

DRAFT

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS, made this _____ day of _____, 2004, by Auto Park Investment General Partnership No. II, LLP, a Maryland limited liability partnership, hereinafter "Declarant."

WHEREAS, Declarant is the owner of certain real property located in Montgomery County, Maryland, identified in the Tax Records as Parcel 970 and Parcel 973/Part of Outlot E, more particularly described in Exhibit "A" (the "Property"); and

WHEREAS, the Property is part of an approximately 10-acre parcel that was rezoned from RE-2 to C-3 (highway commercial) by Local Map Amendment Application ("LMA") G-189, approved by the Montgomery County Council by Resolution 9-806 adopted May 27, 1980; and

WHEREAS, the 10-acre parcel was subdivided by Plat No. 16036 recorded on or about June 20, 1986 into Lot 15 and Outlot E with Parcel 970 remaining an unplatted parcel. Parcel 973 is a part of Outlot E created by created deed conveyance; and

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EXHIBIT NO. 14
APPLICATION NO. DPA 04-2

WHEREAS, Schematic Development Plan Amendment (“SDP”) 86-1 was approved by the County Council by Resolution 10-2241 adopted on October 30, 1986 to amend the schematic development plan approved with LMA G-189; and

WHEREAS, SDP 86-1 showed development on Lot 15 with 25,433 SF of gross floor area and development of the Property with 22,067 SF of gross floor area; and

WHEREAS, SDP 86-1 includes Binding Elements for front and side yard setback and green space requirements for the Property; and

WHEREAS, a Declaration of Covenants, recorded on or about April 30, 1986 in the Land Records of Montgomery County, Maryland in Liber 7099 at Folio 747 (the “1986 Declaration”), sets forth the setback and green space requirements for the Property and limits development of the Property and adjacent Lot 15 to 47,500 SF of gross floor area; and

WHEREAS, the development on the Property is now envisioned in a fashion different from that shown in SDP 86-1; and

WHEREAS, Declarant filed an Application to Amend SDP 86-1, designated _____, to allow for the development of 57,749 SF of gross floor area and associated surface and structured parking on the Property in one or more phases (the “Amendment”); and

WHEREAS, the Amendment did not seek to modify any other development restrictions contained in SDP 86-1 or the Declaration, including the requirements for setbacks and green space; and

WHEREAS, the Amendment was approved by the Montgomery County Council, sitting as the District Council, by Resolution No. _____, adopted _____; and

WHEREAS, pursuant to Section 59-H-2.54(c) of the Montgomery County Code, with the approval of the Amendment, the 1986 Declaration is modified only to the extent the 1986 Declaration limited development on the Property to 22,067 SF of gross floor area.

NOW THEREFORE, in consideration of the approval of the Amendment, the Declarant, for itself, its respective successors and assigns hereby covenant and agrees as follows:

1. That the Property will be restricted to the following development standards as shown and described on the Amendment to Schematic Development Plan prepared by Joyce Engineering Corporation:

<u>Development Control</u>	<u>Required</u>	<u>Binding</u>
Minimum Building Setback		
Front from Briggs Chaney Road	10'	50'
Side	0'	42'

Green Area - Minimum

10%

15%

Maximum Development

57,749 square feet of gross floor area

2. The remaining terms and restrictions of the 1986 Declaration are not modified by this Declaration.

3. The covenants and restrictions made hereunder shall run with the Property and be binding upon all parties claiming under or through the Declarants and all record owners, their respective heirs, successors and assigns so long as the Property shall be zoned in the C-3 classification and at such time a the Property is rezoned to a different zoning classification, then, in that event, these covenants and restrictions shall terminate and have no further force or effect.

4. These covenants and restrictions made hereunder are granted for the benefit of and shall be enforceable by Montgomery County, Maryland and the Maryland National Capital Park and Planning Commission.

5. These covenants may be amended from time to time upon approval of the amended covenant by the Declarants, their heirs, successors or assigns, and the Maryland National Capital Park and Planning Commission and Montgomery County, Maryland.

IN TESTIMONY WHEREOF, the said Declarant has hereunto set its hands and seals the day and year above.

WITNESS:

AUTO PARK INVESTMENT
GENERAL PARTNERSHIP NO. II
A Maryland Limited Liability Partnership

By: _____

STATE OF MARYLAND

COUNTY OF _____ to wit:

I HEREBY CERTIFY that on this ____ day of _____, 2004, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

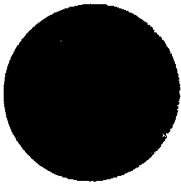
My Commission Expires: _____

[NOTARIAL SEAL]

EXHIBIT "A"

PROPERTY DESCRIPTION

IMANAGE:362349 v.2 05832.0001 Curr: 04/04/04 12:08pm
Orig: 4/4/04 12:06:37 PM Ed: 4/4/04



October 5, 2004

MEMORANDUM

To: Sandra Youla, Zoning Analyst, Development Review
From: ^{aw} Piera Weiss, Eastern County Team, Community-Based Planning
Subject: DPA 04-02, Mile One Body Shop

STAFF RECOMMENDATION: Approval of DPA 04-02, covenants to reference prohibition of parking of any vehicles on green space.

MASTER PLAN:

The 1997 Approved and Adopted Fairland Master Plan describes the general area within which the subject property is located as the Briggs Chaney Area. (See attached pages 63-67 from the master plan.)

The Master Plan had two objectives for the area: 1) clearly define the extent of retail and employment uses and 2) provide continuous sidewalk and streetscape along public roads to improve the visual appearance and so people can walk safely.

With respect to the Auto Sales Park, the master plan stated:

Encourage the Auto Sales Park property owners to participate in efforts to make the south side of Briggs Chaney Road more attractive and more compatible with opposite residential and retail uses including eliminating parking on green spaces along Briggs Chaney Road, US 29 and Automobile Boulevard. Consolidation or sharing of parking, possibly structured parking (with a building height greater than 42 feet, if necessary) should be considered to meet parking needs.

PP70

The subject property, ~~Lot 11~~, along with two other properties, was rezoned to the C-3 zone (G-189) for one dealership. The Schematic Development Plan for G-189 was amended October 30, 1986 to allow two separate dealerships. The property zoned C-3 was subsequently divided into two parcels (Preliminary Plan 1-85123), one each for the

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two dealerships, ~~lots~~ H and 15. The remainder of the property (including some C-3 zoned land) was set aside for a regional storm water management facility including road frontage for access (Outlot E) and easements were granted to the county for maintenance access.

Although the subject site is considered part of the Auto Sales Park because of its use, it is adjacent to the original Auto Sales Park and has no access to the main road, Automobile Boulevard that services the core of the Auto Sales Park; access is along Briggs Chaney Road. For this reason and the fact that the property is directly opposite a residential community, the master plan recommendations for streetscape, parking location and type of parking structure, and overall compatibility with residential development are directly applicable.

The applicant is proposing to double the amount of square footage approved in the original C-3 zoning case. Staff reviewed the application alongside the recommendations of the master plan.

Briggs Chaney Road

There are two road projects that will change the circulation in the Briggs Chaney Road area and are relevant to the access for the subject site. MCDPWT will begin the construction phase for the reconstruction of Briggs Chaney Road between Automobile Boulevard and Dogwood Lane in coordination with the SHA's grade-separated interchange of US 29 and Briggs Chaney Road, which is currently under construction. The cross section for Briggs Chaney Road includes a median between US 29 (west) and Dogwood Lane (east). The subject site is located within this stretch. The subject site is located just west of the intersection of Briggs Chaney Road and Gateshead Manor Way. MCDPWT plans show that a median break occurs at the intersection and will not permit another break in the median for the subject site, therefore, access to the site from Briggs Chaney Road will be right in, right-out.

In meetings with the applicant, staff suggested that since the property owners have recently consolidated their holdings and own property to the west, redundant access to the site could be provided, thereby reducing direct access from Briggs Chaney Road. In a letter dated September 24, 2004 from the applicant to staff, the applicant stated that only cars serviced and sold by Mile One will be using the Body Shop and agreed to have internal access for those vehicles. Other customers using the Body Shop and tow trucks will use the Briggs Chaney Road access and the proposed car wash will not be open to the general public. The letter outlined the operational characteristics of the proposed body shop and concluded that the development, even if it is twice as large as the original Schematic Development Plan, will have minimal impact on the surrounding road network.

Importantly, only cars being sold or serviced at the adjacent Mile One dealerships will be reconditioned or serviced at the Body Shop and these cars will be driven to and from the Body Shop and the adjacent dealerships via internal access

driveways... The site access will be designed to accommodate this movement in a safe and efficient manner and considering the low volume of customer traffic on Briggs Chaney Road relative to the size of the building; there will be no adverse impact on traffic circulation ... caused by the Body Shop.

Staff concludes that the proposed revisions to the circulation and the number of users by time of day as described by the applicant have taken into consideration the issue of congestion along Briggs Chaney Road.

Setbacks and Green Space

The issue of green space and parking of cars on the green space have been an issue for the residential community for at least 20 years. Amendments to the C-3 zone in the 1980s required a 50-foot setback in order to ensure that a substantial amount of green space was provided along the roadways opposite a residential community. The applicant is showing the required setback and such will be recorded in the required covenants. The applicant is also provided structured parking, as recommended in the master plan, which should relieve some of the surface-parking problem.

There remains the problem of parking in the green space. The draft covenants reference the green space and setbacks, but do not specify that no parking will occur in the green space. This restriction should be spelled out in the covenants to eliminate an enforcement issue, as has been the case many times in the past on properties within the Auto Sales Park.

Street trees, sidewalks and landscaping within the green space will be required and reviewed at the time of Site Plan review.

Attachments:

Master Plan, Pages 63-67

Letter dated September 24, 2004 applicant to staff

NON-RESIDENTIAL

The 1981 Plan recommended concentrating retail and employment uses in key locations along US 29 to support the transit serviceability concept and consequently added approximately 330 acres of commercial and industrial/office zoning in locations that could be reached by transit. The 1981 Plan placed additional neighborhood retail in Burtonsville at the northeast intersection of US 29 and MD 198 and at the intersection of Briggs Chaney Road and US 29. In addition, employment/office uses were added to the intersection of US 29 and Cherry Hill Road, adjacent to the existing Montgomery County Industrial Park, and at the southeast quadrant of the US 29/MD 198 intersection.

The 1994 *Eastern Montgomery County Neighborhood Retail Study* and the analysis for the employment outlook (see pages 12-13) concluded that there is sufficient existing and potential commercial and office development to support the existing and future residential population. This Plan accepts the premise that additional neighborhood retail or employment is unnecessary. This Plan also recognizes that during the life of the master plan, market forces will change and redevelopment may be desirable. For example, the older areas, such as the retail businesses in Burtonsville on the west side of US 29 or portions of the Montgomery Industrial Park, may be candidates for redevelopment within the next 20 years. The following pages describe the conditions of the existing retail and employment areas, and establish goals, objectives, and recommendations tailored to each.

NEIGHBORHOOD RETAIL

Briggs Chaney

The Briggs Chaney area contains two neighborhood shopping developments (Briggs Chaney Center and Briggs Chaney Plaza) and the Auto Sales Park, a 46-acre car sales and service center with a regional draw (Figure 27).

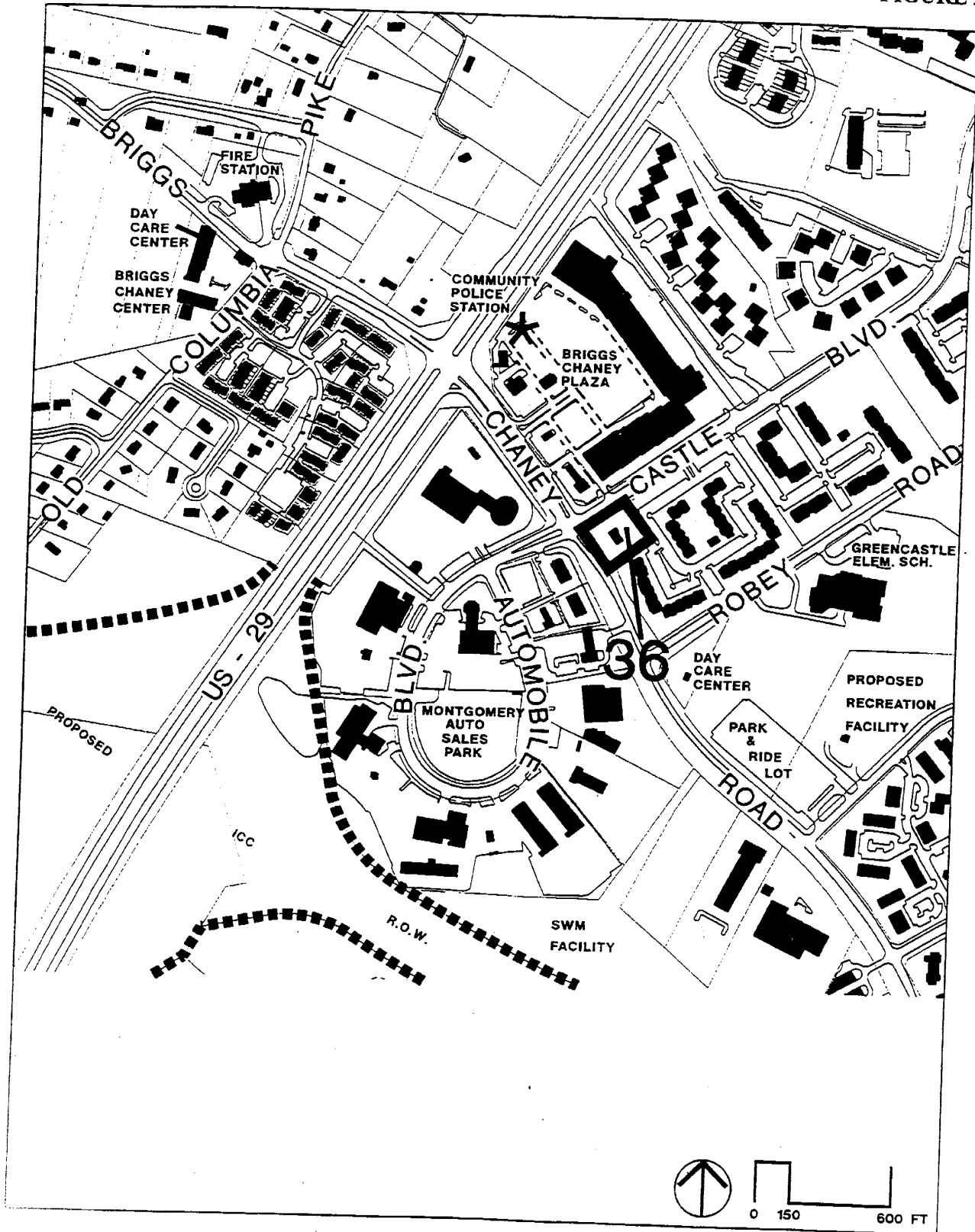
Briggs Chaney Center, located at the intersection of Old Columbia Pike and Briggs Chaney Road opposite the Avonshire housing development, contains 41,000 square feet of retail development and opened in 1987. A restaurant lies adjacent to the south. There are a few local services: a day-care center in the lower level of the shopping center and a dentist's office. The Paint Branch High School is located on Old Columbia Pike, about 1,500 feet north of the Briggs Chaney Road intersection. Students walk to the shopping center and cross US 29 to reach Briggs Chaney Plaza. As a result of injuries and fatalities, a fence was recently installed along US 29 between Briggs Chaney Road and Greencastle Road to deter students from crossing US 29 at unsignalized locations.

Briggs Chaney Plaza, located at the northeast corner of the US 29/Briggs Chaney Road intersection, contains a supermarket and 50 stores totalling 186,000 square feet and the Eastern Montgomery County Police Satellite Facility. Vehicular access to the shopping center is awkward and sometimes left-turning traffic backs up in the US 29 intersection. On the north side of Briggs Chaney Road, east of the shopping center, is a single-family home, zoned for apartments. Approximately 600 feet east of the house is a day-care center located at the corner of Robey and Briggs Chaney Roads. About 1,000 feet east, at the corner of Gateshead Manor Way and Briggs Chaney Road is the site of the future County recreation center, just north of the County park-and-ride lot.

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BRIGGS CHANEY

FIGURE 27



FAIRLAND MASTER PLAN

DRAFT

APPROVED AND ADOPTED

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The Auto Sales Park is located on the southeast corner of Briggs Chaney Road and US 29, opposite the Briggs Chaney Plaza. The concept for an Auto Sales Park dates to the late 1960s, when changes to the Zoning Ordinance limited expansion of auto sales in central businesses districts. Auto sales businesses developed the one-stop automobile shopping area as a coordinated development in an attractive setting with green space. Although the auto-park concept is a successful sales tool, a number of problems have developed over the years. Private covenants were used to maintain the appearance of the Auto Park, but the covenants were extinguished by the affected parties in the 1980s. Since then, the green space has been used for parking and inventory storage and on-street parking is being used for car and truck storage.

Although the shopping centers and most of the facilities are within walking distance of US 29, the sidewalks are discontinuous and vary in standard. There are sidewalks for some stretches on the north side of Briggs Chaney Road; there are no sidewalks or paths on the south side. Most importantly, pedestrian crossing of US 29 is difficult. Although there is a pedestrian crosswalk on the north side of Briggs Chaney Road, turning movements and driver disregard for traffic signals make pedestrian crossing hazardous. The proposed grade-separated interchange will improve pedestrian crossing movements, but may hinder vehicular access to the shopping center. (See Transportation section, page 91.)

GOAL: Improve circulation and define boundaries of the commercial area.

OBJECTIVE: Clearly define the extent of retail and employment uses.

RECOMMENDATIONS:

- No additional commercial (C-1, C-2) or industrial zoning (I-1, I-3).
- Encourage compatible and transitional land uses at the edges between the retail and residential uses. Housing for the elderly is an appropriate use in the vicinity of either shopping center. Residents of these developments could walk or use shuttle busses to shopping and other services. There are few medical offices or professional services in the immediate area. Single practitioners and small-scale offices uses, like those permitted through special exceptions may be appropriate to serve the residential communities.
- The single-family home site (Area 36) on Castle Boulevard is appropriate for CT, Commercial Transitional Zone. (See also page 44.)

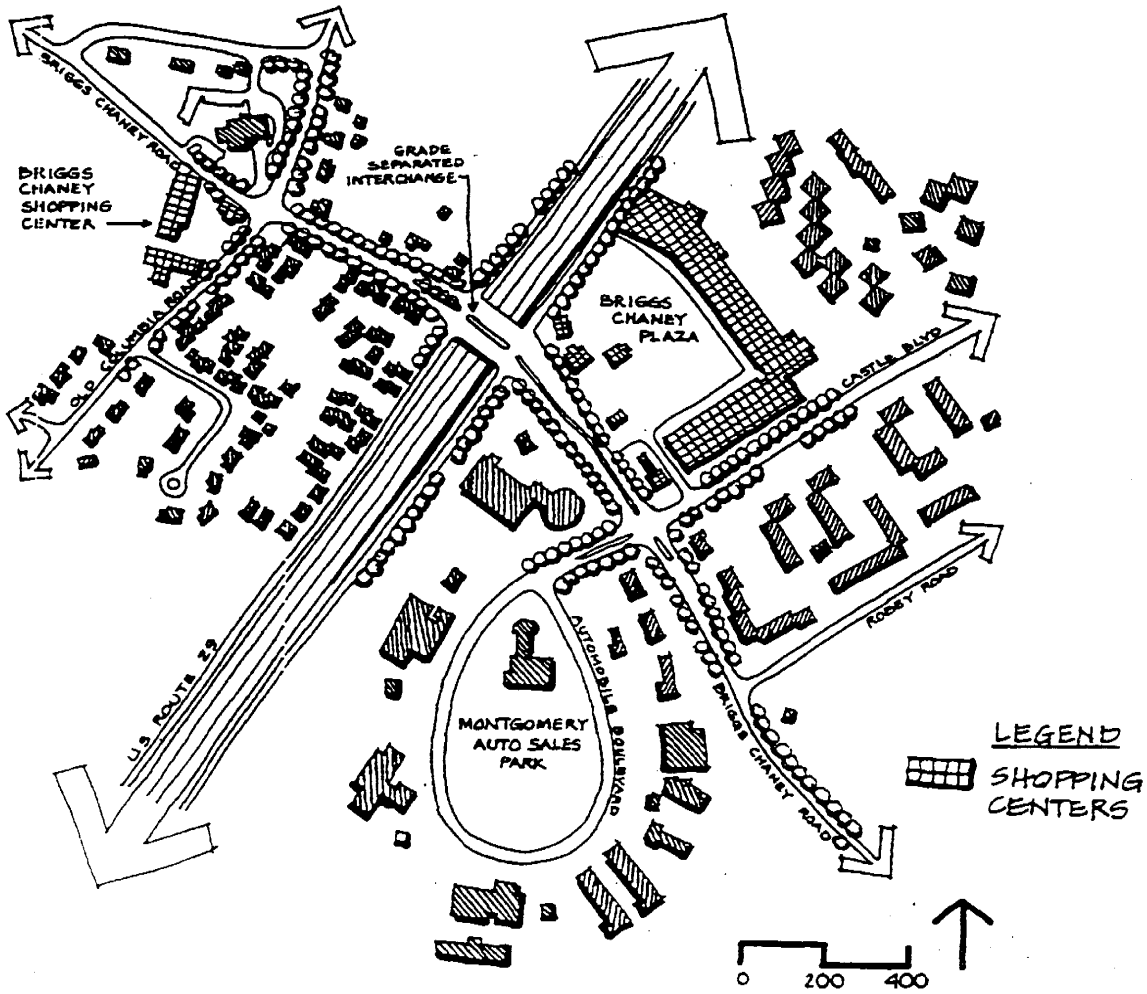
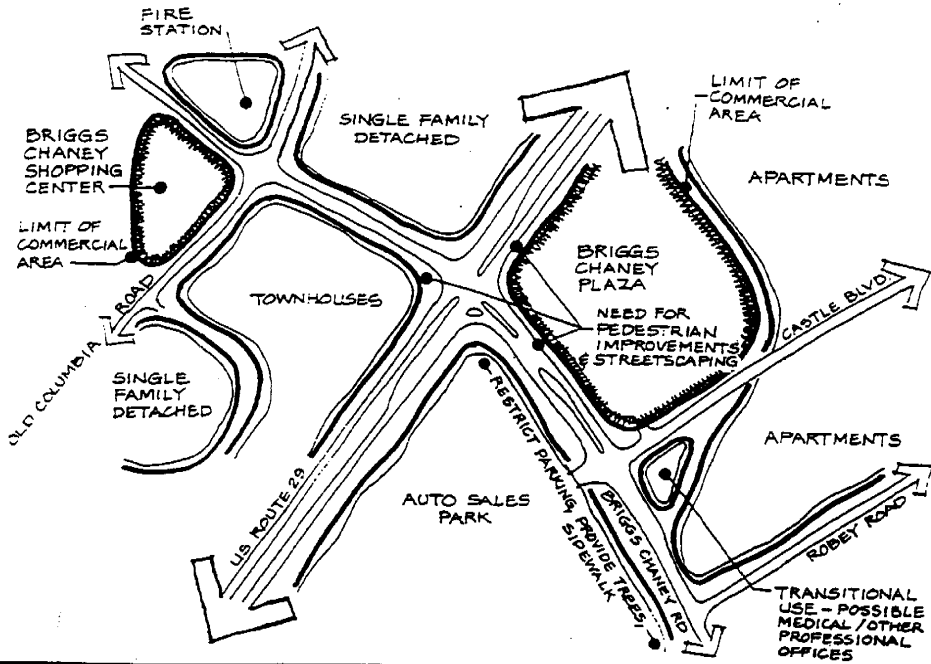
OBJECTIVE: Provide continuous sidewalks and streetscaping along public roads to improve the visual appearance of the entire area and so that people can walk safely.

RECOMMENDATIONS:

- Develop a coordinated streetscape plan, including street trees, sidewalks, and pedestrian crosswalks for Briggs Chaney Road between Old Columbia Pike and Castle Boulevard, and along Old Columbia Pike in the commercial area (Figure 28).
- Include sidewalks/bikeways for access to shopping and across US 29 in the design for the Briggs Chaney interchange. Auto access into the shopping centers must be included in the US 29 ramp and interchange design, to allow for sufficient left turn stacking and signalization where necessary.

BRIGGS CHANEY CENTER CONCEPT

FIGURE 28



(28)

- Develop a public/private partnership including property owners, State Highway Administration (SHA), and Montgomery County Department of Public Works and Transportation (MCDPW&T) to accomplish these improvements, including streetscaping, within the public rights-of-way for US 29, Old Columbia Pike, and Briggs Chaney Road.
- Encourage the Auto Sales Park property owners to participate in efforts to make the south side of Briggs Chaney Road more attractive and compatible with opposite residential and retail uses including eliminating parking on green space along Briggs Chaney Road, US 29, and Automobile Boulevard. Consolidation or sharing of parking, possibly structured parking (with a building height greater than 42 feet, if necessary) should be considered to meet parking needs.

Burtonsville

The intersection of MD 198 and US 29, known as Burtonsville, (Figure 29) contains approximately 232,000 square feet of commercial space. This location has historically served as one of Fairland's commercial and business centers. The 1981 Plan recommended additional commercial zoning in the area. Today, there are two shopping centers, a number of individual stores, small strip centers, and some public uses. Access to the stores and businesses in Burtonsville by car or on foot is hampered by traffic congestion and the lack of sidewalks.

Existing businesses along MD 198 west of US 29 include two mini-malls, ten restaurants, four printing businesses, an animal hospital, car repair and service businesses, home appliance services, small business and medical offices, and a bank. On the east side of US 29 are a plant nursery, a hardware store, and a medical office building. The Burtonsville Post Office, the Burtonsville Elementary School, and the vacant fire station are located west of US 29. A County park-and-ride lot is located on the east side of US 29. The school does not have adequate access to MD 198. The property owners of Area 33 have proposed a solution to the access problem. The Burtonsville Post Office will relocate in the Burtonsville Shopping Center. The Burtonsville Volunteer Fire Department moved to the new fire station on Briggs Chaney Road in March 1995, but retains ownership of the old fire station property, which is split zoned C-1 (commercial) and Rural Cluster (RC).

The *Eastern Montgomery County Neighborhood Retail Study* concluded that expansion of the Burtonsville area is probably not supportable because of future competition within and outside the County. On the other hand, the Study found this to be a strong market area with few vacancies. The two shopping centers supply most of the usual services found in neighborhood centers. The Burtonsville market area has the best potential in Eastern Montgomery County for new housing with sizable disposable income—there are about 300 acres of developable residentially zoned land within a mile of the US 29/MD 198 intersection. However, the realignment of US 29 will remove the convenient right-in/right-out access for northbound travelers. The old alignment will become a local road and not as convenient for northbound evening rush-hour shoppers. A portion of Area 34 lies between the existing and proposed realignment of US 29. Area 34 is zoned Rural Cluster. Special exceptions may be preferable to single-family detached lots on the portion of the Area that will be located between the two roadways.

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

September 24, 2004

Scott C. Wallace
301.961.5124
swallace@linowes-law.com

VIA SCHEDULED EXPRESS

Ms. Sandra Youla
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Mile One Automotive Group - Montgomery County Auto Park – Parcels 970/973
(the “Property”) - Development Plan Amendment DPA-04-2 (the “DPA”)

Dear Sandra:

Since you were unable to attend the August 12, 2004 meeting with Staff on the DPA, the purpose of this letter is to review the nature and scope of activities of the proposed auto body repair shop (the “Body Shop”). As discussed below, because of the particular operational characteristics of the Body Shop, the development will have a minimal impact on nearby uses and the surrounding road network. Further, development of the Property as proposed, and the associated proposal for redevelopment of the Mile One dealerships adjacent to the Property on Lot 11, will significantly enhance the appearance and operation of a large portion of the Montgomery Auto Park to the benefit of the surrounding community

The Body Shop Building

As you are aware, the Property is currently used for car storage on a surface parking lot. The DPA seeks approval of approximately 35,000 square feet (“SF”) of development on the Property, which is in addition to the 22,000 SF of commercial development currently permitted on the Property pursuant to DPA 86-1, to allow for construction of the Body Shop building containing 57,749 SF. The Body Shop building will contain 10 bays for auto body work with technicians assigned to each bay, as more fully described below.

A section of the building will also have bays for new car reconditioning (i.e., washing and detailing of new cars prior to display on the adjacent Mile One dealership lots) and for any overflow from the mechanical service departments of the adjacent Mile One dealerships. Importantly, *only* cars being sold or serviced at the adjacent Mile One dealerships will be

Ms. Sandra Youla
September 24, 2004
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reconditioned or serviced at the Body Shop and these cars will be driven to and from the Body Shop and the adjacent dealerships via internal access driveways. (In that regard, the car washes proposed at the Body Shop will not be open to the general public.) Therefore, neither the new car reconditioning nor the overflow service operations will generate any trips on Briggs Chaney Road. There will also be some new vehicle storage by Mile One on the Property. These cars will be driven to and from the adjacent Mile One dealership lot via the internal access driveways, not on Briggs Chaney Road.

Customers, including tow trucks, dropping off and picking up cars from the Body Shop will use Briggs Chaney Road. In that regard, it was agreed with Staff at our August 12 meeting that Mile One would not pursue a median break on Briggs Chaney Road with the Montgomery County Department of Public Works and Transportation ("DPWT") and no median break is currently contemplated in DPWT plans for the widening of Briggs Chaney Road. Therefore, access for customers will be right in/right out only. The site access will be designed to accommodate this movement in a safe and efficient manner and, considering the low volume of customer traffic on Briggs Chaney Road relative to the size of the building, discussed below, there will be no adverse impact on traffic circulation around the Auto Park caused by the Body Shop.

Number of Employees and Customers/Hours of Operation

It is expected that approximately 35 mechanics, technicians and support personnel will work at the Body Shop when it is fully operational. Of these employees, only approximately 25 are expected to be "new" employees, since approximately 10 employees currently working at the exiting auto body shop at the adjacent Mile One dealership lot (which will be demolished as part of the overall redevelopment plan for Lot 11) will transfer to the Body Shop on the Property when it is operational.

In terms of customers, 5 to 8 vehicle drop-offs per day are projected, including drop-offs by tow trucks which account for approximately 25% of all drop-offs. The Body Shop will be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, and will be closed on weekends. Based on the experience of Mile One, the majority of drop-offs for cars driven to the Body Shop occur in the late morning or early afternoon, outside of the morning and afternoon peak traffic hours. Further, the majority of cars dropped off by tow truck are brought in the early morning or later in the evening after rush hour. (Tow trucks operate at these times because the majority of their calls come from rush-hour accidents.) Customers and tow trucks dropping off cars can use a 24 hour "key drop." However, of the approximately 25-40 cars that are projected to be dropped off at the Body Shop for body repair per week, only approximately five are projected to use the key drop. The low volume of drop-offs is a reflection, in part, of the length of time body work

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requires, as the average vehicle brought to the Body Shop requires 10 days for repair. In contrast, mechanical service can usually be accomplished in one or two days and is effectively a "high turnover" use compared to auto body repair.

Finally, the Body Shop will operate with one shift of employees, working 8:00 a.m. to 5:00 p.m. Most employees arrive in the morning at 7:30-7:45 a.m. and leave immediately after the Body Shop closes at 5:00 p.m. Based on the number of employees projected for the Body Shop and the time and volume of customer drop-offs, it is expected that the actual number of peak hour trips generated by the Body Shop will be between 25-30 trips. (We note the Traffic Impact Analysis for the Body Shop submitted by The Traffic Group utilized standard trip generation rates for general auto services uses and the resulting projection of 121 a.m./153 p.m. peak hour trips for the project therefore presents a "worst case scenario.")

In summary, the particular characteristics of the Body Shop operation proposed for the Property, such as the low volume and off-peak time of customer drop-offs and the use of internal driveways to keep trips off of Briggs Chaney Road, result in a minimal level of vehicular activity in the morning and evening peak hours relative to the size of the Body Shop building and practically no activity before 8:00 a.m. and after 5:00 p.m. on weekdays and weekends. In contrast, many of the other surrounding uses have longer hours of operation, including weekend hours. Therefore, the Body Shop will operate in a manner that is compatible with, and in many ways less intense, than the surrounding uses.

We hope this information has been helpful to you as you review the DPA application. Upon review, if you have any questions, please do not hesitate to call. Thank you.

Very truly yours,

LINOWES AND BLOCHER LLP


Scott C. Wallace

SCW:bta

cc: Ms. Pierra Weiss
Mr. Cherian Eapen
Mr. Jerry Fader
Mr. Tom Gordon
Mr. Jim Gordon
Mr. Wes Guckert

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AND **BLOCHER LLP**
ATTORNEYS AT LAW

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Mr. Jon Penny
Mr. Bill Joyce
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