

**MEMORANDUM**

**DATE:** November 20, 2006  
**TO:** Montgomery County Board of Appeals  
**FROM:** Sandra Youla, AICP (301-495-4624)  
for the Department of Park and Planning  
**VIA:** Rose Krasnow, Chief, Development Review  
**REVIEW TYPE:** Supplementary Staff Report to Consider Supplementary  
Submissions, Pursuant to PB Motion on 7/20/2006 regarding:

- Parking Waiver from Requirements of 59-E-2.71
- Parking Waiver from Requirements of 59-E-2.72
- Special Exception for Drive-in Restaurant, per 59-G-2.16

**APPLICANT:** DavCo Restaurants, Inc.  
**CASE NUMBER:** S-2664  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance; Advisory to Board of Appeals  
**ZONE:** C-2 (General Commercial)  
**LOCATION:** 11030 Veirs Mill Road  
Silver Spring, MD 20902  
**MASTER PLAN:** Comprehensive Amendment to the Sector Plan for the Wheaton  
Central Business District and Vicinity (September 1990)  
**FILING DATE:** November 29, 2005  
**PLANNING BOARD:** November 30, 2006 (also July 20, 2006)  
**PUBLIC HEARING:** December 4, 2006 (postponed from July 28, 2006),  
9:30 a.m. at the Hearing Examiner

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**STAFF RECOMMENDATION**

**Special Exception:**

Staff recommends **DENIAL** of the revised special exception application, because, as discussed in this staff report and appendix and the prior staff report and appendix, the revised application does not meet various general and specific requirements. In particular, the revised application a) is not consistent with the master plan, b) is incompatible with the surrounding area, c) will cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity, d) has non-inherent characteristics and effects sufficient to warrant denial, e) has a number of landscaping, lighting, and signage issues that have not yet been resolved, and e) requires the submission of floor plans to substantiate patronage area and hence parking space requirements.

Also, though not cited as a reason for denial, staff notes that DPWT finds that there is inadequate storage capacity to accommodate projected northbound traffic volumes on Veirs Mill Road between Georgia Avenue and the Metro Bus Access intersection (i.e. the Bally's entrance to the Westfield Wheaton Plaza Shopping Mall), and that the applicant has not yet resolved this issue with DPWT and SHA.

**Parking Waivers:**

Staff recommends **DENIAL** of the necessary parking waivers because, as discussed in this staff report and more explicitly in the initial staff report, a) staff recommends denial of the entire special exception use, and b) the requirements that are proposed to be waived are necessary to ensure compatibility with urban design objectives for the area and to allow the parking facility plan to meet one of the objectives of a parking facility plan, per 59-E-4.2, namely the protection of the welfare of those who use any adjoining land.

**BACKGROUND AND ANALYSIS**

**Planning Board Meeting, Motion, Hearing Examiner Response, Applicant Response**

The Planning Board met on 7/20/2006 to consider S-2664, an application for a drive-in restaurant with a drive-through lane, and two requisite parking waiver requests. The relevant staff report (dated 7/6/2006) for that item is enclosed herewith as a separate attachment and also may be found on-line on the 7/20/2006 PB agenda.

The Planning Board made a three-part motion on the application, as conveyed in the Planning Board transmittal letter dated 7/26/2006 (see appendix)). The three-part motion directed 1) the applicant to address five issues; 2) the applicant to revise submissions and plans accordingly and submit them to the Hearing Examiner for consideration at the scheduled public hearing on 7/28/2006; and 3) the Hearing Examiner to return the revised application to staff and the Planning Board subsequent to the public hearing for further consideration. The five issues that the Planning Board asked the applicant to address concerned vehicular/pedestrian interplay in the surrounding area; vehicular/pedestrian interplay on-site, with a suggestion from the Planning Board that there be independent sidewalks that do not cross vehicular access points to the site; traffic congestion arising from frequent U-turns movements on the portion of the Mall Access Road between the subject site and the health club to the south; and inadequate turning radii into and within the site.

In response to the Planning Board's motion, the Hearing Examiner postponed the public hearing that had been scheduled for 7/28/2006, for reasons discussed in the Hearing Examiner's Notice of Postponement issued 7/25/2006 (see Appendix).

Also in response to the Planning Board's motion, the applicant met with staff on 8/22/2006 and made supplementary submissions, received by staff on 8/22/2006 (dated 8/4/2006 and 8/21/2006) and 8/30/2006 (dated 8/29/2006). The submission received by staff on 8/30/2006 comprises a revised site plan, revised landscape and lighting plan, and revised truck turning radius exhibit, each with revisions made on 8/24/06, as indicated in the revisions block on the plans.

### **Revisions and Zoning Staff Review**

Staff reviewed the applicant's written submission, received 8/22/06 by staff and dated 8/4/2006 (see appendix), which was submitted to respond to the Planning Board's request that the applicant address the cited five issues. Staff also reviewed the final set of revised plans and exhibits, received by staff on 8/30/2006 (see appendix).

Prior to writing the initial staff report, staff was aware of much of the information presented in the written submission received 8/22/06, dated 8/4/06, and had taken that information into consideration when formulating the initial staff recommendation of denial. Therefore, the written submission does not convince zoning staff to change its recommendation.

Further, the submitted revised plans and exhibits received by staff on 8/30/06 also do not convince staff to change its recommendation. The revised plans graphically show certain details discussed in the written submission including driveways along the mall entrance drive that have been narrowed down from 20 feet to 14 feet, raised crosswalks for pedestrians across the entry and exit points and to the site, and a directional sign that augments a previously proposed "no-u-turn sign". The revised plans also show some changes in the planting schedule and adequate turning radii into and within the site. The changes in turning radii were not the result of any design changes per se but rather, as the applicant explained, the application of the appropriate turning template to the plan. The changes in the planting schedule include removal of 15 proposed "Coral Beauties" near the vehicular entrance off the Mall Access Road so that there are none proposed there now; removal of 5 proposed "Coral Beauties" in a planting area abutting the building and facing the health club to the south so that there are now 25 instead of 35; increasing the proposed number of "Coral Beauties" in a planting area abutting the building and facing the mall so that there are 15 rather than 10. It is unclear to staff why these landscaping changes were made, but they do not address the staff's landscaping

concerns as outlined in the prior staff report. (Staff also notes that the revised plans and exhibit are signed and sealed, as staff requested in its initial staff report.)

The proposed changes shown in the revised plans are marginal and modest at best and are insufficient to overcome the basic problem with this application – that this site is an inappropriate location for the proposed use. Locating a drive-in with a drive-through lane on a site that is within the Wheaton CBD Policy Area, directly across the street from a transit station, right next to a mall, and immediately outside of a central business district does not conform with the master plan's vision for the area, is not in keeping with smart growth and new urbanist principles, and contravenes the zoning ordinance's stated locational policy for drive-in special exceptions, namely that they should not be located in places where they will cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity.

The applicant was not able to completely or substantially separate pedestrian and vehicular circulation and access points, and thus could not provide the independent sidewalks that the Planning Board suggested. The applicant also chose not to eliminate the drive-through lane, which the Planning Board asked the applicant to consider. The applicant was not able to pull the building to the street and increase the density, in order to provide a more urban form in keeping with the design vision of the master plan, nor did the applicant address the many landscape, lighting, and signage issues raised in the prior staff report.

The reason that the applicant was not able to achieve most of the above objectives is because of the necessary design requirements for a drive-in with drive-through lanes and because of site constraints – size, shape, and location. Hence, this is the wrong use for the site, and the wrong location for the use. It bears noting that special exception review differs from site plan review (pursuant to 59-D of the zoning ordinance) – in site plan review, the use is a given and cannot be precluded, and design is the only means to mitigate adverse effects. In special exception review, the use can be denied or constrained, and we do not have to feel obliged to approve a use just because it has made as many design improvements as possible given the site, location, and use constraints.

Staff also notes that the applicant also did not address the stacking issues identified by DPWT for the northbound lanes on Veirs Mill, which were identified in the initial staff report. Further, the applicant has not provided floor plans, as requested in the initial staff report. Floor plans are necessary to allow staff to confirm the square footage of the patronage area, which the application states is 884 square feet, determine whether

this is sufficient area, given the large number of walk-ins anticipated, and calculate the required numbers of parking spaces, which are based on patronage area.

### **Comment from Technical Staff**

Zoning and other technical staff has been uniformly and consistently unenthusiastic about the proposed use at the proposed site throughout the review period. Comments from technical referral staff are noted below.

***Community-Based Planning:*** In an email dated 11/6/2006 to zoning staff, Community-Based Planning staff stated:

CBP staff has reviewed the revised plans for the proposed special exception for a Wendy's drive-thru restaurant at the Veirs Mill Road entrance to the Westfield Wheaton Mall. Staff believes that the proposed modifications do not address the basic issue of inconsistency of the proposal with the master plan goals raised in the CBP staff memo of June 27, 2006. Please refer to the June 27, 2006 memo from me to you for a detailed discussion of the master plan issues. CBP staff conclusion is that the revised proposal is inconsistent with the goals and objectives of the Wheaton Sector Plan.

Zoning staff concurs. See appendix of this staff report for Community-Based Planning's initial memo (also in initial staff report appendix).

***Transportation:*** Transportation staff's memo with respect to the revised plans is in the Appendix of this staff report. This memo now recommends approval, but notes that it was a close call. The memo notes that the applicant has made the improvements identified in the prior memo to make the use more pedestrian friendly, or as pedestrian-friendly as can be expected given the constraints of this site at this location (and zoning staff notes that location is not an inherent characteristic – we are not obliged to allow this use at this location), but the memo queries the wisdom and appropriateness of allowing an auto-oriented use across from a transit-station and adjacent to a mall. Transportation staff's memo also states that the revised application has met LATR guidelines, but recommends that DPWT and SHA coordinate further regarding potential means to address the inadequate storage capacity (i.e., the stacking issue) in the northbound lanes of Veirs Mill Road and the Metro Bus Access intersection (i.e., near the Bally's entrance to the mall, as neighbors refer to it), as noted in DPWT's memo dated 6/22/2006 (in appendix of prior staff report).

***Environmental:*** Environmental staff's memo on the revised plans is unchanged from its prior memo, and recommends one condition if the application is approved (see appendix).

***Research:*** Research staff has not commented on the revised plans, and their finding that the applicant has met its burden of proof to demonstrate a county need for a drive-in restaurant, per 59-G-1.25, remains unchanged.

### **Community Comment**

Since the last staff report, zoning staff has received another letter of opposition from a Mr. David Seidman, a community member, who notes 1) that the Bally entrance to the mall is already extremely congested and the Wendy's would undoubtedly exacerbate this, and 2) that the parking for the Wendy's seems inadequate, which would lead to people seeking parking in the Penny's parking area of the mall, creating more parking demand in an area where parking is tight and creating more congestion as the vehicles circulate. This letter is in the appendix of this staff report. As of the first staff report, staff had already received a letter of opposition from another community member also objecting because of congestion at the Bally's entrance. As noted at the Planning Board on 7/20/2006, the County Pedestrian Safety Coordinator submitted a letter of opposition dated 7/7/2006, which is also enclosed here. Also as noted at the July Planning Board, the Wheaton Redevelopment Advisory Committee supports the application, and they submitted a letter of support subsequent to the Planning Board, which is enclosed in the appendix.

### **CONCLUSION**

For reasons noted above, in the prior staff report and appendix, and as noted at the beginning of this staff report, zoning staff recommends denial of the requested and requisite parking waivers and denial of the revised special exception application.

## **APPENDIX**

- **Planning Board Transmittal Letter dated 7/26/2006, including:**
  - **Letter of Opposition from County Pedestrian Safety Coordinator, dated July 2, 2006, handed out at Planning Board on 7/20/2006**
  - **Testimony at the Planning Board on 7/20/2006 of Sharon lasswell, representing the Wheaton Redvelopment Advisory Committee**
- **Hearing Examiner's Notice of Postponement dated 7/25/2006**
- **Applicant's Written Submission, dated 8/4/2006, received by staff on 8/22/2006**
- **Applicant's Revised Special Exception Site Plan, received by staff on 8/30/06**
- **Applicant's Revised Landscape and Lighting Plan, received by staff on 8/30/2006**
- **Applicant's Revised Truck Turning Radius Exhibit, received by staff on 8/30/2006**
- **Community-Based Planning Memo re: Initial Application, dated 6/272006**
- **Transportation Memo re: Revised Application, dated 11/15/2006**
- **Environmental Memo re: Revised Application, dated 2/6/2006, updated 11/7/2006**
- **Letter of Opposition from Mr. David Seidman, dated 6/8/2006, received 11/13/2006**
- **Letter of Support from Holly Olsen, Chairperson of the Wheaton Redevelopment Advisory Committee, dated 11/8/2006**

## **SEPARATE ATTACHMENT**

**Staff Report dated 7/6/2006 (on-line readers see MNCPPC website – <http://www.mc-mncppc.org>, Planning Board Agendas, Archived Staff Report for Item 11 on 7/20/2006 Planning Board Agenda)**