

Agenda item 9

Resolution No: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND

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By: District Council

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Subject: Approval of Development Plan Amendment (DPA) 04-2

**BACKGROUND**

1. Development Plan Amendment ("DPA") application No. 04-2 was filed on April 8, 2004. The Applicant, Auto Park Investment General Partnership II, seeks to amend the approved Development Plan applicable to a 10.2582-acre property that is located on Briggs Chaney Road in the Fairland area, approximately 500 feet east of the intersection of Briggs Chaney and Robey Roads. The 10.2-acre subject property was classified under the C-3 Zone in 1980 via Local Map Amendment ("LMA") No. G-189. The Development Plan for the subject property was amended in 1986 via DPA 86-1. Two later amendments proposed to the Development Plan were ineffective because the executed covenants were not submitted.
2. The subject property is comprised of all or part of four parcels, N 967, P970, N 973 and a portion of Outlot E. The Applicant and a related entity own three of these, P 970, N 973 and a portion of Outlot E.
3. In DPA 04-2, the Applicant seeks an increase in density for parcels P 970 and N 973, which comprise the northern half of the site, as well as a change in use. On the development plan approved in 1986, P 970 is approved for 20,500 square feet of auto dealership use. N 973 is not designated for any development on the 1986 plan, as it was intended to provide access to a regional stormwater management facility on Outlot E. DPA 04-2 seeks approval for a total of 57,749 square feet of development on parcels P 970 and N 973 combined, which together measure about 4.98 acres. A binding element prohibits any designated parking spaces from being located in the storm water access easement area, and requires approval from the Department of Permitting Services for grading and curb cuts to ensure adequate access to the stormwater management facility. The present DPA does not seek to change the other binding elements on the 1986 plan, which specify a 50-foot

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- front yard setback, a 42-foot side yard setback, and a green space requirement of 15 percent.
4. DPA 04-2 does not seek to change the approved density on Parcel N 967 (Lot 15).
  5. Parcels P 970 and N 973 are currently used for automobile storage on a surface parking lot. As a first phase, the Applicant proposes to construct a 57,749-square-foot automobile body shop on Parcels P 970 and N 973, with ten bays for auto body work, approximately 285 surface parking spaces and approximately 163 spaces on a structured roof-top parking deck. The building, with rooftop parking, is intended to be 38 feet in height. The DPA will also permit potential construction of additional parking decks on the roof of the body shop, up to a height of 84 feet, if approved at site plan. The proposed body shop would be part of an overall redevelopment of the auto dealerships owned by the Applicant's parent company, Mile One, in the adjacent Montgomery Auto Park.
  6. Technical Staff of the Maryland-National Capital Park and Planning Commission, by memorandum dated October 21, 2004, recommended that the subject application be granted, with certain revisions to the development plan and additional submissions. See Ex. 42. Staff found that the proposed DPA (1) satisfies the purposes of the C-3 Zone by providing for the orderly grouping of commercial development along or near major highways; (2) conforms with the *1997 Approved and Adopted Fairland Master Plan*; (3) satisfies all the development standards for the zone; and (4) will aid in the accomplishment of a coordinated and comprehensive development of the Maryland Washington Regional District.
  7. The Montgomery County Planning Board (the "Planning Board") voted unanimously on October 28, 2004 to recommend that the application be approved, subject to compliance with the revisions and submissions identified by Technical Staff. See Ex. 48. In its Board Recommendation dated December 3, 2004, the Planning Board stated that the Applicant had made all of the required revisions and submissions to Technical Staff's satisfaction. See *id.*
  8. There is no opposition to DPA 02-<sup>42</sup>3, the Planning Board does not recommend a public hearing in this case, and no request has been made for a hearing.
  9. On February \_\_, 2005, the District Council reviewed DPA 04-2 and concluded that the DPA meets the requirements of the Zoning Ordinance and its approval would be in the public interest.

(2)



**ACTION**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

DPA 04-2, which requests an amendment to the Development Plan approved in DPA 86-1 applicable 10.2582 acres of land located on Briggs Chaney Road in the Fairland area, approximately 500 feet east of the intersection of Briggs Chaney and Robey Roads, to permit the development of a 57,749-square-foot automobile body shop on the portion of said land known as Parcels P 970 and N 973, is approved subject to the specifications and requirements of the Development Plan, Ex. 46(a), provided that the applicant submits the Development Plan for certification by the hearing examiner under the provisions of §59-D-1.64 within 10 days of the District Council action.

This is a correct copy of Council action.

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Mary A. Edgar, CMC  
Clerk of the Council

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MONTGOMERY COUNTY, MARYLAND

MEMORANDUM

February 15, 2005

TO: County Council

FROM: Françoise M. Carrier *FM*  
 Director, Office of Zoning and Administrative Hearings

SUBJECT: Development Plan Amendment (DPA) 04-2

DPA 04-2 was filed on April 8, 2004 by Applicant Auto Park Investment General Partnership II. This application relates to a 10.2582-acre property that is located on Briggs Chaney Road in the Fairland area, approximately 500 feet east of the intersection of Briggs Chaney and Robey Roads. The subject property includes some or all of four different parcels, three of which are owned by the Applicant and one of which is owned by another entity. The parcels, sizes and ownership are set forth below:

Parcel Number	Approximate Acreage	Ownership	Current Use
N 967 (Lot 15)	4.0	Covington Buick	Covington Buick Dealership with parking
P 970 (Lot 16)	4.0	Applicant	Outdoor automobile storage
N 973	0.98	Applicant	Automobile storage, plus interior access to the auto park and access to a storm water management facility
Portion of Remaining Part of Outlot E	1.3	Auto Park (parent of applicant)	Storm water management facility



Office of Zoning and Administrative Hearings

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The subject property has a rather complicated history of zoning actions, which is summarized in the following table:

Case No.	Actions and Dates	Effect
G-189	Filed 1979 Granted 1980	Rezoned 10-acre property to C-3 Zone to permit development of a single auto dealership with total of 47,500 sq. ft. of space, 7,500 sq. ft. of showroom and 40,000 sq. ft. of office, parts and service.
DPA 86-1	Filed and Granted 1986	Property approved for two auto dealerships totaling 47,500 sq. ft.: 25,433 sq. ft. on Lot 15 and 22,067 sq. ft. on Lot 16. Covenants executed and recorded as required. This SDP, Ex. 23(A), remains the currently approved plan for both lots.
DPA 00-3	Filed 2000 Approved 2001	Proposed to transfer square footage from Lot 16 to Lot 15. Covenants were never executed, making DPA 00-3 an ineffectual action.
DPA 01-2	Filed 2000 Deferred 2001 Dismissed 2004	Described to Hearing Examiner as confirming square footages established in DPA 86-1. In fact, submitted plan would have conformed square footage for Lot 16 to level proposed in DPA 00-3, 20,826 sq. ft. Covenants were never executed or filed. Application was later dismissed at applicant's request.

Thus, the last development plan amendment that took effect with regard to the subject property was DPA 86-1, in 1986. Two subsequent attempts to decrease slightly the approved density on Lot 16 and increase the approved density on Lot 15 did not take effect because the covenants were never executed.

In the present case, the Applicant seeks a substantial increase in density for parcels P 970 and N 973, which comprise the northern half of the site, as well as a change in use. On the current development plan, dating from 1986, P 970 is approved for 20,500 square feet of auto dealership use. N 973 is not designated for any development on the 1986 plan, as it was intended to provide access to a regional stormwater management facility on Outlot E. The present DPA seeks approval for a total of 57,749 square feet of development on parcels P 970 and N 973 combined, which together measure about 4.98 acres. A binding element prohibits any designated parking spaces from being located in the storm water access easement area, and requires approval from the Department of Permitting Services for grading and curb cuts to ensure adequate access to the



stormwater management facility. The present DPA does not seek to change the other binding elements on the 1986 plan, which specify a 50-foot front yard setback, a 42-foot side yard setback, and a green space requirement of 15 percent.

DPA 04-2 does not seek to change the approved density on Parcel N 967 (Lot 15).

Parcels 970 and 973 (the "Property") are currently used for automobile storage on a surface parking lot. As a first phase, the Applicant proposes to construct a 57,749-square-foot automobile body shop on the Property, with ten bays for auto body work, approximately 285 surface parking spaces and approximately 163 spaces on a structured roof-top parking deck. The building, with rooftop parking, is intended to be 38 feet in height. The DPA would also approve potential construction of additional parking decks on the roof of the body shop, up to a height of 84 feet, if approved at site plan. The proposed body shop would be part of an overall redevelopment of the auto dealerships owned by the Applicant's parent company, Mile One, in the adjacent Montgomery Auto Park.

Technical Staff of the Maryland-National Capital Park and Planning Commission, by memorandum dated October 21, 2004, recommended that the subject application be granted, with certain revisions to the development plan and additional submissions. See Ex. 42. Staff found that the proposed DPA (1) satisfies the purposes of the C-3 Zone by providing for the orderly grouping of commercial development along or near major highways; (2) conforms with the *1997 Approved and Adopted Fairland Master Plan*; (3) satisfies all the development standards for the zone; and (4) will aid in the accomplishment of a coordinated and comprehensive development of the Maryland Washington Regional District.

The Montgomery County Planning Board (the "Planning Board") voted unanimously on October 28, 2004 to recommend that the application be approved, subject to compliance with the revisions and submissions identified by Technical Staff. See Ex. 48. In its Board Recommendation dated December 3, 2004, the Planning Board stated that the Applicant had made all of the required revisions and submissions to Technical Staff's satisfaction. See *id.*

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The Hearing Examiner's office received the subject file and all exhibits from Technical Staff on December 23, 2004. On January 19, 2005, the Hearing Examiner informed Technical Staff of certain defects in the submitted covenants that required correction before the case could be presented to the District Council. Those defects were corrected in a new submission filed on February 2, 2005.

There is no opposition to DPA 04-<sup>2</sup>1, the Planning Board does not recommend a public hearing in this case, and no request has been made for a hearing. Therefore, under the provisions of Zoning Code §59-D-1.74(c)(3), the matter can be considered directly by the District Council without the need for a hearing conducted by the Office of Zoning and Administrative Hearings. A proposed resolution is enclosed for your consideration.

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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Chairman, Montgomery County Planning Board

**DATE:** December 3, 2004

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** Montgomery County Planning Board

**SUBJECT:** Planning Board Opinion on Schematic Development Plan Amendment DPA-04-2

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Schematic Development Plan Amendment DPA 04-2 at its regular meeting on October 28, 2004. By a unanimous vote, the Board recommended for reasons set forth in the staff report and supplemented by staff at the Planning Board meeting that

- 1) the application be **APPROVED**,
- 2) the applicant comply with staff recommendations numbers 3 and 4 in the staff report and revised staff recommendation number 2, as submitted as a handout at the Planning Board meeting, and
- 3) there be no public hearing before the Hearing Examiner because there was no public opposition to the application.

The staff report and handout are incorporated by reference into this staff report. Recommendations numbers 3 and 4 in the staff report and revised staff recommendation number 2 are as follows:

- 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. Further, these plans must note DPS requirements that a) no designated parking spaces may be located within the storm water access easement, and b) access to the storm water parcel must include grading and curb cuts acceptable to

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EXHIBIT NO.

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APPLICATION NO.

DPA 04-2

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DPS. 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.

(Underlining indicates additions to the language shown in the staff report dated 10/21/2004.)

- 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.

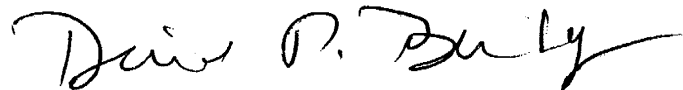
Following the Planning Board meeting, the applicant made such submissions to staff, received by M-NCPCC on 11/23/2004. Staff found the submissions to be satisfactory, and the Planning Board gives the Council notice of staff's satisfaction via this memo. In addition, the applicant submitted to staff an Affidavit of Posting and an Affidavit of Mailing, as required. These affidavits and submissions, along with the staff report, staff handout showing revised recommendation number 2, this Planning Board recommendation, and other case documents are incorporated into the case file, for transmission to the Hearing Examiner for transmission to the County Council. The exhibit list of the case file has been updated accordingly, as required.

Planning Board members acknowledged the complex zoning history of this site and took note of prior difficulties that arose at the site due to inaccurate and/or unrecorded Declarations of Covenants. They thus were supportive of staff recommendations that binding elements be shown accurately, the Declaration of Covenants be revised, and an illustrative plan be submitted covering the entire approximately 10-acre site that was the subject of the original zoning case,

schematic development plan, and subsequent schematic development plan amendments.

**CERTIFICATION**

This is to certify that the attached staff report and staff handout at the Planning Board meeting showing revised recommendation 2 are true and correct copies and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on a motion of Commissioner Wellington, as seconded by Commissioner Bryant, and with Commissioner Robinson, Vice Chair Perdue, and Chairman Berlage voting in favor of the motion, at its regular meeting held in Silver Spring, Maryland on Thursday, October 28, 2004.



Derick P. Berlage  
Chairman

# DPA 04-2 AGENDA ITEM 8, MCPB 10/28/2004

## REVISED RECOMMENDATION # 2

(Distributed at Planning Board Meeting by MNCPPC zoning staff)

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. Further, these plans must note DPS requirements that a) no designated parking spaces may be located within the storm water access easement, and b) access to the storm water parcel must include grading and curb cuts acceptable to DPS. 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.

(Underlining indicates additions to the language shown in the staff report dated 10/21/2004.)



EXHIBIT NO.	43 A
APPLICATION NO.	DPA 04-2