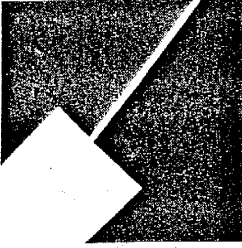


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Date of Mailing: AUG 12 2005

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Silver Spring, Maryland 20910-3760
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**MONTGOMERY COUNTY PLANNING BOARD
OPINION**

Site Plan No.: 8-05027
Project: Darnestown Village Center
Date of Hearing: April 21, 2005

Action: **APPROVAL SUBJECT TO CONDITIONS.** (Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Wellington; with a vote of 4-0, Commissioners Berlage, Bryant, Wellington, and Robinson voting in favor. Commissioner Perdue was necessarily absent.)

The date of this written opinion is AUG 12 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State). This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On February 14, 2005, the applicant, David M. Landow ("Applicant"), filed an application with the Planning Board for review of a proposed 9,458 square feet of additional grocery store use and a request for a waiver to the required number of parking spaces. The application was captioned Site Plan No. 8-05027 (Darnestown Village Center) ("Application" or "Site Plan"). On April 21, 2005, the Site Plan was brought before the Montgomery County Planning Board for a public hearing ("Hearing"). At the Hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

BACKGROUND

Preliminary Plan #1-89044 ("Preliminary Plan") was approved by the Planning Board on November 12, 1989 for a 43,256 square foot "retail establishment." The Board considered an amendment to the Preliminary Plan ("Preliminary Plan Amendment") concurrently with its review of the Site Plan.¹ Subsequently, in 1998, MNCPPC and Applicant executed an

¹ The Preliminary Plan Amendment increases the existing grocery use on the subject property from 33,798 square feet to 43,256 square feet and confirms that the previously

amendment to the adequate public facilities agreement that the parties had entered into in 1990 in satisfaction of a condition of approval of the Preliminary Plan ("APF Amendment"). The APF Amendment expressly limited development on the subject property to a "33,798 square foot supermarket and 9,458 square feet of general retail use."

THE SUBJECT PROPERTY

The 10.63-acre site ("Subject Property") consists of an existing 33,798 square foot Food Lion grocery store. The building is set back from Darnestown Road by approximately 170 feet, with surface parking in the front and rear of the building. Access into the site is directly opposite the signalized intersection of Seneca Road and Darnestown Road. The eastern boundary, which includes the Darnestown Square Urban Park, contains mature trees and picnic tables in a grassy setting. The northeastern boundary of the site contains a ten-foot-tall retaining wall with a six-foot wood fence and Leyland Cypress buffer to the adjacent residential homes and lots within the Seneca Highlands community. The western boundary of the site consists of Lots 30 and 31, which were part of the original subdivision and proposed for future septic area to accommodate the expansion. The majority of Lots 30 and 31 are wooded, with a conservation easement on the southern boundary of lot 31. The topography within the site falls by five feet from Darnestown Road to the store.

Existing thirty-foot light poles are located within the site, primarily on the perimeter and within the planting islands. A 3-4 foot evergreen hedge screens the existing parking from Darnestown Road. Small deciduous trees remain in some of the planting islands throughout the parking lot.

The area is covered by the approved and adopted Potomac Subregion Master Plan of 2002, which recommended that the Subject Property be included in an overlay zone, which was crafted to allow compatible uses in a rural village pattern. The original preliminary plan was approved prior to completion of the Master Plan.

The purpose of the overlay zone, which was implemented by Sectional Map Amendment, was to retain and enhance the commercial crossroads character through compatible scale, massing, siting, and setbacks for new and expanded uses; to encourage a variety of uses

approved 43,256 square feet of retail use (in Condition No. 1 of the Preliminary Plan) includes grocery use. The Preliminary Plan Amendment also requires that the Adequate Public Facilities Agreement—entered into as a condition of approval of the Preliminary Plan—shall be modified to reflect the change in use.

that serve the needs of the local community; to provide opportunities for new and existing business expansion, while keeping the commercial area compact and of low density; and to create a pedestrian-friendly commercial area through streetscape design.

PROPOSED DEVELOPMENT

The Application proposed to increase the existing 33,798 square foot existing grocery store by 9,458 square feet, which will equal the 43,256 square feet originally approved by the preliminary plan (#1-89044) in 1989. The grocery store addition is proposed for the northeast side of the existing building in the area presently used for storage.

Vehicular circulation presently consists of a three-way turning movement in and out of the site at the signalized intersection of Darnestown Road and Seneca Road. Internal vehicular circulation currently consists of 25-foot-wide drive aisles with parking and a parcel pick-up near the entrance of the building. The drive aisle continues to the rear of the building to accommodate loading and additional parking spaces. Pedestrian circulation consists of a 15-foot wide entrance under the existing and proposed vestibule and a 5-foot wide sidewalk connecting the parking and loading in the rear to the expanded walkway at the entrance of the building. The Application proposed an 8-foot wide bike lane along the frontage of the property, within the MD 28 right-of-way.

An additional 25 parking spaces are being provided for the additional square footage. The Application proposed a total of 28 fewer parking spaces than would generally be required, thereby necessitating a waiver from the Board.

The Applicant proposed to supplement the existing landscaping through additional shade trees in the parking lot islands and on the perimeter of the site. Lighting will be retrofitted to accommodate the building addition and extra parking spaces.

Lots 30 and 31, located in the northwest portion of the Subject Property, will be used to accommodate future septic needs for the proposed addition. The stormwater management concept was approved for this site on January 27, 2005, and consists of on-site quality and quantity control, via the existing on-site stormwater management pond.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval of the site plan in its memorandum dated April 15, 2005 ("Staff Report"). Staff presented its findings consistent

with the Staff Report at the Hearing. Staff did advise the Board, however, that the Staff Report incorrectly states that Applicant's parking waiver sought to reduce by thirty-one the number of required parking spaces, when, in fact, the reduction sought is twenty-eight spaces.

The Applicant appeared at the hearing represented by legal counsel. The Applicant testified that, while it agreed with most of Staff's recommendations, it disagreed with Staff on a few points, including: Applicant's desire that the conditions of approval be amended to clarify that the development ceiling of 43,256 square feet would permit both grocery store and retail uses, where the Staff recommendation would have limited any development to grocery use; the number of parking spaces that can be omitted, twenty-eight requested by the Applicant contrasted eighteen recommended by Staff; whether specific aspects of the exterior lighting design could be addressed at a staff level following approval, rather than placing specific limits in the conditions of approval, as had been proposed by Staff; and Applicant's desire, through Site Plan proposed condition no. 6(b), to leave open the option to encumber a portion of the forest conservation easement with a stormwater management facility, should DPS require a facility at such location..

Staff informed the Board that, under the provisions of the Zoning Ordinance, "retail" use—which is listed as a distinct use—was not technically permitted in the C-1 Zone, although certain types of retail uses are. The Applicant responded that it only wanted the space to be approved for those retail uses expressly permitted in the C-1 Zone. Ultimately, Staff and the Applicant agreed that the language could read that the space be approved for grocery use and those specific retail uses permitted in the C-1 Zone.

Two additional speakers testified at the hearing. Both speakers represented the Darnestown Civic Association ("DCA"). Mr. Steven Ellis testified that DCA took issue with only a few aspects of the Application. Mr. Ellis testified that he concurred with the Applicant's proposal that Staff, community members, and the applicant can address lighting at a later date. However, Mr. Ellis advised the Board that the DCA would like the option of returning to the Board in the event that the parties could not arrive at a consensus position with respect to the lighting design. Mr. Ellis testified that the DCA was in support of Applicant's request for a waiver to permit a reduction in the number of required parking spaces. Mr. Ellis advised the Board that the DCA objected to situating parking spaces behind the existing building, suggesting that people generally do not park behind stores, and that to the DCA was concerned that this might facilitate loitering. Mr. Ellis proposed siting parking spaces on lots 30 and 31 rather than behind the building.

Mr. Scott Modstrum, President of the DCA, testified regarding the neighboring property, which has been dedicated to the Commission and will eventually be developed into a County park. Mr. Modstrum emphasized the need for an ADA parking space with a handicapped ramp into the park as well as the need for maintenance ramp accessing the park and expressed his view that such accommodations should be addressed as a part of this Application.

The Record also contains a letter from Terrence Reis. Mr. Reis raised three issues in his letter. First, Mr. Reis was concerned with the number and the height of the lighting fixtures in the parking area. Secondly, Mr. Reis asked that the Board ensure that any rooftop equipment on the building is sufficiently quiet. The third issue that Mr. Reis raised in his letter was his objection to the proposal to add additional parking spaces behind the building.

DISCUSSION OF ISSUES

Retail Use Language

Staff testified that, under the provisions of the Zoning Ordinance, retail sales and personal services uses are not permitted uses in the C-1 Zone but that certain specific retail uses such as, among several others, grocery stores and flower shops are permitted in the C-1 Zone. The Applicant informed the Board that it only seeks to include those retail uses that are permitted in the C-1 Zone. Following consideration of the matter, the Board concluded that the development ceiling should apply to both grocery and those retail uses permitted in the C-1 Zone.

Lighting

Following discussion on the question of exterior lighting, the Applicant, Staff, and the speakers from the Darnestown Civic Association all agreed to a condition that the particulars of the lighting design could be agreed to following approval but before signature set, with the caveat that if no consensus can be reached the plan should be brought before the Planning Board for final decision. Accordingly, the Board finds that the Applicant's suggestion that a lighting plan be submitted to Staff for approval prior to signature set is appropriate.

Parking Behind the Store

The Applicant testified that it would provide neighbors with the contact information of the store manager in the event that loitering in the parking area behind the store becomes a problem. Additionally, in response to Board the questioning, it was revealed that the homes closest to this proposed parking area are ten to twelve feet higher in elevation than the surface of the parking lot and the closest home is located approximately fifty feet away.

The Board finds that any concerns regarding noise and loitering in the parking area would be mitigated by the existing topography, proposed landscape screening, and fencing do not justify any prohibitions on parking on this part of the Subject Property.

Parking Waiver

Staff recommended that the Board grant a waiver for a total of eighteen (18) parking spaces; the Applicant requested that the Board grant a waiver for a total of twenty-eight (28) parking spaces. In response to Board queries, Staff advised the Board that there were not concerned that any potential overflow parking would pose a safety or incompatibility standard. The DCA representative testified that it supported the granting of the waiver requested by the Applicant, in part because of the rural character of the environs and the fact that many users drive trucks. The Board is persuaded that the unique circumstances of this development and its location warrant Board grant of a parking waiver for twenty-eight (28) spaces, as requested by the applicant.

Forest Conservation

The Applicant requested that the requirement that the forest conservation easement not be encumbered by stormwater management facilities be amended to include an exception in the event the Department of Permitting Services requires such an encumbrance. The Board's Environmental Planning Staff advised the Board that it did not support such a condition. The Board declines to modify the condition.

Access to Adjoining Parkland

The Applicant testified that it did not believe that it was obligated to provide curb cuts, accessible ramps or maintenance access ramps to the adjoining park; however, the Applicant testified that it would grant permission for MNCPPC to install a future curb cut to the Subject Property's parking lot, if needed. The Board noted that it was not in a position to opine on the design of the park at this point in time but that the record of this case

should reflect the Board's desire and direction that care be taken that the future park be designed in an efficient manner such that the usable portions of the park are maximized.

FINDINGS

Based on all of the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. An approved development plan or a project plan is not required for the subject development.
2. The Site Plan meets all of the requirements of the zone in which it is located.

The Site Plan meets all of the requirements of the C-1 Zone as demonstrated in the project Data Table included in the Staff Report. The Applicant requested a waiver, pursuant to Section 59-E-4.5 of the Montgomery County Code, to reduce the parking requirement and the Board finds that such a waiver is appropriate, as discussed above.

Additionally, the site plan meets all of the requirements of the Rural Village Overlay Zone with respect to minimum setbacks, green area requirements, building height, parking, landscaping and lighting.

3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

- a. **Buildings**

The existing Food Lion store is located approximately 170 feet north of Darnestown Road (MD 28) with parking in the front. The addition to the existing store is located on the eastern perimeter approximately 36 feet from the adjacent residential zone, consistent with the zoning ordinance. The proposed addition to the existing store is compatible with the existing use and adjacent residential. The existing façade of the building will be retrofitted to contain a modified vestibule, incorporating the proposed addition.

b. Open Spaces

The C-1 Zone requires 10 percent of the site to be attributed toward green area; however the Rural Village Overlay Zone requires 35 percent of the site to be comprised of green area. The plan proposes 40 percent of the property as open space or green space, within the parking islands and along the perimeter of the property. Green space is also provided as part of lots 30 and 31, which will be used for future septic area.

c. Landscaping and Lighting

The proposed landscaping on the site consists of a mix of shade, evergreen, and flowering trees along the eastern property boundary adjacent to the local park and neighboring residences. The retaining wall and mass of Leyland cypress provide an extensive buffer on the northeastern boundary, in addition to the proposed evergreen screening for the proposed parking spaces along the northern boundary, adjacent to the residential home.

Deciduous trees are proposed within the new and existing parking islands to match the existing shade trees in terms of caliper and size. Additional shade trees with underplanting is proposed along the local park boundary and along the frontage of the property adjacent to MD 28.

The lighting plan proposes to retrofit the existing lights and provide new light fixtures within the planting islands and on the perimeter of the site. The Applicant will submit a revised lighting design and plan to Staff and the Darnestown Civic Association for review and approval prior to signature set. In the event that consensus cannot be reached among the aforementioned parties on the question of lighting, the Application will return to the Planning Board for its consideration and resolution of any disputed issues related to the lighting design.

d. Recreation

Recreation facilities are not required for commercial sites; however, the Darnestown Square Urban Park was originally dedicated to M-NCPPC as part of the 1989 subdivision application.

e. Vehicular and Pedestrian Circulation

An existing access point to the site is provided opposite Seneca Road from Darnestown Road (MD 28) near the southeastern property line.

An eight-foot-wide shared use path (Class I bikeway) is provided within the MD 28 right-of-way. Internal sidewalks will also be provided to facilitate pedestrian circulation throughout the development from Darnestown Road. Improved pedestrian and vehicular circulation is integral to the site and an important component of the Rural Village Overlay Zone. The improvements also meet the objectives of the Parking Facilities Plan to satisfy the waiver request to permit fewer parking spaces than required.

4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The existing use and structure has been operational since the early 1990's and is compatible with the existing and proposed adjacent development. The proposed addition is also compatible and is not detrimental to the surrounding uses or developments.

The proposed addition meets the setbacks from residential boundaries, height requirements and other development standards within the C-1 Zone and Rural Village Overlay Zone. The proposed structure extends the building line within an area originally targeted for expansion and is complemented by the extension of the proposed vestibule.

The reduction of parking spaces does not detrimentally affect the surrounding neighborhoods and meets the objectives of the Parking Facilities Plan in terms of adequate lighting, landscaping and safety concerns of the patrons.

Concerning the question of noise generated by rooftop mechanical equipment, the Board finds that, because regulation of projected noise levels emanating from a site is beyond the statutory authority of the Planning Board in reviewing site plans, the concern raised by a neighbor relating to noise originating from the subject property is not properly before the Planning Board.

5. The site plan meets all applicable requirements of Chapter 22A regarding forest

conservation.

The site is exempt from the forest conservation requirements because the subdivision was approved prior to the 1992 Forest Conservation Law.

PLANNING BOARD ACTION AND CONDITIONS

The Montgomery County Planning Board APPROVES Site Plan Review #8-05027 for 9,458 square feet of additional grocery store use and other retail uses permitted in the C-1 Zone, and a waiver, pursuant to Code § 59-E-4.5, of twenty-eight (28) of the minimum required parking spaces on 10.61 gross acres in the C-1 Zone and Rural Village Center Overlay Zone, with the following conditions:

1. Preliminary Plan Conformance

The proposed development shall comply with the conditions of approval for Preliminary Plan 1-89044 as listed in the Planning Board opinion dated November 12, 1989, as amended.

2. Site Design

Continue to permit the use of the parking facilities at Darnestown Village Center subject to the terms, conditions, and limitations set forth in the letter addressed to William E. Gries dated September 1, 1998. Applicant shall provide permission to MNCPPC to install a curb cut at the Subject Property parking lot in order to facilitate access by the public and MNCPPC Staff and equipment to the adjacent Darnestown Square Urban Park at such time as MNCPPC requests such permission. Such a curb cut shall not result in the loss of any parking space(s).

3. Landscaping

- 4
- a. Continue the row of evergreen trees on the northern property line behind the proposed fence.
 - b. Any trees from within the property that are proposed for relocation shall be evaluated by the applicant and M-NCPPC staff to determine the health and procedure for transplanting, prior to relocation of the tree.
 - c. Provide written approval from the State Highway Administration for the installation of shade trees within the MD 28 right-of-way.

4. Lighting

- a. The lighting design and plans shall be submitted, reviewed, and approved by Staff in concert with the Darnestown Civic Association. The security lighting plan, which addresses lights to be turned off, specifically on the perimeter of the site, after business hours of operation, shall be submitted, reviewed and approved as part of

the lighting and photometric plan. In the event that consensus cannot be reached among Staff, the Applicant, and the Darnestown Civic Association on the question of lighting, the Application will return to the Planning Board for its consideration and resolution of any disputed issues solely related to the lighting design.

5. Pedestrian Circulation

- a. Provide a pedestrian signal, painted crosswalk and handicapped accessible ramps at the intersection of Darnestown Road and Seneca Road, subject to approval by the State Highway Administration.
- b. Provide and label the bike lane (DB-6, dual bikeway) along the property frontage on MD 28, subject to approval by the State Highway Administration.

6. Forest Conservation

- a. Provide documentation that the septic easement does not overlap with the forest conservation easement on 31.
- b. Applicant shall not encumber any portion of the forest conservation easement with the stormwater management facility.

7. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated January 27, 2005.

8. Development Program

Applicant shall construct the proposed development in accordance with a Development Program. The Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of signature set of site plan. The Development Program shall include a phasing schedule as follows:

- a. Street tree planting shall progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
- b. Landscaping associated with the parking lot and building addition shall be completed as construction of each facility is completed.
- c. Pedestrian pathways, including the sidewalk connections from the parking lot to the proposed sidewalk within the MD 28 right-of-way shall be completed as construction of parking lot alterations is completed.
- d. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.
- e. Phasing of dedications, stormwater management, sediment/erosion control, community paths or other features.

9. Clearing and Grading

No clearing or grading prior to M-NCPPC approval of signature set of plans.

10. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following

revisions shall be included and/or information provided, subject to staff review and approval:

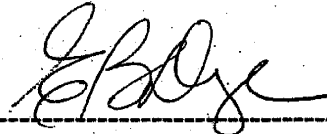
- a. Development program, inspection schedule, and Site Plan Opinion.
- b. Limits of disturbance. *- On S.P.*
- GH* — c. Methods and locations of tree protection.
- GH* — d. Forest Conservation easement areas. *- on S.P.*
- e. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
- f. Location of outfalls away from tree preservation areas. *- On S.P.*
- g. All other conditions of approval specified in the site design, landscaping, lighting, pedestrian circulation and forest conservation conditions above.

APPROVED AS TO LEGAL SUFFICIENCY
IAS
M-NCPPC LEGAL DEPARTMENT
DATE *7/25/05*

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday July 28, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of Commissioner Bryant, seconded by Commissioner Robinson, with Chairman Berlage and Commissioners Bryant, Robinson, and Wellington voting in favor of the motion, ADOPTED the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Darnestown Village Center, Site Plan No. 8-05027. Commissioner Perdue abstained.



Certification As To Vote of Adoption
Technical Writer