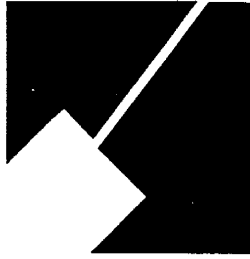


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

MCPB
Item # 8
10/28/2004

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MEMORANDUM

DATE: October 21, 2004
TO: Montgomery County Planning Board
FROM: Sandra Youla, AICP (301-495-4624) *AZY*
for the Department of Park and Planning
VIA: Carlton Gilbert, Zoning Supervisor, and *CG*
Richard Hawthorne, Chief, Development Review Division *RCH*
REVIEW TYPE: Schematic Development Plan Amendment
APPLICANT: Auto Park Investment General Partnership II
CASE NUMBER: DPA-04-2
REVIEW BASIS: Chapter 59, Zoning Ordinance
ZONE: C-3
LOCATION: Parcel 970 and Part of Outlot E/Parcel 973
Briggs-Chaney Road, approx. 500 feet east of its
intersection with Robey Road
MASTER PLAN: 1997 Fairland Master Plan
FILING DATE: April 8, 2004
PUBLIC HEARING:

RECOMMENDATIONS

1. Staff recommends approval of (Schematic) Development Plan Amendment 04-2.
2. The applicant must revise all plans that show binding elements so that the plans indicate that the proposed binding element for the green space requirement is 15%, not 20.7%, as erroneously shown. These revised plans must be submitted to staff prior to staff's transmission of the staff and Planning Board's recommendations to the Hearing Examiner for transmission to the County Council.
3. To ensure clarity in the record, the applicant must submit an illustrative plan that shows the entire 10.2582 acres that are the subject of prior DPA-86-1 and original zoning case G-189 and related schematic development plan, and the plan must correctly indicate lot or parcel numbers, zoning boundaries, and the portion of the property for which changes are proposed, per this schematic development plan amendment. The plan must be to the satisfaction of MNCPPC staff. The plan must be submitted

to staff prior to staff's transmission of the staff and Planning Board's recommendations to the Hearing Examiner for transmission to the County Council.

4. The applicant must submit a revised Declaration of Covenants, to the satisfaction of staff of the MNCPPC, prior to staff's transmission of its recommendation and the Planning Board's recommendation to the Hearing Examiner for transmission to the County Council. The revisions must 1) state that the 1986 covenants are incorporated by reference, and 2) specify that parking is not allowed in the green space.
5. Regarding the need for a public hearing, Section 59-D-1.7(d)(1) of the Montgomery County Zoning Ordinance states:

If there is public opposition to the development plan amendment, or if a public hearing is either recommended by the planning board or requested by any aggrieved party within 10 days of the date of the planning board meeting, the hearing examiner must conduct a public hearing on the development plan amendment.

Staff notes that at the time that this staff report was written, there was no public opposition to the application.

BACKGROUND

Introduction: Pursuant to the provisions of Section 59-H-2.53 and 59-D-1.7 of the Montgomery County Zoning Ordinance, Auto Park Investment General Partnership II requests approval of a schematic development plan amendment, DPA 04-2, in order to amend DPA 86-1.

Property and Proposal: DPA 86-1 and its precedent zoning case, G-189 and related schematic development plan, apply to a property of 10.2582 acres that comprises N 967, P 970, N 973 (also known as Part of Outlot E), and a portion of the remaining Part of Outlot E. This property is in the C-3 zone, a floating zone, and is located approximately 500 feet east of the intersection of Briggs Chaney and Robey Roads on the east side of Briggs Chaney Road. Ownership of these properties is as follows:

N 967 -- Montgomery Auto Sales Park, Plat book 139, Plat Number 16036, containing 4.0 acres, owned by Covington Buick, and improved with a Covington Buick Dealership with parking;

P 970 -- an unsubdivided parcel of approximately 4.0 acres, owned by Auto Park Investment General Partnership II, currently used for outdoor automobile storage.

N 973 -- a Part of Outlot E, approximately 0.98 acres, conveyed by deed to Auto Park Investment General Partnership II, currently used for

automobile storage and interior access to the Auto Park and a storm water management facility.

Portion of the Remaining Part of Outlot E – owned by the Auto Park, approximately 1.3 acres, currently used for a storm water management facility.

The requested schematic development plan amendment requests that no more than 57,744 square feet of development be allowed on a *portion* of that property, namely P 970 and N 973. That portion of property is approximately 4.98 acres. Other binding elements are proposed as well for that portion of property, and none of these binding elements differ from what was proposed in DPA-86-1, namely a 50-foot front yard setback, a 42-foot side yard setback, and a green space requirement of 15%. (Staff notes that the submitted plans erroneously indicate that the proposed binding element for the green space is 20.7 percent, and staff has told the applicants that they must amend all plans to show the correct binding element of 15%. The draft covenants show 15%.)

Currently, according to DPA 86-1, no more than 25,433 square feet of development is permitted on N 967 for a proposed auto dealership, body shop, and showroom; no more than 20,500 square feet is permitted on P 970 for a proposed auto dealership, body shop, and showroom; and no illustrative development or development cap is shown on N 973 and the remaining portion of Part of Outlot E within the 10.2582 acres.

Purpose and Additional Details of Proposal: According to the application,

Auto Park II proposes in the application to construct auto-related uses on the property with surface and structured parking (the “Project”). The project is part of a comprehensive redevelopment of the dealerships and auto repair services operated by Auto Park II’s parent company, Mile One, on the property [P 970 and N 973] and adjacent Lot 8 and Lot 11. This redevelopment will enhance the appearance and retail services of this section of the Auto Park to the benefit of customers, employees, and surrounding property owners...

The project proposes an auto body shop of approximately 57,749 square feet of gross floor area, approximately 285 surface parking spaces, and approximately 163 spaces on a structured roof-top parking deck. The body shop building with rooftop parking will be 38 feet in height. The application also contemplates, as a future phase of development, the addition of one or more parking decks on top of the roof, which will accommodate approximately 160 parking spaces per deck. Such additional height is permitted as part of site plan review if recommended in the applicable master plan.

Surrounding Area: The Hearing Examiner's Report for the original zoning case G-189 (April 14, 1980) described the surrounding area as follows:

Located immediately to the west of the subject property and situated in the C-3 zone is the 50-acre site of the Auto Sales Park. Located immediately to the east of the site is a triangular shaped undeveloped parcel situated in the I-3 Zone. South of the site is the deleted 8-acre site (a portion of Outlot E)...situated in the RE-2 zone. Also located south of the subject property and extending in an east-west direction is the right-of-way of the proposed intercounty connector ranging in width from 300 – 1,300 feet.

The surrounding area has since developed. On the north side of Briggs Chaney Road there is a day care center west of the intersection with Robey Road situated in the R-30 Zone. Across the street on the north side of Briggs Chaney Road is: county owned land containing various uses, including the Fairland Community Recreation Center, the Eastern County Government Services Center, a police substation, and the Briggs Chaney Park and Ride Lot, all situated in the R-30 zone. Adjoining on the east is an auto dealership (Lot 15), further east is the Pepsi-Cola Bottling Plant in the I-1 zone, and adjacent to that a self-storage facility zoned I-3. Further west at the intersection with US 29 is the Briggs Chaney Shopping Center zoned C-2.

Additional Submissions/Revised Plans: At staff request, the applicant submitted a letter dated September 24, 2004, explaining site operations. The applicant also submitted a revised site plan (received by MNCPPC 10/12/04) and a site grading and landscaping plan (received by MNCPPC 10/12/04).

ZONING HISTORY

Zoning was first applied to the subject property in the 1958 countywide comprehensive zoning that classified the property in the RA zone. The residential zones were recodified in 1973 at which time the RA zone was renamed the RE-2 zone. The entire property retained the RE-2 residential zoning classification until 1980.

1) G-189 and the Original Schematic Development Plan

On May 27, 1980, the District Council reclassified the 10.2582 property to the C-3 Zone in Local Map Amendment G-189. The property, then under the ownership of Percontee Inc., was part of a larger property of approximately 18.34 acres. The remainder of the 18.34 acre property, namely about 8 acres, retained the RE-2 zone.

The C-3 zone was applied under Section 59 H-1.1, Map Amendments, and Section 59 H-2.5, optional method of application of the Montgomery County Zoning Ordinance. The optional method requires a schematic development plan

(Section 59-H-2.53), which “must illustrate or specify how and to what extent the applicant will restrict the development standards or the use of the property to less than the maximum permitted in the requested zone and whether and how development will be staged.” The C-3 zone also requires site plan review under Section 59-D-3 of the Zoning Ordinance. The Planning Board may not approve a site plan or preliminary plan unless it is in conformance with the approved schematic development plan.

A schematic development plan depicting the limitation on development, as approved in G-189, was filed in conformance with Section 59-H-2.53. The schematic development plan showed a single 47,500 square foot structure that included a 7,500 square foot showroom and a 40,000 square foot service facility. The building height was limited to 42 feet and building coverage limited to 10.5 percent of the site. The plan also included a 50-foot easement along the eastern perimeter, a 50-foot front yard setback, a 470-foot rear yard setback, and 110-foot side yard setbacks. Approximately 45% (4.62 acres) of the 10.2 acres was reserved for green space.

Correct public covenants were never filed or recorded by the original G-189 applicant (see following section for repercussions).

2) *DPA 86-1*

The District Council approved Development Plan Amendment 86-1 on October 30, 1986. The approved schematic development plan for DPA 86-1 depicted two lots for automobile dealerships instead of one on the 10.2582-acre tract. The amendment showed a single building on Lot 15 not to exceed 25,433 square feet and a Lot 16 (also identified in the tax records as parcel P 970) to be developed with a dealership building not to exceed 22,067 square feet. The combined square footage for both lots measured 47,500 square feet, as had been approved in G-189. Approximately 2.2582 acres were reserved for open space that would provide access to the proposed regional storm water management facility. The other binding elements included a 15 percent minimum green space, a 50-foot minimum setback along Briggs Chaney Road, and a minimum 42-foot side yard setback.

The covenants were executed and recorded as required.

According to the Hearing Examiner's Report for DPA 86-1,

The 1967 private covenants [associated with the Auto Park] mistakenly became linked to the subject property in G-189. When the District Council approved the C-3 zone for the subject property in 1980, it approved the first schematic development plan under the newly authorized optional method of application. The provisions of the zoning ordinance require the applicant to file executed public covenants and if successful

record the land records of Montgomery County and certify the recordation to the Planning Board at the time of site plan review. See Section 59-H-2.5. These public covenants are intended as notice to the public that the zoning of the site is limited by a schematic development plan. The G-189 applicant, Percontee, Inc., or Homer Gudelsky, who happened to be the grantor of the 1967 private covenants pertaining to the auto park, filed executed covenants at the time of zoning which purported to be the public covenants required under the optional method. However, these covenants were in fact the 1967 private covenants that pertained to the auto park and did not include the subject property. This discrepancy was not disclosed at the time of zoning and correct public covenants were never filed or recorded by the original G-189 applicant.

The G-189 covenant deficiency created a quagmire. The Covingtons initiated efforts to acquire four acres of the subject property in the summer of 1985, unaware of the zoning restrictions. The G-189 applicant, or a successor in interest, filed for subdivision approval, but did not disclose the zoning restrictions applicable to the property. In the fall of 1985, the Planning Board, also not cognizant of the zoning restrictions, approved Preliminary Plan No. 1-85123, which effectively divided the G-189 tract and some adjacent land into three parts: two four-acre parcels, Lot 15 and future Lot 16 [P 970]; and a 2-2582-acre Outlot E... During this period the Covingtons became contract purchasers of Lot 15 and filed a site plan request in November of 1985. They subsequently learned of the zoning restrictions and filed SDPA 86-1 for Lot 15 only. The Planning Board noted that the request was incomplete because it did not address the entire G-189 tract and the applicant was requested to amend SDPA 86-1 to correct this deficiency. The applicant executed public covenants with the remaining owners of the G-189 tract on April 28, 1986, and acquired Lot 15 the same day. SDPA 86-1 was amended accordingly. A plat was approved by the Planning Board on May 1, 1986, which divides the G-189 tract and adjacent land into the three parcels described above...

In the meantime, the Planning Board considered the Covington's site plan request filed for Lot 15 November 13, 1985. The staff, according to MNCPPC correspondence, allegedly raised the issue of the zoning restrictions pertaining to the site in January 1986, although the community also take s credit for this discovery. In any event, the Planning Board's site plan review procedure was deferred pending the applicants' submission of the modified SDPA. Following this modification, the Board resumed its consideration of the site plan. On April 23, 1986, the Board approved the site plan subject to several conditions, including the District council's approval of SCPA 86-1. The approved site plan is depicted on page 12 of this report.

3) *DPA 00-3*

In May 2000, Covington Buick Pontiac GMC Truck, Inc. filed DPA 00-3 to build a separate auto body building measuring 6,467 square feet on N 967, and to reduce the square footage on P 970. Both owners ostensibly agreed to the redistribution of the square footage. DPA 00-3, approved on January 16, 2001, by the District Council, showed the following:

- On N 967, two buildings, one existing building containing 20,207 square feet and one proposed building designated as a body shop containing 6,467 square feet.
- On P 970, density limited to 20, 826 square feet.
- All setbacks and green space as approved on DPA 86-1.
- The property severed into two parcels, N 967 and P 970.

The District Council, in approving DPA 00-3, stated in Resolution No. 14-734, that 1,241 square feet of density will be transferred from P 970 (proposed Lot 16) to N 967 (also known as Lot 15), and that there is a pending DPA 01-2 that reduces the density on P 970 by 1,241 square feet.

The covenants were never executed, thereby making DPA 00-3 and ineffectual action.

4) *DPA 01-2*

On December 21, 2000, Auto Park Investment General Partnership No. 2, Herb Gordon Autoworld, filed DPA 01-2 to limit the density on Lot 16 to 20,826 square feet. All setbacks and green space were the same as in DPA 86-1. The covenants were never executed, and the application was later dismissed at the applicant's request.

Other Approvals: In 1989, the Automobile Park General Partnership II filed Preliminary Plan 1-89252 for P 970 that showed an auto dealership and body shop. At that time, there was no transportation (staging ceiling) capacity for the policy area so the proposed development could not be approved. Preliminary Plan 1-89242 was placed in the queue of pending preliminary plans until capacity for the proposed development became available. In 1991, the Automobile Park General Partnership II submitted an application for Site Plan, 8-91033, for the same property. The Planning Board approved site Plan 8-91033 on December 12, 1991, for improvements to be built in two phases. Phase 1 was for a temporary automobile storage lot. Phase 2 was for future development as an auto dealership, as shown in DPA 86-1 and in pending Preliminary Plan 1-89252, subject to an Adequate Public Facilities test. However, P 970 remains an unrecorded lot.

Approval Procedures: If the District Council approves DPA 04-2, the applicant must follow the provisions of Section 59-D-1.64, Certification and Filing of Approved Development Plans. Further, per Section 59-H-2.54, the applicant must immediately file the executed covenants in the land records of Montgomery County, Maryland. P 970 and N 973 also are subject to preliminary plan, per the requirements of the Subdivision Ordinance, and site plan review. The preliminary plan and site plan must be in conformance with the binding elements approved by the District Council and described in the covenants. Certification of the filing of the covenants in the land records must be submitted to the Montgomery County Planning Board at the time of submission of the site plan, as required by Division 59-D-3. No site plan may be either processed for review or approved by the Planning Board until such certification of filing is submitted.

ANALYSIS

Covenants: To ensure clarity, the applicant must submit a revised Declaration of Covenants, to the satisfaction of staff of the MNCPPC, prior to staff's transmission of its recommendation and the Planning Board's recommendation to the Hearing Examiner for transmission to the County Council. The revisions must state that the 1986 covenants are incorporated by reference. They also must specify that parking is not allowed in the green space in order to stem the long-standing problem at the Auto Sales Park of cars parking in green space.

Revised Plans: The applicant must revise all plans that show binding elements so that the plans indicate that the proposed binding element for the green space requirement is 15%, not 20.7%, as erroneously shown. These revised plans must be submitted to staff prior to staff's transmission of the staff and Planning Board's recommendations to the Hearing Examiner for transmission to the County Council.

Also, to ensure clarity in the record, the applicant must submit an illustrative plan that shows the entire 10.2582 acres that are the subject of prior DPA-86-1 and original zoning case G-189 and related schematic development plan, and the plan must correctly indicate lot or parcel numbers, zoning boundaries, and the portion of the property for which changes are proposed, per this schematic development plan amendment. The plan must be to the satisfaction of MNCPPC staff. The plan must be submitted to staff prior to staff's transmission of the staff and Planning Board's recommendations to the Hearing Examiner for transmission to the County Council.

Requirements of the Zone/Binding Elements: DPA 04-2 satisfies the purposes of the C-3 zone found in Section 59-C-2 of the zoning ordinance, specifically "to provide a method for orderly grouping and spacing of commercial development on properties which abut or front on and have access to heavily traveled major highways with a planned or existing pavement of at least six lanes, or on properties which are recommended for such zoning on approved

and adopted master plans or which are adjacent to properties previously or concurrently zoned C-3." Staff finds that DPA 04-2 provides for the orderly grouping of commercial development along or near major highways in conformance with the zone.

DPA 04-2 proposes to increase the development intensity on P 970 and N 973 from that which was proposed as a binding element in DPA 04-2. The increased intensity, namely 35, 682 square feet, from 22,067 square feet to 57, 749 square feet, does not contravene zoning ordinance requirements.

The other binding elements do not contravene zoning ordinance requirements, including special regulations applicable to designated automobile-related uses (Section 59-C-4.367), as follows: front yard setback (50 feet vs. minimum 10 feet required), side yard setback (42 feet vs. no minimum required), and green area (15% vs. minimum 10% required). Further, these binding elements are the same as provided in DPA 86-1.

Master Plan: DPA 04-2 conforms with the *1997 Approved and Adopted Master Plan*. Please see attached memo from Community-Based Planning staff dated October 5, 2004.

Design Issues: The applicant submitted revised plans on October 12, 2004, in part to eliminate the off-site proposal for a median-break and to ensure right-in, right-out exit only.

Environment: Environmental staff is satisfied that environmental issues have been adequately addressed at this stage. Please see the attached memo dated October 21, 2004.

Transportation: Transportation staff is satisfied that transportation issues have been adequately addressed at this stage. Please see the attached memo dated October 21, 2004.

Community Comment: The Avonshire Homeowners Association sent an email dated October 13, 2004, indicating strong support for DPA 04-2 and the Mile One Auto Park Expansion. This community is located directly across Columbia Pike from the Auto Park. Please see attached copy of the email.

CONCLUSION

Upon review of DPA 04-2, staff concludes that it is in compliance with the recommendations of the 1997 Fairland Master Plan, is consistent with the purposes of the C-3 zone, and satisfies all the development standards for the zone. For these reasons and because the schematic development plan amendment will aid in the accomplishment of a coordinated and comprehensive development of the Maryland Washington Regional District, the Development

Plan Amendment should be approved. Additional recommendations, as noted at the front of this staff report, must also be applied.