



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NOV 19 2013

MCPB No. 13-128
Site Plan No. 81994026B
Darcars at Montgomery Industrial Park, Lot 33
Date of Hearing: September 19, 2013

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, on September 11, 1995 the Planning Board, by Planning Board Opinion, approved Site Plan No. 819940260, for 21,900 square feet of automobile sales and service development on 4.10 acres of I-1 zoned-land, located on Prosperity Drive ("Subject Property"), in the Fairland Master Plan ("Master Plan") area; and

WHEREAS, on March 25, 1996 the Planning Board approved an amendment to the Site Plan No. 819940260 to revise two of the Site Plan conditions; and

WHEREAS, on May 16, 2012 an amendment to the Site Plan No. 819940260 to add 86,000 square feet of automobile sales and service use development was filed but later withdrawn; and

WHEREAS, on June 10, 2013 Eastern Diversified Properties Inc., filed an application for approval of an amendment to the previously approved site plan(s) to add 2,505 square feet of automobile service development, update the Landscape Plan, and to update the employee surplus parking requirements; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 81994026B, Darcars at Montgomery Industrial Park, Lot 33 ("Site Plan," "Amendment" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated August 23, 2013, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

Daniel L. [Signature] 10/31/13

NOW, THEREFORE, BE IT RESOLVED that, the Planning Board APPROVES Site Plan No.81994026B to permit the addition of 2,505 square feet of automobile service development and to update the employee surplus parking requirements by modifying the following conditions:¹

Conditions:

Remove condition 3

Modify Condition 4:

Prior to seeking building permit for Phase II, Applicant to demonstrate to the satisfaction of staff that required or any additional employee parking is not consistently occurring off-site on public streets where "No-Parking" signs are posted, or on the Marriott Courtyard or Home Depot properties.

Add conditions 11-13:

11. Landscape Surety

The Applicant must provide a performance bond/surety in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial surety amount.
- b) The amount of the bond/surety shall include plant material, on-site lighting, recreational facilities, and exterior site furniture within the relevant phase of development.
- c) Prior to issuance of the first building permit, the Applicant must enter into a Site Plan Surety & Maintenance Agreement with the Planning Board in a form approved by the Office of General Counsel that outlines the responsibilities of the Applicant and incorporates the cost estimate.
- d) The Bond/surety must be tied to the development program, and completion of plantings and installation of particular materials and facilities covered by the surety for each phase of development will be followed by inspection and reduction of the surety.

12. Development Program

The Applicant must construct the development in accordance with a development program that will be reviewed and approved by Staff prior to the approval of the Certified Site Plan. The development program must include the following items in the phasing schedule:

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final

¹ For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices

13. Certified Site Plan

The Certified Site Plan must include the following:

- a) The stormwater management concept approval, development program, inspection schedule, and the approved Site Plan Resolution on the cover sheet.
- b) The data table must reflect development standards enumerated in the Staff Report.
- c) Consistency of all details and layout between Site Plan and Landscape Plan.

14. Forest Conservation Exemption

Prior to Certified Site Plan, the Applicant must submit to the Planning Department an application for, and obtain confirmation of, a forest conservation exemption for this Site Plan.

BE IT FURTHER RESOLVED that all other Site Plan conditions of approval for this project remain unchanged and in full force and effect; and

BE IT FURTHER RESOLVED that all site development elements as shown on Darcars at Montgomery Industrial Park, Lot 33 drawings stamped by the M-NCPPC on August 19, 2013 are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having given full consideration to the recommendations and findings of its Staff as presented at the hearing and set forth in the Staff Report, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an*

approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.

The Subject Property does not have a development plan, diagrammatic plan, or a schematic development plan.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Subject Property is zoned I-1 and is within the US 29/Cherry Hill Employment Area Overlay Zone. ZTA 11-05, approved on July 19, 2011,

MCPB No. 13-128
 Site Plan No. 81994026B

exempted certain development including this site from the standards and requirements of the Cherry Hill Employment Overlay Zone. The proposed automobile related service use is allowed in the I-1 Zone. The proposed Amendment meets all of the requirements of the zone as shown in the table below.

Development Standard	Permitted/Required	Provided (Proposed amendment- Phase 1B)	Provided (Future Phase 2)
Maximum Building Height (59-C-5.31)	42'	28'	28'
Minimum Green Area (59-C-5.32)	10%	19.8%	19.8%
Building Setbacks (59-C-5.33)			
Minimum Front Yard	10'	125' ¹	125' ¹
Minimum Rear Yard	10'	124' ¹	60' ¹
Minimum Side Yard	10'	52' ¹	52' ¹
Minimum Side Yard	10'	135' ¹	135' ¹
Parking Setbacks (59-C-4.367)			
Minimum Front Yard	10'	10'	10'
Minimum Rear Yard	10'	10'	10'
Minimum Side Yard	10'	10'	10'
Minimum Side Yard	10'	10'	10'

Development Standard	Permitted/Required	Provided (Proposed amendment-Phase 1B)	Provided (Future Phase 2)
Maximum Building Coverage (59-C-4.367)	35%	10.4%	13.6%
Parking (59-E-3.7):			
Total Required		92 required 92 provided	114 required 114 provided
Employees	1 space per employee	26 required 26 provided	29 required 29 provided
Service	3.3 sp /1000 s.f.	19 (5,705 x 3.3/1000 sf)	38 (11,500 x 3.3/1000 sf)
Office	2.9 sp /1000 s.f	27 (9,009 x 2.9/1000 sf)	27 (9,709 x 2.9/1000 sf)
Show/Retail	5 sp. /1000 s.f.	20 (3,896 x 5/1000 sf)	20 (3,896 x 5/1000 sf)
Handicap Accessible (59-E-2.3)		4	4
Bicycle and Motorcycle Parking (59-E-2.3)			
Minimum Bicycle Spaces	1space/20 auto spaces	4 Required 5 Provided	5 Required 5 Provided
Minimum Motorcycle Spaces	2% of parking	2	2
Internal landscaping in surface parking (59-E-2.73)	5%	11.7%	11.7%

1 The building setbacks listed under "Provided" in this table are approximate and may vary on the ground, but must not be less than the minimum required by the Zoning Ordinance."

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

Building and Structures

The proposed addition will enclose an area between two buildings currently being used to display vehicles outdoors. The existing development and the proposed addition will continue to be surrounded by similar industrial land uses on neighboring properties. Staff finds that the location of the proposed addition of 2,505 square feet to be adequate, safe, and efficient.

Green Area

The original Site Plan was approved for 19.8% green area and the proposed Amendment is maintaining this amount, with some minor changes to the site's landscaping as discussed below.

Landscaping

The Landscape Plan shows that there are mostly shade trees throughout the parking lot and along the property borders. The Amendment modifies the Landscape Plan to accommodate the changes being made to the Site Plan.

The Amendment reduces the Green Liriope plantings currently located near the customer parking spaces close to the building addition to accommodate the new bicycle racks required on the site. However, the site is maintaining the same amount of landscaping approved in the original Site Plan and, at 11.7%, is still exceeding the zoning requirement of 5% of the site area.

The Applicant is improving the site's landscaping by replacing missing plants and relocating a few plants to different parts of the site.

Pedestrian and Vehicular Circulation

The Subject Property's primary access is from Prosperity Drive with a secondary vehicular entrance from Whitethorn Terrace.

Master-Planned Roadway and Bikeway

The 1997 *Fairland Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan* designated Prosperity Drive as an industrial road, I-8, within a 80-foot wide right-of-way with bike lanes, PB-60.

Public Transit Service

Transit service is available to/from the site with three bus routes within half a mile:

1. The Metrobus Route Z6, Silver Spring Metrorail Station to Burtonsville Crossing Park-and-Ride. The nearest stop is approximately half a mile from the auto dealership.

2. The Metrobus Route Z9, Silver Spring Metrorail Station to Greencastle Park and Ride. The nearest stop is approximately half a mile from the auto dealership.
3. The Ride-On bus Route 10, Twinbrook Metrorail Station to Hillandale. The nearest stop is approximately half a mile from the auto dealership.

Pedestrian Facilities

Along the south side of Prosperity Drive, there is a four-foot wide sidewalk with a four-foot wide green panel. Along the Whitethorn Court cul-de-sac, there is a four-foot wide sidewalk and a five-foot wide green panel.

Vehicular Circulation

The proposed Site Plan No. 81994026B is for a new Phase 1-B of automotive service use of 2,505 square feet, which will increase the total approved square footage on the site to 24,405 square feet. Though an APF test is not required, Staff assesses that the increase of 2,505 square feet will generate five additional peak-hour trips within the morning peak period and seven additional peak-hour trips within the evening peak period. The current road network is adequate to handle the additional trips.

Staff finds that the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

Recreation Facilities

Not Applicable

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

The proposed addition is compatible with the surrounding area. The Subject Property has already been approved for, and developed with, automobile sales and service use, and the surrounding area is composed of similar office and industrial uses.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable laws.*

At the hearing on this Amendment, the Planning Board heard conflicting arguments about whether the Subject Property is exempt from Article II of the forest conservation law. Based on the Applicant's actions and the history of approvals on this site – including an ambiguous resolution adopted by the Board – the status of this property vis-à-vis the forest conservation law is ambiguous. However, the weight of the evidence supports that when this Site Plan was originally approved the Board determined that the Subject Property was exempt from Article II of the forest conservation law, and is therefore not subject to an

approved forest conservation plan. The Board emphasizes that its determination in this case is based on the unusual and specific set of facts in this case.

The Board further finds that the project should still be exempt from Article II of the forest conservation law. But in order to proceed with the activity called for in the Site Plan, the Applicant must have the Subject Property's exempt status confirmed by the Planning Department, where the authority to seek and obtain confirmation of a forest conservation exemption lies in the first instance. Therefore, prior to certified Site Plan, the Applicant must file a request for, and obtain confirmation of, an exemption and have it confirmed by the Planning Department.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

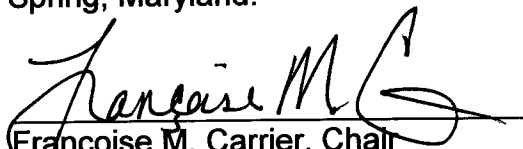
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is NOV 19 2013 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Anderson, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, November 7, 2013, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board