisions since there are no County standards for response times and because the city has no authority over the fire/ems services. The proposed text amendment would delete the reference to the fire and emergency services provisions in Article 20 of the Zoning Ordinance, which is the Adequate Public Facilities Ordinance (APFO).

*Zoning Ordinance of
The City of Rockville
Adopted December 15, 2008
by Ordinance 19-08*

Being Chapter 25 of the Rockville City Code

Effective Date – March 16, 2009

As Amended to
October 12, 2015

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APPLICANT'S PROPOSAL

The Mayor and Council directed the staff to review the current Adequate Public Facilities Standards (APFS) and propose revisions based on the recent County actions on the Subdivision Staging Policy and revisions to the fire and emergency response times promulgated by Montgomery County Fire and Rescue Services (MCFRS). The staff presented the recommended revisions to the Mayor and Council at their meeting on June 12 and they directed the staff to proceed with the public hearing based on the recommendations presented.

At the June 12 meeting the Mayor and Council noted that if the fire and emergency services provisions are deleted from the APFS, then the reference to fire/ems in Article 20 of the Zoning Ordinance should also be deleted. The staff was directed to prepare a text amendment, which is expected to be authorized for filing at the meeting on July 10.

PROCESS AND PROCEDURE

The APFS is a document that sets forth the standards and requirements (Level of Service) for traffic and transportation, schools, fire and emergency services, and water and sewer service. It was initially issued in November, 2005. The APFS may be revised by the Mayor and Council by resolution without the requirement to hold a public hearing. However, since the Mayor and Council have proposed a public hearing on the recommended changes, the Planning Commission should review the proposal and provide comments and a recommendation to the Mayor and Council ahead of the public hearing. The public hearing would be a joint hearing to also take testimony on the proposed zoning text amendment.

RECOMMENDATION

The staff recommends approval of the proposed revisions to the APFS and the text amendment.

BACKGROUND

The Mayor and Council initially adopted the Adequate Public Facilities Ordinance (APFO) and the Adequate Public Facilities Standards in November, 2005. The standards included level of service requirements for traffic capacity, school capacity, fire and emergency services protection, and water and sewer service. Since then, there have been several amendments to the APFS standards for both fire/ems and school capacity. The most recent revision was in April, 2017 when the Mayor and Council added a waiver to the fire/ems requirements in response to changes in the County's emergency service response times map for the city.

In November, 2016 the County adopted revisions to the Subdivision Staging Policy (SSP), effective January 1, 2017, which sets forth adequate facilities requirements for traffic capacity and school capacity in the County. In June, 2015 the Mayor and Council adopted revisions to the APFS that made the city's school test consistent with the County at that time. The traffic test was not changed.

ANALYSIS

County staff provided a briefing to the Mayor and Council on the proposed SSP revisions in June 2016. In January 2017, City staff described the County's changes to its calculations of the fire and emergency medical services response times that resulted in several areas of the City falling out of compliance with the City's current standard. County Fire Chief Goldstein met with the Mayor and Council in February to further discuss the County's changes to its fire and emergency response times.

In light of the County's newly adopted SSP and the changes to the County's methodology for calculating fire and emergency response times, the Mayor and Council directed City staff to propose revisions to the City's Adequate Public Facilities Standards (APFS). As set forth more fully below, City staff recommended that the Mayor and Council consider amendments to the City's APFS levels of services for schools and fire and emergency services. Exhibit 1 is the redline draft showing the proposed revisions to the APFS.

While the County's SSP also revises the County's methodology for calculating levels of service for traffic and transportation, City staff does not have any recommended amendments to the City's methodology at this time. The City uses the Comprehensive Transportation Review (CTR) methodology as the basis for the APFS transportation review. The CTR will continue to be used for the APFS test for now. If the Traffic and Transportation Division determines that any revisions to the CTR are needed because of the County's changes to the SSP, that will be the subject of a future amendment. Substantive revisions to the CTR standards would be best addressed when developing the transportation element of the 2040 Master Plan update for policy guidance.

The City's APFS also addresses levels of service for water and sewer capacity. The Department of Public Works (DPW) is preparing substantive revisions to Chapter 24 of the City Code entitled Water, Sewers and Sewage Disposal. If the Mayor and Council adopt revisions to Chapter 24, DPW will propose any necessary revisions to the APFS language to ensure consistency with the code revisions.

The Mayor and Council is not required to hold a public hearing on revisions to the City's APFS. However, due to the substantial revisions proposed, the Mayor and Council decided to hold a public hearing on this matter. The hearing is currently scheduled to be held on September 18.

Public Schools Standards

On June 1, 2015, the Mayor and Council adopted Resolution No. 06-15, which revised the APFS standards for schools in the City. The revision generally aligned the City's school capacity test with Montgomery County's school capacity standards in the County's SSP in effect at that time, which assessed school capacity for the clusters at each of the three school levels – elementary,

middle, and high school. The review and approval process was also patterned on the County's process, whereby applications were assigned a queue date based on when the application was deemed complete. Subsequent applications in the same cluster would be placed in the queue and would be processed up to the point where the capacity was analyzed by the Approving Authority. At that point, the applications could be approved, conditionally approved or denied.

The County Council adopted the most recent SSP on November 15, 2016, effective on January 1, 2017. The 2017 SSP now makes the school capacity test apply to individual schools, not the overall cluster. As part of this individual school test for elementary and middle schools, the 2017 SSP includes a two-part capacity test to determine the point at which a school goes into moratorium. To be in moratorium, the schools must exceed 120% of the program capacity and also exceed a seat count deficit. The seat count deficit is 110 seats at the elementary level and 180 seats at the middle school level. In addition, each cluster has one high school and if the high school for the cluster exceeds 120% of program capacity the entire cluster goes into moratorium. For development review purposes, each school level serving the proposed development must have adequate capacity.

With the change in the test to account for individual elementary and middle schools, the County's APFS test has become more restrictive compared with the previous cluster test. One elementary school that serves students living in the City, Rosemont ES, is shown to be in moratorium. This school serves an area of the City bounded by Redland Boulevard, Frederick Road, Shady Grove Road and Interstate 270. This area includes a portion of the King Farm and the Upper Rock developments as well as the proposed Shady Grove Town Center. Two other schools, College Gardens ES and Ritchie Park ES, would be over capacity except that they are covered by the placeholder for the new RMES #5 school currently under construction. The new school is scheduled to come on line in August, 2018. We expect the Board of Education to issue the proposed cluster boundary changes later this year at the conclusion of the boundary study.

The method for calculating student generations rates has also been revised under the new SSP. The County uses the generation rates to determine the number of students expected from each household at each school level to calculate the student enrollment projections for the year. The households are also broken out by type – single family detached; single family attached; multi-family low to mid-rise; and multi-family high rise. Using much more detailed school enrollment data, MCPS and the County's Planning Board staff have developed more accurate generation rates than the County-wide averages used in the past. Since the City's APFS test relies on the County's calculation of program capacity, which is based on the enrollment projections, the new enrollment tables and generation rates will be included as part of Rockville's APFS (Exhibit 2), regardless of whether any revisions are made to the City's APFS school test.

Fire and Emergency Services Standards

The issue of revising the provisions of the APFS for Fire and Emergency Service Protection was

initially raised with the issuance of the revised response time map by the Montgomery County Fire and Rescue Service (MCFRS) in 2016. MCFRS had reviewed its response time goals and determined that an extra 90 seconds was needed between initial call receipt and actual dispatch. The City's APFS standard for fire and emergency services relies on the County's methodology for calculating response times in order to determine compliance with the City's standard. With the addition of this extra time, six areas of the city (see Exhibit 3) no longer meet the City's APFS standard of requiring emergency apparatus from at least two Fire and Rescue Service stations to arrive at the site of the proposed development within 10 minutes. As can be seen, the additional time needed for the second response ranges from an additional six seconds to an additional 58 seconds.

The Mayor and Council discussed this matter at the January 9 meeting and at a follow-up meeting on February 13, which included a question-and-answer session with County Fire Chief Scott Goldstein. At that meeting, the Mayor and Council asked questions regarding the difference between the County's goals and the City's standards.

County Goals v. City Standards

For the County's purposes, fire and emergency services response times are measured in terms of goals, which is much different than the City's APFS standard which requires every development application to meet a certain standard. The County's goals are expected to be met 90 percent of the time, while the City's APFS standard must be met 100 percent of the time. Exhibit 4 provided by MCFRS, shows the benchmark response time goals that are expected to be achieved by 2022. This is significant since the County does not have response time goals for each year. For example, there is no published goal for 2017. As such, the City would not know whether proposed developments within the City meet the County's goals for 2017 but only whether the developments meet the County's goals that are expected to be achieved by 2022. The Fire Chief has indicated support for deleting the fire/ems standard from the APFS (Exhibit 5).

The County's response goals are periodically reviewed by the Commission on Fire Accreditation International (CFAI). MCFRS is fully accredited by CFAI. These goals and actual response time data are reviewed by CFAI every five years to assure continuity.

Recommendations

One of the underpinnings for adequate public facilities programs is that they are intended to assist in guiding planned development so as not to overburden the public facilities needed to serve the proposed development. Landowners have a right to develop their properties in accordance with adopted zoning regulations. The courts have found that some degree of delay in the ability to develop is acceptable where there are plans or programs in place to mitigate the lack of needed public facilities. However, an Adequate Public Facilities Ordinance (APFO) should not function as a *de facto* moratorium on new development.

One aspect of the test for whether an APFO is viable is the ability of the jurisdiction to mitigate the issues preventing development from proceeding. While the City has the ability to control water and sewer service in most of the City and the City has control over City streets, the City does not have any control over schools and fire/EMS within the City's boundaries. As such, City staff recommends that the City adopt the standards for school capacity set forth in the County's SSP and eliminate the standard for fire and emergency services in accordance with the County's approach.

Schools Test

With respect to the City's schools test, in June, 2015, the Mayor and Council voted to adopt changes to the APFS schools test that follow the County's system for capacity calculations. The County's 2017 SSP now includes an individual school test at the elementary, middle and high school levels and is not just a cluster average test, which is a more stringent test than the County's previous SSP and the City's current test.

City staff proposes to amend the City's APFS to include the County's new methodology for calculating capacity at the three school levels as well as the County's new seat deficit standard. The revisions proposed are shown on the redline version of the APFS, Exhibit 1.

As is currently the case, the school test is measured at the five-year mark. The County calculates its projected school enrollment and related program capacity annually as part of the County's budget and CIP process with an effective date each year of July 1. The County's 2017 SSP revisions did not modify the County's application queue system. However, City staff recommends modifications to the City's application queue system set forth in the City's APFS to simplify the system and to conform the process to the City's requirement that all approved residential development be counted toward the projected capacity levels. Currently, the City's APFS requires that residential development applications be added to the application queue upon filing the application with the City. Residential development applications would now be added to the application queue upon approval by the City, not upon filing.

Fire/EMS Standard

Regarding the fire/ems standard, there are two issues. First, the City does not have any authority over the fire/ems service provision, which is a function of MCFRS countywide. Second, the County does not have a standard for fire/EMS service but only response time goals. In general, the County's response time goals should be met 90 percent of the time while the City's APFS requires that every proposed development meet the City's APFS standard 100 percent of the time. As such, the City's standard is not reasonably related to nor consistent with the County's goals, especially given the fact that the County's goals are to be achieved by 2022.

Given the lack of correlation between the County's published goals and the City's standards and the fact that the City is completely reliant on the County for fire/EMS service, staff recommends that the City's APFS standard for Fire and Emergency Service Protection be deleted. This would not change any aspect of fire/EMS service provided within the City. With this revision, all references to the Fire and Emergency Services provision in the APFS are proposed to be deleted. (See Exhibit 1).

As an interim measure ahead of this more detailed consideration of the City's APFS, on April 17, the Mayor and Council adopted a resolution to insert a waiver provision into the APFS allowing the Approving Authority to grant a waiver from the fire/ems standard where safety would not be compromised. This was in response to the concerns expressed by the The Village at Rockville in connection with their expansion plans. This waiver language is also recommended to be deleted.

Additional Revisions

Staff is recommending a revision to Table 1 in the APFS manual to add "Major Site Plan Amendment" to the Application column. A major site plan amendment normally involves changes to the level and character of approved development. These changes typically result in the need for a new APF determination for the proposed development. In addition, staff has amended references to the "Chief of Planning" to the "Chief of Zoning," to be consistent with the redesignation of this position in the Zoning Ordinance.

Proposed Revisions to the APFS

The following revisions are recommended to the APFS document, based on the analysis above, and shown in Exhibit 1. The revisions highlighted are as follows:

- Table I: APFO Approval Types – in the Detailed Application column, add "Major Site Plan Amendments". Major amendments often include changes in the types of uses proposed and the amount of development existing on a property, which results in the need for a new APFO analysis.
- Under Section II – Process – Reference to fire and emergency service protection is deleted and inclusion of major site plan amendment is added.
- Table II: Facility Capacity Schedules – All reference to fire and emergency service protection is deleted.
- Section II.C – Exemptions and Waiver Provisions – References to fire and emergency services is deleted, including the new waiver provision (subsection iii) recently added to the APFS.

- Section III.B – Schools – In subsection 1, the revised capacity test including the seat count deficit set forth in the County’s 2017 SSP is inserted. Former subsections 2 and 3 are deleted since the 2017 SSP has been revised to have individual capacity tests at the elementary and middle school grade levels. New subsections 2 and 3 have been revised to better reflect the City’s development review process as set forth in Section 25.20.02.d of the Zoning Ordinance. Both sections related to the application queue date have been modified to simplify the process and conform to the City’s requirement that all approved residential development be counted toward the projected capacity levels, as discussed more fully above.
- Section III.C – Fire and Emergency Service Protection – Based on the recommendation above to delete this standard, this section is proposed to be deleted.
- Section III.D – Water Supply, and Section III.E – Sewer Service are renumbered due to the deletion of the fire/EMS section. As noted elsewhere in the Discussion, this section will be subject to future revision once the revisions to Chapter 24 being formulated by Public Work have been adopted.
- The footnotes on pages 5 and 8 are revised to refer to the Chief of Zoning instead of Chief of Planning, consistent with the redesignation of this staff position in the Zoning Ordinance.

TEXT AMENDMENT

For the reasons set forth above for the APFS, the text amendment proposes to amend Section 25.20.02, “Applicability” to delete the reference to fire and emergency services protection, as shown on Exhibit 6. The staff recommends approval of the text amendment along with the APFS revisions.

EXHIBITS

- 1. Proposed Revisions to the APFS**
- 2. Public School Data**
- 3. Fire & Emergency Services Response Times Map**
- 4. Fire & Emergency Services Response Times Goals**
- 5. E-mail comments from the Fire Chief**
- 6. Proposed zoning text amendment**