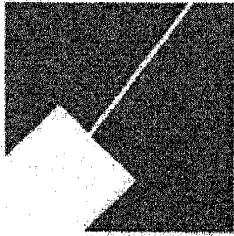


Attachment C

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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**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