



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

MCPB
Item #
05/14/09



MEMORANDUM

DATE: May 1, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *fk*
Catherine Conlon, Subdivision Supervisor *CA*
Development Review Division

FROM: *NB*
Neil Braunstein, Planner Coordinator (301-495-4532)
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: One lot for a 147,142 square-foot self-storage facility

PROJECT NAME: EZ Storage – Burtonsville Industrial Park

CASE #: 120070510

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: I-3/Burtonsville Employment Area overlay zone

LOCATION: Located on Sandy Spring Road (MD 198) 400 feet west of the intersection of Star Point Drive.

MASTER PLAN: Fairland

APPLICANT: Siena Corporation

ENGINEER: Site Solutions

ATTORNEY: Linowes & Blocher

FILING DATE: December 29, 2006

HEARING DATE: May 14, 2009

RECOMMENDATION: Approval subject to the following conditions:

- 1) Approval under this preliminary plan is limited to one lot for a self-storage building containing 147,142 sq. ft of floor area, including 67,668 square feet below grade (cellar) and 79,474 square feet above grade.
- 2) The applicant must comply with the conditions of the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The applicant must dedicate and the record plat must show dedication of an approximately 5,655-square-foot, semi-circular area for the cul-de-sac of the proposed Dino Drive, as shown on the preliminary plan.
- 4) The applicant must participate in the pro rata funding of future Dino Drive as a participant in Dino Drive Road Club per the Trip Generation Percentage funding terms of the June 15, 2000 Participation Agreement as applicable to the subject property. This condition must be noted on the record plat.
- 5) The grade establishment for Dino Drive may be as proposed by the May, 2007 Amendment to Dino Drive street grades submitted in conjunction with the Preliminary Plan, with final grade establishment for future Dino Drive, including confirming compliance with the applicable vertical and horizontal curve limitations as prescribed in the Road Club, to be approved by the County at the time of the site plan approval for this project.
- 6) The applicant must construct a site access driveway from Dino Drive within nine months of the County Executive's order accepting public maintenance for the segment of Dino Drive from the end of the cul-de-sac to the limit of existing improvements. At that time, the applicant must also close the proposed temporary driveway to MD 198 via Star Point Drive and the service road and relocate the site access to the Dino Drive driveway.
- 7) The record plat must reflect a common ingress/egress and utility easement over the driveway that is to provide future access for an adjacent property to Dino Drive.
- 8) The applicant must comply with the conditions of the MCDPS stormwater management approval letter dated October 10, 2007. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 9) The applicant must comply with the conditions of the State Highway Administration (MDSHA) letter dated March 2, 2007. These conditions may be amended by MDSHA, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 10) The applicant must comply with the conditions of the Montgomery County Department of Public Works and Transportation (MCDPWT, now renamed MCDOT) letter dated November 21, 2007. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 11) The applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s).

- 12) The applicant must satisfy provisions for access and improvements as required by MDSHA prior to issuance of access permits.
- 13) No clearing, grading or recording of plats prior to certified site plan approval.
- 14) Final approval of the number, size, and location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan.
- 15) The record plat must show necessary easements.
- 16) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.

SITE DESCRIPTION

The subject property, shown below and in Attachment A, consists of a 3.04 acre unplatted parcel. The property is in the Burtonsville Employment Area overlay zone, with I-3 as the base zone. The property is located on the south side of Sandy Spring Road, 400 feet west of the intersection of Star Point Drive. The site is largely undeveloped, with the exception of a small building which will be removed to accommodate the proposed self-storage use.

Properties north of the site, across Sandy Spring Road, contain one-family residences in the RC zone. A horticultural nursery is in operation directly across Sandy Spring Road, also within the RC zone, and a small office building is located to the east of the nursery in the C-1 zone. Properties to the east include several undeveloped sites and one developed site in the I-3 zone and in the Burtonsville Employment Area overlay zone and an existing self-storage use in the I-1 zone and in the overlay zone. Properties south of the site include developed and undeveloped sites in the I-3 zone and in the overlay zone. The site is bounded on the west by Columbia Pike, constructed as a limited access expressway in this area. Beyond Columbia Pike to the west is a hardware store in the I-3 zone and in the overlay zone.

The subject property is located within the Little Paint Branch Watershed. Steep slopes (over 25% gradient) exist in a band in the central portion of the property and along the eastern property line. An ephemeral stream channel originates near the northeastern corner of the property, and it traverses the property in a southerly direction near the eastern property line. Forest covers 2.4 acres of the property. There are no stream buffers, floodplains, or wetlands on the site.



PROJECT DESCRIPTION

The application proposes to create one 3.04 acre lot for a self-storage use. The self-storage is proposed to be housed in a 147,142 square-foot building, of which 79,474 square feet are proposed to be above grade in the first and second floors, and 67,668 square feet are proposed to be below grade in a cellar. In addition to the storage areas, the building is proposed to include an office and an onsite manager's residence. The proposal includes a 26-space parking lot. Access is proposed via a driveway from an existing service road in the Sandy Spring Road (MD 198) right-of-way. An additional driveway is proposed to access the site from a future extension of Dino Drive when that extension is constructed.

(Attachment B – proposed plan)

PREVIOUS PLANNING BOARD DENIAL

This application came before the Planning Board at a public hearing on February 14, 2008. The Planning Board denied the application because it found that the proposal was not in conformance with the Fairland Master Plan. The Planning Board found that the application did not substantially conform to the Master Plan's goals with respect to creating a diversified employment center in the Burtonsville Industrial Area. The applicant filed a petition for judicial review of the Planning Board's denial, and the applicant prevailed. The Court remanded the

preliminary plan to the Planning Board, with instructions that it approve the application. Staff notes that any action taken by the applicant to implement the proposed use based on a Planning Board approval of this application is subject to the risk of additional appeals of the lower court's decision.

ANALYSIS AND FINDINGS

Master Plan Compliance

In the previous review of this application, staff recommended that the Planning Board find that the preliminary plan was not in substantial conformance with the Fairland Master Plan with respect to creating a diversity of uses and a diversified but unified employment center in the Burtonsville Employment Area, as stated in the attached staff report and resolution (Attachments E and F). Staff continues to believe that the proposed preliminary plan is not in substantial conformance with the Fairland Master Plan for the reasons previously stated, however, the court's order does not permit this to be the basis for a denial of the application.

Public Facilities

Roads and Transportation Facilities

The proposed lot does not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. The application predates requirements for Policy Area Mobility Review. Therefore, the application is also not subject to Policy Area Mobility Review.

Access is proposed via a driveway from an existing service road in the Sandy Spring Road (MD 198) right-of-way. An additional driveway is proposed at the southeastern property line to access the site from a future extension of Dino Drive. This additional driveway is not proposed to be constructed with the project but rather would be constructed in the future when the extension of Dino Drive is constructed. The staff recommendation includes a condition that requires construction of the driveway and closure of the proposed driveway to MD 198 within nine months of the date that the completed Dino Drive is opened to public traffic. This driveway will also provide access to Dino Drive for anticipated future development on an adjacent property. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

A road club agreement exists between several area property owners for construction of Dino Drive. One segment of the street was constructed in 2004 pursuant to approval of an earlier development project (Burtonsville Self Storage). Approval of a preliminary plan on the subject property would be subject to the terms of the road club agreement, including payment of a pro-rata share of road construction costs.

Other Public Facilities and Services

Public facilities and services are available and will be safe and adequate to serve the proposed development. The property will be served by public water and public sewer. The application has been reviewed by the Montgomery County Fire and Rescue Service which has determined that the property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be safe and adequate to serve the property. Electrical and telecommunications services are also available to serve the property.

Environment

There are no wetlands, streams, floodplains, or environmental buffers on or adjacent to the subject property. There are 2.40 acres of existing forest on the property. The on-site forest is a mixed hardwood forest dominated by Red Maple (*Acer rubrum*), Big Toothed Aspen (*Populus grandidentata*), Chestnut Oak (*Quercus prinus*), and Silver Maple (*Acer saccharinum*). There are five trees that are 24 inches in diameter or greater on the subject property. All five trees are proposed to be removed due to construction of the new building and access road.

Under the proposed forest conservation plan, the entire 2.40 acres of forest are proposed to be removed. The application is subject to a reforestation requirement of 1.42 acres. This requirement is proposed to be met by securing forest credits within an approved forest bank. This is acceptable because there are no priority planting areas on-site. The plan meets all applicable requirements of the county Forest Conservation Law.

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on October 10, 2007. The stormwater management concept includes the use of a sand filter and recharge trenches to provide on-site water quality control and groundwater recharge. Channel protection is not required because the one-year post-development peak discharge is less than two cubic feet per second.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. Taking into consideration the court's decision regarding Master Plan compliance, the application meets all applicable sections of the Subdivision Regulations. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lot was reviewed for compliance with the dimensional requirements for the Burtonsville Employment Area Overlay Zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Citizen Correspondence and Issues

This plan submittal pre-dated any requirements for a pre-submission meeting with neighboring residents, however, written notices of the plan submittal and the February 2008 and current public hearing dates were given by the applicant and staff.

In response to the notice for the 2008 hearing, three letters were received. The first letter was received from the Fairland Master Plan Citizens Advisory Committee. The letter is in opposition to the preliminary plan, based on lack of conformance with the master plan. The letter states that the proposed self-storage use would generate only one employee, in conflict with the master plan goal of creating a unified employment center in Burtonsville. Further, the letter states that since there is already an existing self-storage facility in Burtonsville, addition of a second one is contrary to the master plan goal of achieving a diversity of uses in Burtonsville.

Two letters were received from William Kominers and Christopher Ruhlen, representing the owners of Burtonsville Self Storage, a nearby business in the Burtonsville Employment Area Overlay Zone. These letters discuss the Dino Drive Road Club agreement and provide suggested language for a condition that would require the applicant to participate in the road club. The proposed conditions include a condition that addresses this issue.

As of the date of this staff report, no citizen letters have been received in response to the notice for the current hearing.

CONCLUSION

The proposed lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and, based upon the court's decision, is in substantial conformance with the recommendations of the Fairland Master Plan. Access and public facilities will be adequate to serve the proposed lot, and the application has been reviewed by other applicable county agencies, all of which have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Attachments

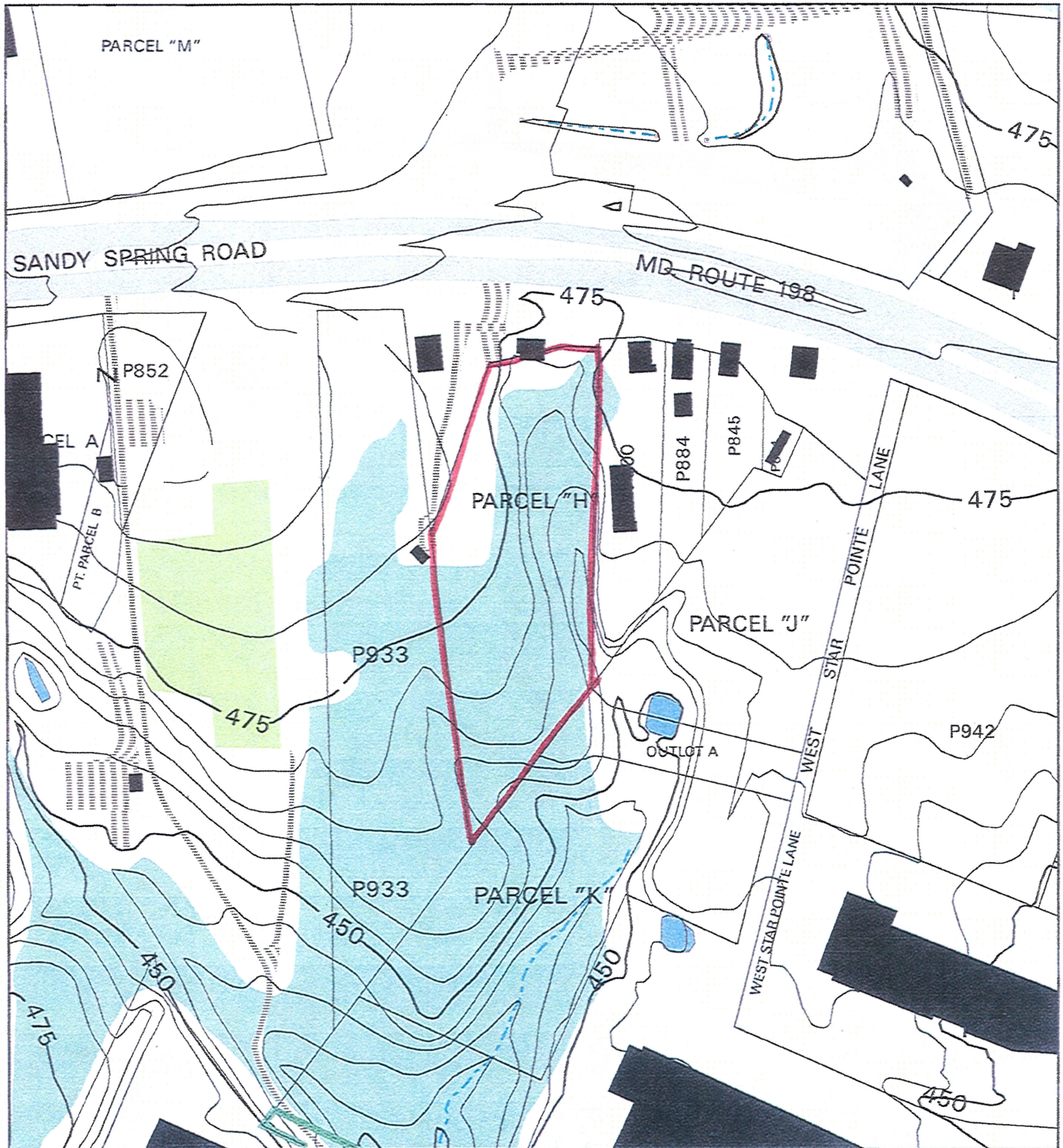
- Attachment A – Vicinity Development Map
- Attachment B – Proposed Development Plan
- Attachment C – Citizen Correspondence
- Attachment D – Agency Correspondence Referenced in Conditions
- Attachment E – Staff Report for previous Planning Board hearing (February 1, 2008)
- Attachment F – Planning Board Resolution from previous Planning Board hearing (August 1, 2008)

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: EZ Storage – Burtonsville Industrial Park				
Plan Number: 120070510				
Zoning: I-3; Burtonsville Employment Area Overlay Zone				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Commercial				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	2 acre minimum	2.91 acres minimum	NB	2/15/08
Lot Width	Not specified	210 ft. minimum	NB	2/15/08
Lot Frontage	Not specified	169 ft. minimum	NB	2/15/08
Setbacks				
Front	100 ft. Min.	Must meet minimum ¹	NB	2/15/08
Side	0 ft. Min.	Must meet minimum ¹	NB	2/15/08
Rear	0 ft. Min.	Must meet minimum ¹	NB	2/15/08
Height	100 ft. Max.	May not exceed maximum ¹	NB	2/15/08
Max Comm'l s.f. per Zoning	79,474 sq. ft.	79,474 sq. ft. above grade	NB	2/15/08
MPDUs	N/A		NB	2/15/08
TDRs	N/A		NB	2/15/08
Site Plan Req'd?	Yes		NB	2/15/08
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes	NB	2/15/08
Road dedication and frontage improvements		Yes	Agency letter	11/21/07
Environmental Guidelines		Yes	Staff memo	1/16/08
Forest Conservation		Yes	Staff memo	1/16/08
Master Plan Compliance		Yes	NB	2/15/08
ADEQUATE PUBLIC FACILITIES				
Stormwater Management		Yes	Agency letter	10/10/07
Water and Sewer (WSSC)		Yes	Agency comments	3/5/07
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	3/5/07
Well and Septic		N/a	Agency comments	3/5/07
Local Area Traffic Review		N/a	Staff comments	3/5/07
Policy Area Mobility Review		N/a	Staff comments	1/24/07
Transportation Management Agreement		N/a	Staff comments	1/24/07
Fire and Rescue		Yes	Agency letter	4/23/07

¹ As determined by MCDPS at the time of building permit.

EZSTORAGE-BURTONSVILLE IND. PARK (120070510)



Map compiled on February 13, 2007 at 9:01 AM | Site located on base sheet no - 221NE04

NOTICE

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland -National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998

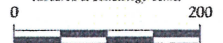
Key Map



N



Research & Technology Center



1 inch = 200 feet
1 : 2400

FAIRLAND MASTER PLAN CITIZENS ADVISORY COMMITTEE

February 5, 2007

TO: Development Review Division

RE: EZ Storage—Burtonsville Industrial Park, Preliminary Plan (File No. 120070510)

The Fairland Master Plan Citizens Advisory Committee wishes to comment in vehement opposition to the EZ Storage preliminary plan proposal for Burtonsville.

The master plan committee is not merely concerned but incredulous over and appalled by this proposal that would place a *second* self-storage facility in Burtonsville at this key intersection of MD 198 and the US 29 off-ramp—less than a quarter-mile (perhaps .1 of a mile!) from an existing large self-storage facility that has been a major eyesore and detractor from efforts to create a sense of “place” in Burtonsville.

This gateway from Prince George’s into Montgomery is already an embarrassment for the community and the County owing to poor planning, implementation, and enforcement in the past. To approve a second storage warehouse in this location would be not merely redundant but would underscore the perception of incoherent development that has so harmed the business district in the planning area, contribute to the impression of transiency that has plagued our schools as well, and make it increasingly difficult for Burtonsville to develop out as envisioned.

Moreover, a storage facility on this site is directly at odds with both the employment and the “diversity of uses” goals specifically called for on page 80 of the approved and adopted 1997 Fairland Master Plan. It is hard to imagine a less fitting or productive use here, in a location that specifies, according to the master plan, coherent development and a “unified employment center.” Apparently there would be a single employee on this site under the applicant’s proposal. Although the zone may allow another self-storage adjacent to an already existing large storage facility, the project would not be remotely compatible, much less consistent, with the master plan goal to “develop diversity of uses”—not to mention the master plan, County, and regional objective to improve the jobs-housing ratio in the East County.

Many citizens have registered deep concern over the fate of Burtonsville and as they learn of this latest proposal are further dismayed. We have told them to trust in the master plan, but we rely on Planning Staff and the Planning Board to insure that the intent and integrity of our plans are sustained and that they have meaning and worth. We and the residents and businesses whom we represent and who worry that projects like this will spell the death knell of efforts to revive our community, look forward to working with developers (as we have in the Briggs Chaney and Calverton areas) and the Planning Department to achieve a more appropriate and legitimate employment use for this key site at the entrance to Burtonsville.

Sincerely,
Stuart Rochester

Chair, Fairland Master Plan CAC

**cc. Chairman Royce Hansen, Montgomery County Planning Board
Rose Krasnow, Chief, Development Review Division
Cathy Conlon, Development Review
Councilmember Marilyn Praisner**

Holland Knight

Tel 301 654 7800
Fax 301 656 3978

Holland & Knight LLP
3 Bethesda Metro Center, Suite 800
Bethesda, MD 20814-6337
www.hklaw.com

December 21, 2007

DEC 28

William Kominers
301 215 6610
william.kominers@hklaw.com
Christopher M. Ruhlen
301 664 7615
chris.ruhlen@hklaw.com

VIA UPS

Ms. Catherine Conlon
Development Review Division
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Re: Preliminary Plan No. 1-20070510 (the "Preliminary Plan")

Dear Ms. Conlon:

This letter is written on behalf of our client, Burtonsville Self Storage, LLC, to express concerns about certain conditions proposed for the above-referenced Preliminary Plan application. We understand that this Preliminary Plan has been submitted by the Siena Corporation (the "Owner") for the subdivision of certain property located at 4001 Sandy Spring Road in Burtonsville, also known as Part of Parcel H (the "Property").

As you are aware, the Property is subject to the terms of that certain New Dino Drive Road Participation Agreement dated June 15, 2000, and recorded in the Land Records of Montgomery County at Liber 18183, Folio 468 (the "Agreement"). Pursuant to the Agreement, the Planning Board has agreed to require any owner of properties identified in the Agreement, which includes the Property, in obtaining a development approval and/or construction permit from M-NCPPC, to contribute the respective share of funds due for the past and future construction of Dino Drive. Attached as Exhibit "A" is a copy of excerpts of the Agreement, including the provisions whereby the M-NCPPC agrees to impose the condition for participation in the New Dino Drive Road Club as established by the Agreement.

The participants in the New Dino Drive Road Club agreed to both: (1) pay their respective pro rata shares of the cost of construction for portions of Dino Drive related to or fronting their property, and (2) reimburse the original Road Club members for the pro rata share (including interest costs) of portions of the road already constructed by the other participants. As defined in the Agreement, this respective share includes the reimbursement of Burtonsville Self-Storage, LLC for all pro rata monies attributable to the Property that were advanced by Burtonsville Self-Storage for the prior construction of Phase I of Dino Drive. This pro rata share, under the Agreement, includes accrued interest on the applicable amount.

Ms. Catherine Conlon
December 21, 2007
Page 2

Burtonsville Self-Storage respectfully requests that any M-NCPPC Staff Report prepared in connection with the Development Review Division's review of the subject Preliminary Plan application recommend to the Planning Board, and the Planning Board eventually adopt, the following as a condition of approval:_____

That the Owner be required to join the New Dino Drive Road Participation Agreement and comply with all terms thereof, including paying the pro rata share of monies attributable to the Property for the construction of Dino Drive, including but not limited to those monies due as reimbursement to Burtonsville Self-Storage, LLC, for the construction of Phase I of Dino Drive, and including all accrued interest thereon which is a part of said pro rata share pursuant to and as defined in the Agreement.

The construction of Phase I of Dino Drive was undertaken in good faith by Burtonsville Self-Storage and others pursuant to the Agreement. Other owners along the future sections of Dino Drive, including the predecessor of the Owner, were always intended to become subject to the Agreement at the time they might proceed to development. For this Property, this is that time. Fundamental fairness demands that the M-NCPPC fulfill its commitment under the Agreement and thereby require the Property to fulfill its obligations. We hope that this information is useful to you in your continued evaluation of the Preliminary Plan.

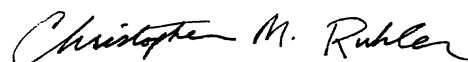
Should you have any questions or require additional information, please do not hesitate to contact us.

Very truly yours,

HOLLAND & KNIGHT LLP



William Kominers



Christopher M. Ruhlen

cc: Mr. Alan Jacobs
Mr. Greg Leck
Mr. Shahriar Etemadi

EXHIBIT A

NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT

This NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT ("Agreement") is made as of this 15th day of JUNE, 2000, by and among DFM, L.L.C., a Maryland limited liability company, its heirs, successors and assigns ("DFM"), ELDER HOME, INC., a Maryland corporation, its heirs, successors and assigns ("ELDER"), and BURTONSVILLE SELF-STORAGE, L.L.C., a Maryland limited liability corporation, its heirs, successors and assigns ("BURTONSVILLE").

FILED
MOLLY Q. RUMIL
CLERK'S OFFICE
MONTGOMERY CO, MD
00 JUN 26 P 1:25

RECITALS

- R-1. Capitalized terms, not already defined in this Agreement or not defined in the Recitals, are defined in the Definition section of this Agreement.
- R-2. Montgomery County, Maryland, a body politic, has indicated its refusal to construct a certain roadway defined below as "New Dino Drive."
- R-3. The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (the "M-NCPPC") wishes to confirm that it has agreed to require each owner of the property listed on the attached Exhibit 11, which is incorporated by reference, to contribute its respective share for the Construction of New Dino Drive, as a condition of any development approval granted by M-NCPPC and/or construction permit approved by M-NCPPC, which undertaking was initially established by a certain Agreement to Contribute to Dino Drive Escrow Fund, dated September 15, 1998, by and between DFM, LLC, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission and the Montgomery County Department of Public Works and Transportation, concerning the land and premises described therein and in this Agreement as Parcel L and Parcels J&K.

Such undertaking by M-NCPPC was also established by a certain Agreement to Contribute to Dino Drive Escrow Fund, dated March 18, 1999, by and between BURTONSVILLE SELF-STORAGE, L.L.C., the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission and the Montgomery County Department of Public Works and Transportation, concerning the land and premises described therein as parcels P946 and P997, and in this Agreement as Parcels 946 & 997.

R-4. The Parties wish to provide the terms and conditions under which each will participate in the Project Cost Estimate and/or the Phase Project Cost Overrun of one or more Phases of New Dino Drive.

R-5. DFM is the owner of the land and premises described in the attached Exhibit 1, which is incorporated by reference "Parcel L".

REC'D
MONTGOMERY CO
JUN 26 2000
11:27 AM

#89369v31
11640.001
February 25, 2000

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YMC

NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT

reasonably to facilitate amendments to the Agreement and other actions needed to effectuate the provisions of this Paragraph. To the extent that the purchaser is substituted for a Party, the Party shall be automatically released from such portion of its obligations under this Agreement.

- m) Personal Liability. Notwithstanding anything herein to the contrary, in no event shall any officers, partners, shareholders or directors of any Party have any personal liability under, or in connection with, this Agreement.
- n) Limitation of Liability. The obligations of any Party subject to this Agreement shall apply only with respect to the period during which such Party is the fee simple owner of a Parcel. When any Party ceases to own a fee simple interest in a Parcel, the obligations and liabilities thereafter accruing (but not accrued and unperformed obligations and liabilities) shall be the obligations of such Party's successors and assigns.
- o) [Intentionally omitted.]
- p) Imposition of This Agreement on Subsequent Parties by M-NCPPC and Assistance by the Parties. The M-NCPPC hereby confirms its commitment to require each owner of the property listed on the attached Exhibit 11, to contribute, as required by law, its respective share for the Construction of New Dino Drive, as a condition of any development approval granted by M-NCPPC and/or construction permit approved by M-NCPPC.
- q) Equity. In addition to the obligations of the M-NCPPC to require each owner of the property listed on the attached Exhibit 11, to contribute its respective share for the Construction of New Dino Drive, as a condition of any development approval granted by the M-NCPPC and/or construction permit approved by M-NCPPC, the Parties shall urge M-NCPPC to use reasonable efforts to review subdivision proposals and make recommendations to assure that applicable additional applicants for subdivision benefiting from, making use of capacity from, or making use of New Dino Drive, will become bound by the terms and conditions of this Agreement.
- r) Authority. Each of the undersigned hereby represents and warrants that they or it possess actual authority to execute this Agreement, and this Agreement constitutes a valid and legally binding obligation of the party on whose behalf they have executed this Agreement.
- s) Notices. Any payment, notice, demand, consent, approval, request, or other communication or document to be provided under this Agreement: (A) shall be in writing; (B) shall be deemed to have been provided on the earlier of:

NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT

The undersigned executes this Agreement for the sole purpose of agreeing to the provisions of Section 9 p) and q) of this Agreement.

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

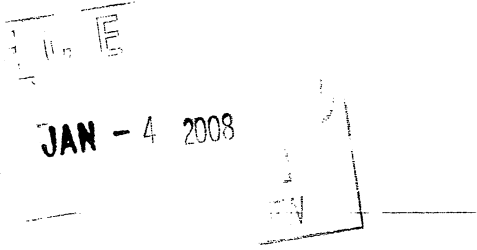
By: Joseph R. Davis
Name: Joseph R. Davis
Title: Acting Chief, Development Review Division
Date: August 8, 1999

APPROVED AS TO LEGAL SUFFICIENCY
MK 8/2/99
M-NCPPC LEGAL DEPARTMENT

EXHIBIT 11

List of all Parcels subject to or to be made subject to this Agreement
with Tax Identification Numbers

Property	Current Owner	Tax Identification Numbers:
Parcel L (formerly Parcel "G")	DFM, L.L.C.	Parcel "G":05-02927523
Parcel J (formerly Parcel "D") and Parcel K (formerly Parcel "E")	DFM, L.L.C.	Parcel "D":05-02791113 Parcel "E":05-02791124
Parcel 191	Elder Home, Inc.	Parcel 191:05-00249865
Parcels 946 & 997	Burtonsville Self Storage, L.L.C.	Parcel 946:05-01508170 Parcel 997:05-00275933
Parcel F, and Parcel "H" (AKA N901 and N902)	J. Yang	Parcel "F":05-02791135 Parcel "H":05-02957017
Parcel 900, Parcel 884, Parcel 845, and Parcel 844	S. C. Beaver (includes Pattison land)	Parcel 900:05-00276072 Parcel 884:05-00261060 Parcel 845:05-00282222 Parcel 844:05-002457067
Parcel 942	K. Wilson	Parcel 942:05-01508192



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Christopher M. Ruhlen
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January 3, 2008

VIA UPS

Ms. Catherine Conlon
Development Review Division
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Re: Preliminary Plan No. 1-20070510 (the "Preliminary Plan")

Dear Ms. Conlon:

This letter is written to provide additional information that is relevant to the above-referenced Preliminary Plan application that was submitted by the Siena Corporation (the "Owner") for the subdivision of certain property located at 4001 Sandy Spring Road in Burtonsville, also known as Part of Parcel H (the "Property").

In our previous letter to you dated December 21, 2007, we expressed concerns about the enforcement of that certain New Dino Drive Road Participation Agreement dated June 15, 2000, recorded in the Land Records of Montgomery County at Liber 18183, Folio 468 (the "Agreement"), to which the Property is to be made subject. More specifically, we requested on behalf of our client, Burtonsville Self Storage, LLC, that any Planning Board Staff Report prepared in connection with the Development Review Division's review of the subject Preliminary Plan recommend to the Planning Board, and that the Planning Board ultimately adopt, the following as a condition of approval:

That the Owner be required to join the New Dino Drive Road Participation Agreement and comply with all terms thereof, including paying the pro rata share of monies attributable to the Property for the construction of Dino Drive, including but not limited to those monies due as reimbursement to Burtonsville Storage, LLC, for the construction of Phase I of Dino Drive, and including all accrued interest thereon which is a part of said pro rata share pursuant to and as defined in the Agreement.

We previously explained that as a part of the Owner's respective pro rata share of the cost of constructing portions of Dino Drive related to or fronting their property, the Agreement

Ms. Catherine Conlon
January 3, 2008
Page 2


requires the Owner to reimburse the original Road Club members for the pro rata share (including interest costs) of portions of the road already constructed by other participants. Pursuant to the Agreement, relevant portions of which are attached as Exhibit "A", Burtonsville Self Storage paid the net difference due for the project cost estimate of Phase I of Dino Drive, as well as certain additional project cost overruns, with the reasonable expectation that the Planning Board would require future property owners to reimburse for these expenditures. The attached spreadsheet for payments advanced by Burtonsville Self Storage for this Phase I construction (Exhibit "B") shows that the total refundable project cost payment attributable to the Property through December 31, 2007, with interest, is \$26,571.75. However, please note that the Agreement provides that interest continues to accrue at a rate of nine (9) percent per annum for every day or portion thereof until the day following receipt by Montgomery County of payment in full of all principal amounts and interest due for: (1) the Owner's share of the net difference of the original project cost estimate, and (2) project cost overruns paid by Burtonsville Self Storage.

Our position continues to be that because Burtonsville Self Storage advanced the funds necessary for the construction of Phase I of Dino Drive in good faith reliance on the Agreement, fundamental fairness demands that the Planning Board fulfill its commitment under the Agreement to require the Property to fulfill its obligations. As such, we hope that the information presented herein is useful in your continued evaluation of the Preliminary Plan, and trust that you will not hesitate to contact us should you have any questions.

Very truly yours,

Holland & Knight LLP


William Kominers


Christopher M. Ruhlen

w/ Attachments

cc: Mr. Alan Jacobs
Mr. Greg Leck
Mr. Shahriar Etemadi
Ms. Melissa Morgan

5028682_v1

EXHIBIT "A"

NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT

reasonable cost of the consideration provided to anyone not bound by this Agreement in exchange for any rights to real property necessary for the Construction of Phase 2, Phase 3, and Phase 4 of New Dino Drive; however, such liability shall cease twenty-one (21) years after the recordation of this Agreement.

- ii) Each such Party's share of any such consideration to be paid shall be equal to its Traffic Generation Percentage.
- iii) Provided, however, the Owner of Parcels 946 & 997 and the Owner of Parcel L shall not be required to pay any share of such consideration unless each agrees upon such consideration to be provided, which agreement shall not be unreasonably withheld. Each such Party shall pay its share of the agreed-upon consideration within the later of:
 - a) forty-five (45) days of the agreement by such Parties; or
 - b) when all of the other Parties pay their share of such consideration.
- g) Dedication of Land and Granting of Permanent and Temporary Easements for Phase 1 of New Dino Drive. Upon written request of the Owner of Parcels 946 & 997, provided such request is made no later than twenty-one (21) years from the date of this Agreement, each Original Phase 1 Party and any other Party whose land is adjacent to Phase 1 of New Dino Drive shall perform whatever steps are necessary: (1) to dedicate the land and premises located within Phase 1 of New Dino Drive, and (2) to grant such permanent and temporary easements as may be necessary to construct or maintain Phase 1 of New Dino Drive, as required by Montgomery County, the Maryland State Highway Administration, and/or M-NCPPC.
- h) Obligation of owners of Parcels to Pay Interest to the Escrow Agent To Pay the Owner of Parcels 946 & 997 For Its Payment of the Net Difference Payable By the Owner of Parcels 946 & 997
 - i) Each of the following owners of Parcels shall pay to the Escrow Agent interest on its share of the Net Difference Payable By the Owner of Parcels 946 & 997, and the principal amount against which such interest shall be calculated for each such owner of Parcels is listed immediately below:
 - a) Parcels J & K: \$78,122;

NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT

- b) Parcel 191: \$24,350;
- c) Parcels F & H: \$15,472;
- d) Parcels 900, 884, 845, & 844: \$15,219
- e) Parcel 942: \$50,982

The calculation of the principal amounts listed above is listed in the attached Exhibit 17 which is incorporated by reference.

- ii) For each owner of a Parcel listed above, interest on the principal amounts listed above shall be at the rate of nine percent (9%) per annum, based upon a 365 day year, for every day or portion thereof, beginning on the date of the first payment by the Owner of Parcels 946 & 997 to the Escrow Agent for all or any portion of the Net Difference Payable by the Owner of Parcels 946 & 997 for the Construction of Phase 1 of New Dino Drive and for each owner of a Parcel listed above, ending on the day following receipt by the Escrow Agent of the payment in full of:
 - (1) such interest on the principal amount indicated above; and
 - (2) the total amount to be paid by the owner of the subject Parcel toward Phase 1 of New Dino Drive.

Any interest paid to the Escrow Agent shall belong to the Owner of Parcels 946 & 997.

- i) Obligation of owners of Parcels to Pay Interest to the Escrow Agent for the Owner of Parcels 946 & 997 For Its Overpayment of Its Entire Share of the Phase 1 Project Cost Overruns
 - i) Each of the following owners of Parcels shall pay to the Escrow Agent interest on its share of the Phase 1 Project Cost Overruns:
 - a) Parcels J & K;
 - b) Parcels F & H;
 - c) Parcels 900, 884, 845, & 844; and
 - d) Parcel 942.
 - ii) For each owner of a Parcel listed immediately above, interest on its share of the Phase 1 Project Cost Overruns shall be at the rate of nine percent (9%) per annum, based upon a 365 day year, for every day or portion thereof, beginning on the date of the first payment by the

NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT

Owner of Parcels 946 & 997 to the Escrow Agent of an amount in excess of its share of the Phase 1 Project Cost Overruns, less the amounts contributed to the Phase 1 Project Cost Overruns by the Owner of Parcel L and the Owner of Parcel 191, and, for each owner of a Parcel listed above, ending on the day following receipt by the Escrow Agent of the payment in full of:

- (1) such interest on its share of the Phase 1 Project Cost Overruns; and
- (2) the payment of its share of the Phase 1 Project Cost Overruns.

Any interest paid to the Escrow Agent shall belong to the Owner of Parcels 946 & 997.

4. PAYMENT FOR THE COST OF PHASE 2 OF NEW DINO DRIVE.

- a) Initial Responsibility for Payment and Responsibility for Implementation.
Subject to the terms and conditions of this Agreement as to the initial payment of the Phase 2 Project Cost Estimate and the Phase 2 Project Cost Overrun by the Original Phase 2 Parties, the Owner of Parcels J & K shall be responsible for implementing the Construction of Phase 2 of New Dino Drive according to the Grade Establishment Plan and the Master Plan and in accordance with the Construction Management Scope of Services Guidelines, attached as Exhibit 12 and incorporated by reference.
- b) Payment of the Phase 2 Project Cost Estimate for New Dino Drive.

Each Original Phase 2 Party agrees to pay to the Escrow Agent, on or before the earlier of the submission of an application for a building permit or the commencement of construction of Phase 2 of New Dino Drive, its remaining share of the Project Cost Estimate for New Dino Drive which is equal to the portion of its percentage of its Traffic Generation Percentage provided on the Traffic Generation Analysis, which percentage is also provided below. For each Original Phase 2 Party, the product of such portion of its Traffic Generation Percentage and the Project Cost Estimate is listed below under "Amount" as follows:

- i) Owner of Parcels J & K:
 - a) Traffic Generation Percentage: 30.8%
 - b) Amount of Project Cost Estimate payable: Two Hundred Ten Thousand Nine Hundred Eighty and NO/100 Dollars (\$210,980).
- ii) Owner of Parcel 191:

EXHIBIT "B"

A	B	C	D	E	F	G	H	I	J	K	L
ALLOCATION OF TOTAL PHASE 1 PAYMENTS BEFORE PROJECT COST (1)	PHASE 1 NONREFUNDABLE DEPOSITS PAID BY OWNERS (1)	PHASE 1 NET DIFFERENCE PAYABLE FROM OWNERS (1)	INTEREST ON NET DIFFERENCE PAYABLE (3)	OVERRUN PAYMENTS MADE (2)	INTEREST ON OVERRUN PAYMENTS (4)	SUBTOTAL	NONREFUNDABLE BURTONSVILLE OVERRUNS	PAYMENTS MADE BY DFM (2)	ADDITIONAL DEPOSIT & INTEREST DUE FROM ELDER (2)	TOTAL REFUNDABLE PROJECT COST	
SHARE OF ENTIRE PROJECT COST (1)	OWNER (1)	DFM, L.L.C.	DFM, L.L.C.	Elder Home, Inc.	Burtonsville Self Storage, L.L.C.	J & K	DFM, L.L.C.	DFM	ELDER	BURTONSVILLE	
17.4%	\$119,190.00	\$119,190.00	\$0.00	\$0.00	\$0.00	\$20,434.39	\$0.00	(\$20,434.39)	\$0.00	\$0.00	
30.8%	\$102,240.00	\$102,240.00	\$58,308.98	\$36,171.21	\$15,525.86	\$212,246.05	\$0.00	(\$12,554.44)	\$0.00	\$189,691.61	
14.6%	\$34,250.00	\$34,250.00	\$18,174.44	\$17,146.09	\$7,359.66	\$42,680.20	\$0.00	\$0.00	\$59,813.64	\$102,493.83	
5.0%	\$34,250.00	\$34,250.00	\$0.00	\$5,871.95	\$0.00	\$5,871.95	(\$5,871.95)	\$0.00	\$0.00	\$0.00	
6.1%	\$4,785.00	\$0.00	\$4,785.00	\$11,548.05	\$7,163.78	\$26,571.75	\$0.00	\$0.00	\$0.00	\$26,571.75	
6.0%	\$41,100.00	\$0.00	\$41,100.00	\$11,359.21	\$7,046.34	\$62,530.07	\$0.00	\$0.00	\$0.00	\$62,530.07	
20.1%	\$36,020.00	\$0.00	\$36,020.00	\$38,052.13	\$23,605.24	\$107,809.50	\$0.00	\$0.00	\$0.00	\$107,809.50	
100.0%	\$371,835.00	\$187,690.00	\$184,145.00	\$137,442.80	\$117,439.00	\$478,143.91	(\$5,871.95)	(\$32,988.82)	\$59,813.64	\$495,086.76	

DINO DRIVE ROAD CLUB
 Overrun Payments Made:
 To be reimbursed with 9% interest per Participation Agreement
 Assumed Date of Road Completion: [REDACTED]

Overrun Payments Made:

Date	O	P	Made by
5/15/02	\$35,000.00	\$17,743.56	Burtonsville
6/10/02	\$32,739.00	\$16,387.44	Burtonsville
11/28/03	\$10,500.00	\$3,868.03	Burtonsville
9/10/04	\$14,350.00	\$4,270.80	DFM
9/10/04	\$14,350.00	\$4,270.80	Burtonsville
	\$117,439.00	\$50,408.65	DFM
		\$167,847.65	

Date Net Difference Paid by Burtonsville: 9/17/99

Net Difference Payable:

Parcel(s)	M	N
J&K	\$78,122.00	\$58,308.98
191	\$24,350.00	\$18,174.44
F&H	\$15,472.00	\$11,548.05
900, 884, 845, 844	\$15,219.00	\$11,359.21
942	\$50,982.00	\$38,052.13
	\$184,145.00	\$137,442.80

* NONREFUNDABLE DEPOSIT DUE FROM ELDER (2):

Payments made:	Advance	Interest	Total
9/17/1999	\$34,250.00	\$25,563.64	\$59,813.64
			Burtonsville

NOTES:
 (1). PER EXHIBIT 10 OF NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT.
 (2). PER ALAN JACOBS.
 (3). PER SECTION 3H AND EXHIBIT 17 OF NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT-T.
 (4). PER SECTION 3I OF NEW DINO DRIVE ROAD PARTICIPATION AGREEMENT.

IRS Circular 230 Disclosure: Please be advised that the tax advice contained herein (including any attachments) is not intended or written by the practitioner to be used and cannot be used by the taxpayer for the purpose of avoiding any U.S. tax-related penalties that may be imposed on the taxpayer.



Attachment D

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid Joyner
Director

October 10, 2007

OT 17
RECEIVED

Mr. Michael Devine
Site Solutions, Inc.
20410 Observation Drive, Suite 205
Germantown, MD 20876

Re: **Revised Stormwater Management CONCEPT**
Request for EZ Storage / Burtonsville Industrial
Park
Preliminary Plan #: 1-07051
SM File #: 230205
Tract Size/Zone: 3.041 acres / C-3
Total Concept Area: 3.041 acres
Lots/Block: N/A
Parcel(s): Pt. of Parcel H
Watershed: Little Paint Branch

Dear Mr. Devine:

Based on a review by the Department of Permitting Services Review Staff, the revised stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site water quality control via construction of a Montgomery County Sand Filter; and onsite recharge via installation of recharge trenches. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. Offsite drainage from the existing storm drain outfall under Rte. 29 must be diverted around the proposed water quality facility.
5. This approval supercedes the previous stormwater concept approval for this project.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 **is not** required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this

office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mark Etheridge at 240-777-6338. **11/10**

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:dm mce

cc: C. Conlon
S. Federline
SM File # 230205

QN -ON; Acres: 3
QL - ON; Acres: 3
Recharge is provided



State Highway Administration

Driven to Excel

Martin O'Malley, Governor | Anthony Brown, Lt. Governor

John D. Porcari, Secretary Designate | Neil J. Pedersen, Administrator

Maryland Department of Transportation

March 2, 2007

Ms. Catherine Conlon
Supervisor, Development Review
Subdivision Division
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Montgomery County
ezStorage - Burtonsville
File # 1-20070510
Service Drive @ MD 198
east of US 29

Dear Ms. Conlon:

The State Highway Administration (SHA) appreciates the opportunity to review the preliminary plan application for the proposed 155,840 square foot self-storage building. We offer the following comments:

- The proposed access is an extension of the existing service road. The existing service road appears to be located within MD 198 rights-of-way. If this is correct, an access permit from SHA's Engineering Access Permits Division will be required.
The preliminary plans show a proposed extension of the existing pipe culvert under MD 198. The applicant must submit all the necessary hydrologic analyses, storm sewer computations, drainage area maps and storm sewer profiles for our review and comment.
Right-of-way dedications need to be in accordance with the Master Plan of Highways. SHA will require that right-of-way dedications be platted to SHA standards. These plats must be submitted in hard copy format for review and final issuance. Please contact Dan Andrews at 410-545-8860 or dandrews@sha.state.md.us for additional information.

If you have any questions, please contact Ray Burns at 410-545-5592 or our toll free number in Maryland only 1-800-876-4742.

Very truly yours,

[Handwritten signature]

for Steven D. Foster, Chief
Engineering Access Permits Division

SDF/rbb

cc: Siena Corporation / 8221 Snowden River Pkwy., Columbia, MD 21045
Site Solutions Inc./ 20410 Observation Dr, Suite 205, Germantown, MD 20876
Mr. Shahriar Etemadi / M-NCPPC
Mr. Sam Farhadi / MCDPWT
Mr. Jeff Wentz sent via e-mail
Ms. Kate Mazzara sent via e-mail
Mr. Augustine Rebish sent via e-mail

My telephone number/toll-free number is
Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free



DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

November 21, 2007

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan No. 1-20070510
ezStorage - Burtonsville

Dear Ms. Conlon:

We have completed our review of the preliminary plan dated September 24, 2007. The original plan for this site was reviewed by the Development Review Committee at its meeting on March 5, 2007. We recommend approval of the plan subject to the following comments:

We have met with the applicants and their representatives to discuss their request to continue to access Spencerville Road (MD 198), via the existing service road off Star Pointe Lane that was built by the Maryland State Highway Administration (under their US 29/MD 198 interchange project), until such time as Dino Drive is extended to Star Pointe Lane. We believe their request is reasonable, in that they made proffers which reasonably protect the ability to complete the construction of Dino Drive at a future date. For this reason, we recommend the Planning Board approve this request subject to the conditions described below.

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Applicants shall agree to pay their share of the pro-rata monies for the future construction of Dino Drive in accordance with the recorded Dino Drive Participation and Escrow Agreements. This condition shall be noted on the record plat.
2. Provide an easement for future dedication of the right-of-way and granting of necessary easements along the Dino Drive site frontage at such time as requested by the Planning Board or the County. Such right-of-way and easements shall be provided without delay and at no cost to the County. This condition shall be noted on the record plat.

Division of Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
240-777-6000 • 240-777-6013 TTY • 240-777-6030 FAX
www.montgomerycountymd.gov

Ms. Catherine Conlon
Preliminary Plan No. 1-20070510
November 21, 2007
Page 2

3. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.

The current approved grade establishment for Dino Drive does not adequately address the side slope grading needed to connect with the existing topography of adjacent properties in the vicinity of the proposed cul-de-sac. Applicant shall be responsible for identifying additional slope easements necessary from Parcels J and K and shall exercise commercially reasonable efforts to obtain the granting of such easements, to implement the proposed revision to the existing approved grade establishment for Dino Drive, prior to issuance of the building permit for this site. The construction of retaining walls in the right-of-way may be necessary if the applicant is unable to obtain the necessary additional slope easements. This condition shall be noted on the record plat.

4. Final approval of the grade establishment in accordance with the revised profile for Dino Drive proposed by this applicant must be obtained prior to submission of the record plat.
5. Size storm drain easement(s) prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the Department of Permitting Services and a recorded Maintenance and Liability Agreement.
6. Record plat to reflect a reciprocal ingress, egress, and public utilities easement to serve the lot(s)/parcel(s) to be accessed by the future private common driveway off Dino Drive.
7. Access and improvements along Spencerville Road (MD 198) service road as required by the Maryland State Highway Administration.
8. The parking layout plan will be reviewed by the Department of Permitting Services at the site plan or building permit stage, whichever comes first. To facilitate their review, that plan should delineate and dimension the proposed on-site travel lanes, parking spaces, curb radii, handicap parking spaces and access facilities, and sidewalks. The applicant may wish to contact Ms. Sarah Navid of that Department at (240) 777-6320 to discuss the parking lot design.
9. Truck loading space requirements to be determined in accordance with the County's "Off-Street Loading Space" policy. On the site plan, delineate the location and dimensions of the proposed truck loading and/or dumpster spaces.
10. Provide on-site handicap access facilities, parking spaces, ramps, etc. in accordance with the Americans With Disabilities Act.
11. Where perpendicular parking spaces border a sidewalk, a two (2) foot vehicle overhang is assumed. The applicant should either provide a seven (7) foot wide sidewalk or wheelstops within those parking spaces.

Ms. Catherine Conlon
Preliminary Plan No. 1-20070510
November 21, 2007
Page 3

12. The owner will be required to submit a recorded covenant for the operation and maintenance of private streets, storm drain systems, and/or open space areas prior to MCDPS approval of the record plat. The deed reference for this document is to be provided on the record plat.
13. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
14. If the proposed development will alter or impact any existing County maintained transportation system management component (i.e., traffic signals, signal poles, handboxes, surveillance cameras, etc.) or communication component (i.e., traffic signal interconnect, fiber optic lines, etc.), please contact Mr. Bruce Mangum of our Traffic Systems Engineering Team at (240) 777-6000 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
15. NOTE: the Public Utilities Easement is to be graded on a side slope not to exceed 4:1.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at greg.leck@montgomerycountymd.gov or (240) 777-6000.

Sincerely,



Gregory M. Leck, Manager
Development Review Group
Traffic Engineering and Operations Section

m:/subd/gml/docs/pp/1-20070510, ezStorage-Burtonsville

Enclosure

cc: Craig Pittinger; Siena Corp.
Alfred Blumberg; Site Solutions, Inc.
C. Robert Dalrymple; Linowes and Blocher, LLP
Neil Braunstein; M-NCPPC Development Review
Shahriar Etemadi; M-NCPPC Transportation Planning
Piera Weiss; M-NCPPC Community Based Planning
John Borkowski; MSHA Engineering Access Permits
Alan Jacobs
James R. Miller
Joseph Y. Cheung; DPS Right-of-Way Permitting and Plan Review
Sarah Navid; DPS Right-of-Way Permitting and Plan Review
Sam Farhadi; DPWT Traffic Engineering and Operations



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

MCPB
Item #
2/14/08



MEMORANDUM

DATE: February 1, 2008

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

FROM: ^{*NB*} Neil Braunstein, Planner Coordinator (301-495-4532)
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: One lot for a 147,142 square-foot self-storage use

PROJECT NAME: EZ Storage – Burtonsville Industrial Park

CASE #: 120070510

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: I-3/Burtonsville Employment Area overlay zone

LOCATION: Located on Sandy Spring Road (MD 198) 400 feet west of the intersection of Starpointe Drive.

MASTER PLAN: Fairland

APPLICANT: Siena Corporation

ENGINEER: Site Solutions

ATTORNEY: Linowes & Blocher

FILING DATE: December 29, 2006

HEARING DATE: February 14, 2008

RECOMMENDATION: Denial

SITE DESCRIPTION

The subject property, shown below and in Attachment A, consists of a 3.04 acre unplatted parcel. The property is in the Burtonsville Employment Area overlay zone, with I-3 as the base zone. The property is located on the south side of Sandy Spring Road, 400 feet west of the intersection of Starpointe Drive. The site is largely undeveloped, with the exception of a small building which will be removed to accommodate the proposed self-storage use.

Properties north of the site, across Sandy Spring Road, contain one-family residences in the RC zone. A horticultural nursery is in operation directly across Sandy Spring Road, also within the RC zone, and a small office building is located to the east of the nursery in the C-1 zone. Properties to the east include several undeveloped sites and one developed site in the I-3 zone and in the Burtonsville Employment Area overlay zone and an existing self-storage use in the I-1 zone and in the overlay zone. Properties south of the site include developed and undeveloped sites in the I-3 zone and in the overlay zone. The site is bounded on the west by Columbia Pike, constructed as a limited access expressway in this area. Beyond Columbia Pike to the west is a hardware store in the I-3 zone and in the overlay zone.

The subject property is located within the Little Paint Branch Watershed. Steep slopes (over 25% gradient) exist in a band in the central portion of the property and along the eastern property line. An ephemeral stream channel originates near the northeastern corner of the property, and it traverses the property in a southerly direction near the eastern property line. Forest covers 2.4 acres of the property. There are no stream buffers, floodplains, or wetlands on the site.



PROJECT DESCRIPTION

The application proposes to create one 3.04 acre lot for a self-storage use. The self-storage is proposed to be housed in a 147,142 square-foot building, of which 79,474 square feet are proposed to be above grade in the first and second floors and 67,668 square feet are proposed to be below grade in a cellar. In addition to the storage areas, the building is proposed to include an office and an onsite manager's residence. The proposal includes a 26-space parking lot. Access is proposed via a driveway from an existing service road in the Sandy Spring Road (MD 198) right-of-way. An additional driveway is proposed to access the site from a future extension of Dino Drive when that extension is constructed.

(Attachment B – proposed plan)

ANALYSIS AND FINDINGS

Master Plan Compliance

The proposed preliminary plan is not in conformance with the Fairland Master Plan with respect to recommendations regarding diversity of uses and uses that generate employment.

The Master Plan provides the following goal and objective on page 80:

This Plan supports the industrial park employment concept of the 1981 Plan and addresses the problems that have since emerged: an irregular zoning pattern, minimum lot standards and setbacks that make development for some properties impossible under the 1-3 Zone, and inability, to date, to achieve the desired internal road network with limited access to MD 198. An overlay district, similar to the one proposed for the US 29/Cherry Hill Employment Area, could best guide development so that consistency of standards and compatible development results.

GOAL: Develop diversity of uses to serve and support the businesses, employees, and area residents.

OBJECTIVE: Enable the Burtonsville Industrial Area to develop as a diversified, but unified employment center.

As discussed below, the preliminary plan is not in conformance with this goal and objective, the only ones that specifically apply to the Burtonsville Employment Area. Following these two statements, the Master Plan contains this list of recommendations on pages 80 and 82:

RECOMMENDATIONS:

- Rezone all R-200 and other parcels too small to develop under the 1-3 standards to the 1-1 Zone.
- Develop an overlay district for Area 19 that establishes appropriate uses and development standards.
- The overlay should have the following objectives:
 - Limit uses in the 1-1 Zone to ensure compatibility with 1-3 uses;
 - Allow additional uses in the 1-3 Zone for services: such as restaurants;
 - Require trip mitigation for all properties;
 - Ensure all uses have appropriate building setbacks, FAR standards and similar landscaping requirements; and
 - Ensure compatibility of proposed uses through site plan review.
- Orient all development to the interior with access to MD I98 via relocated Dino Drive or Star Pointe Lane. Relocate Dino Drive to connect with Star Pointe Lane. (See page 93-93.)
- Conduct a study to evaluate whether a traffic signal should be provided at MD 198 and Dino Drive.
- Provide pedestrian/bikeway access to proposed parkland directly to the south.

As discussed below, the preliminary plan is in conformance with the one recommendation that relates to orientation to Dino Drive. This appears to be the only recommendation that has direct applicability to the subject property.

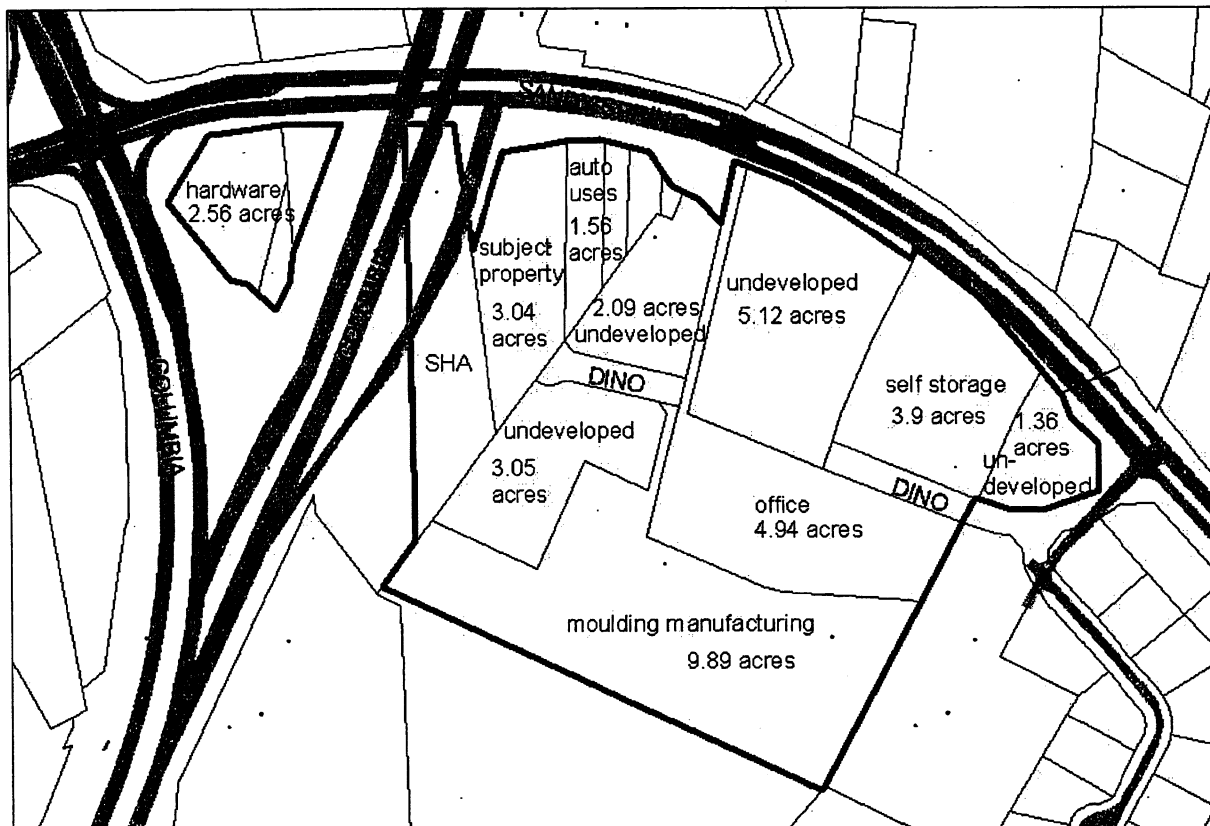
The Master Plan recommends that the Burtonsville Industrial Area develop as a diversified but unified employment area. The proposed self-storage use will generate only minimal employment, consisting of one manager who will live on-site and potentially several employees who will work in the office or sell packing supplies. Generation of so few employees on a three-acre site cannot be considered to be consistent with the employment generation goals of the Master Plan. Further, this project does not advance the goal of diversification of uses because a self-storage use already exists within Burtonsville Industrial Area, in close proximity to the subject property.

These two concerns are rendered even more critical when existing and future development in the Burtonsville Industrial Area is taken into account. The Burtonsville Industrial Area contains ten privately-owned properties comprising 37.5 acres that are available for commerce. These ten properties are listed in the chart below. At 37.5 acres, the area of the Burtonsville Industrial Area is not large. With implementation of this project, 18.5% of the land area and 20% of the total number of properties would be devoted to self storage use, a use that is not a strong employment generator. With only 31% of the land area left undeveloped, opportunities for future employment-generating development are limited. The loss of the subject property's three acres to a project that will not diversify uses and will only nominally generate

employment causes the preliminary plan not to be in substantial conformance to the goals of the Master Plan.

Land Uses in the Burtonsville Industrial Area

Use	Acres
Hardware store (pre-dates master plan)	2.56
self storage (subject property)	3.04
automobile uses (pre-dates master plan)	1.56
undeveloped	2.09
undeveloped	3.05
undeveloped	5.12
office	4.94
molding manufacture	9.89
self storage	3.9
undeveloped	1.36
Total	37.51



Burtonsville Industrial Area with land uses

Nonetheless, one aspect of the proposal is consistent with the Master Plan. The Master Plan recommends that access to properties within the Burtonsville industrial area be provided via

Dino Drive instead of Sandy Spring Road (MD 198). The preliminary plan advances this goal by dedicating land for the completion of Dino Drive, providing for future site access to Dino Drive, and providing an easement so that an adjacent property can also access Dino Drive in the future.

Compliance with respect to Dino Drive, however, does not override the concerns with respect to the appropriateness of the land use. Staff recommends, therefore, that the Planning Board find that the preliminary plan is not in compliance with the Fairland Master Plan. Based on this recommendation, staff further recommends that the Planning Board deny this application. Despite the recommendation for denial, staff has provided, for the Planning Board's information, the analysis below with respect to other required subdivision findings.

Public Facilities

Roads and Transportation Facilities

The proposed lot does not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review.

Access is proposed via a driveway from an existing service road in the Sandy Spring Road (MD 198) right-of-way. An additional driveway is proposed at the southeastern property line to access the site from a future extension of Dino Drive. This additional driveway is not proposed to be constructed with the project, but rather would be constructed in the future when the extension of Dino Drive is constructed. This driveway will also provide access to Dino Drive for anticipated future development on an adjacent property. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

A road club agreement exists between several area property owners for construction of Dino Drive. One segment of the street was constructed in 2004 pursuant to approval of an earlier development project (Burtonsville Self Storage). Approval of a preliminary plan on the subject property would be subject to the terms of the road club agreement, including payment of a pro-rata share of road construction costs.

Other Public Facilities and Services

Public facilities and services are available and will be safe and adequate to serve the proposed development. The Property will be served by public water and public sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be safe and adequate to serve the Property. Electrical and telecommunications services are also available to serve the Property.

Environment

There are no wetlands, streams, floodplains, or environmental buffers on or adjacent to the subject property. There are 2.40 acres of existing forest on the property. The on-site forest is a mixed hardwood forest dominated by Red Maple (*Acer rubrum*), Big Toothed Aspen (*Populus grandidentata*), Chestnut Oak (*Quercus prinus*), and Silver Maple (*Acer saccharinum*). There are five trees that are 24 inches in diameter and greater on the subject property. All five trees are proposed to be removed due to construction of the new building and access road.

Under the proposed forest conservation plan, the entire 2.40 acres of forest are proposed to be removed. The application is subject to a reforestation requirement of 1.42 acres. This requirement is proposed to be met by securing forest credits within an approved forest bank. This is acceptable because there are no priority planting areas on-site. The plan meets all applicable requirements of the county Forest Conservation Law.

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on October 10, 2007. The stormwater management concept includes the use of a sand filter and recharge trenches to provide on-site water quality control and groundwater recharge. Channel protection is not required because the one-year post-development peak discharge is less than two cubic feet per second.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The application meets all applicable sections except the requirement stated in Section 50-35(l) of the Subdivision Regulations that the preliminary plan be consistent with the master plan (as discussed above). Access and public facilities will be adequate to support the proposed lot and uses. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision.

The lot was reviewed for compliance with the dimensional requirements for the Burtonsville Employment Area Overlay Zone and the I-3 zone as specified in the Zoning Ordinance. The lot as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in those zones. A summary of this review is included in attached Table 1. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

Citizen Correspondence and Issues

This plan submittal pre-dated any requirements for a pre-submission meeting with neighboring residents, however, written notice was given by the applicant and staff of the plan submittal and the public hearing date.

In response to the notice, three letters were received. The first letter was received from the Fairland Master Plan Citizens Advisory Committee. The letter is in opposition to the preliminary plan, based on lack of conformance with the master plan. The letter states that the

proposed self-storage use would generate only one employee, in conflict with the master plan goal of creating a unified employment center in Burtonsville. Further, the letter states that since there is already an existing self-storage facility in Burtonsville, addition of a second one is contrary to the master plan goal of achieving a diversity of uses in Burtonsville.

Two letters were received from William Kominers and Christopher Ruhlen, representing the owners of Burtonsville Self Storage, a nearby business in the Burtonsville Employment Area Overlay Zone. These letters discuss the Dino Drive Road Club agreement and provide suggested language for a condition that would require the applicant to participate in the road club. Because the preliminary plan is recommended for denial, no conditions are included in the staff recommendation and the two letters are not attached to the staff report.

CONCLUSION

The proposed lot and use do not comply with the recommendations of the Fairland Master Plan because the proposal does not diversify uses in the Burtonsville Employment Area and because the project would generate only one employee on the three acre site. The application does not comply with Section 50-35(1) of the Subdivision Regulations that requires conformance to the master plan. Therefore, denial of the application is recommended.

Attachments

~~Attachment A–Vicinity Development Map
Attachment B–Proposed Development Plan
Attachment C–Citizen Correspondence
Attachment D–Pages 80-82 of the Fairland Master Plan~~

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: EZ Storage – Burtonsville Industrial Park				
Plan Number: 120070510				
Zoning: I-3; Burtonsville Employment Area Overlay Zone				
# of Lots: 1				
# of Outlots: 0				
Dev. Type: Commercial				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	2 acre minimum	2.91 acres minimum	NB	2/1/08
Lot Width	Not specified	210 ft. minimum	NB	2/1/08
Lot Frontage	Not specified	169 ft. minimum	NB	2/1/08
Setbacks				
Front	100 ft. Min.	Must meet minimum ¹	NB	2/1/08
Side	0 ft. Min.	Must meet minimum ¹	NB	2/1/08
Rear	0 ft. Min.	Must meet minimum ¹	NB	2/1/08
Height	100 ft. Max.	May not exceed maximum ¹	NB	2/1/08
Max Comm'l s.f. per Zoning	79,474 sq. ft.	79,474 sq. ft.	NB	2/1/08
MPDUs	N/A		NB	2/1/08
TDRs	N/A		NB	2/1/08
Site Plan Req'd?	Yes		NB	2/1/08
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes	NB	2/1/08
Road dedication and frontage improvements		Yes	Agency letter	11/21/07
Environmental Guidelines		Yes	Staff memo	1/16/08
Forest Conservation		Yes	Staff memo	1/16/08
Master Plan Compliance		No	Staff memo	1/30/08
ADEQUATE PUBLIC FACILITIES				
Stormwater Management		Yes	Agency letter	10/10/07
Water and Sewer (WSSC)		Yes	Agency comments	3/5/07
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	3/5/07
Well and Septic		N/a	Agency comments	3/5/07
Local Area Traffic Review		N/a	Staff comments	3/5/07
Policy Area Mobility Review		N/a	Staff comments	1/24/07
Transportation Management Agreement		N/a	Staff comments	1/24/07
Fire and Rescue		Yes	Agency letter	4/23/07

¹ As determined by MCDPS at the time of building permit.



AUG 21 2008

MCPB No. 08-36
Preliminary Plan No. 120070510
EZ Storage – Burtonsville Industrial Park
Date of Hearing: February 14, 2008

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION¹

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board (“Planning Board” or “Board”) is vested with the authority to review preliminary plan applications; and

WHEREAS, on December 29, 2006, Siena Corporation (“Applicant”), filed an application for approval of a preliminary plan of subdivision of property that would create one lot for a self-storage facility on 3.04 acres of land zoned I-3 located in the Burtonsville Employment Area Overlay Zone on the south side of Sandy Spring Road (MD 198), 400 feet west of the intersection of Starpointe Drive (“Property” or “Subject Property”), in the Fairland Master Plan area (“Master Plan”); and

WHEREAS, Applicant’s preliminary plan application was designated Preliminary Plan No. 120070510, EZ Storage – Burtonsville Industrial Park (“Preliminary Plan” or “Application”); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated February 1, 2008, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions (“Staff Report”); and

WHEREAS, following review and analysis of the Application by Planning Board staff (“Staff”) and the staffs of other governmental agencies, on February 14, 2008, the Planning Board held a public hearing on the Application (the “Hearing”); and

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to
Legal Sufficiency: [Signature] 7/22/2008

8787 Georgia Avenue, Suite 200, Burtonsville, MD 20814 Chairman’s Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on February 14, 2008, the Planning Board denied the Application, on motion of Commissioner Robinson; seconded by Commissioner Bryant; with a vote of 4-0, Commissioners Bryant, Cryor, Hanson, and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board denied Preliminary Plan No. 120070510 to create one lot for a self-storage facility on 3.04 acres of land located on the south side of Sandy Spring Road (MD 198), 400 feet west of the intersection of Starpointe Drive ("Property" or "Subject Property"), in the Fairland Master Plan area ("Master Plan").

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS that:

1. *The Preliminary Plan does not substantially conform to the master plan.*

The Master Plan's single goal for the area containing the Subject Property is to "develop a diversity of uses to serve and support the businesses, employees, and area residents."² And the Master Plan's single objective for that area is to "enable the Burtonsville Industrial Area to develop as a diversified, but unified employment center."³ Thus, the overarching Master Plan recommendation is to create an area that has a diversity of uses in an employment center. In fact, the Master Plan expressly states that "this Plan supports the industrial park employment concept of the 1981 Plan"⁴ The Preliminary Plan does not substantially conform to the Master Plan's goal and objective because 1) it is proposing a self-storage facility in close proximity to another self-storage facility that already exists within the Burtonsville Industrial Area and 2) it is proposing a use that will generate minimal employment. Specifically, the proposed self-storage use will generate employment for one manager who will live on-site and potentially several employees who will work in the office or sell packing supplies. Generation of so few employees on a three-acre site cannot be considered to be consistent with the employment generation goals of the Master Plan.

² Fairland Master Plan, p. 80 (emphasis added).

³ *Id.*, (emphasis added).

⁴ *Id.*, (emphasis added).

The Master Plan also recommended creating an overlay zone for the area. In response, the Burtonsville Employment Area Overlay Zone was adopted and this Overlay Zone applies to the Subject Property. There are five stated purposes of the Burtonsville Employment Area Overlay Zone. The first purpose is to “develop a compatible mix of office, commercial, light industrial, and non-residential uses within a designated employment area.”⁵ Again, the Preliminary Plan’s proposal to develop another self-storage use within close proximity to an already existing self-storage use, both within the Burtonsville Industrial Area, fails to create 1) a “mix” of uses and 2) employment.⁶

These two concerns are rendered even more critical when existing and future development in the Burtonsville Industrial Area is taken into account. The Burtonsville Industrial Area contains ten privately-owned properties comprising 37.5 acres that are available for commerce. At 37.5 acres, the area of the Burtonsville Industrial Area is not large. With implementation of this project, 18.5% of the land area and 20% of the total number of properties would be devoted to self storage use, a use that is not a strong employment generator. With only 31% of the land area left undeveloped, opportunities for future employment-generating development are limited.⁷ Significantly, this development would reduce the amount of existing land available for development within the 37.5 acres by about 26% (which is about an 8% reduction of the overall 37.5 acres). The Planning Board finds that the loss of the Subject Property’s three acres to a project that will not diversify uses and will only nominally generate employment causes the Preliminary Plan not to be in substantial conformance with the Master Plan.

The Applicant, through its counsel, argued at the Hearing that the Planning Board did not have the authority to deny a preliminary plan on the basis that the use is inappropriate. It argued that the Master Plan’s recommendations were

⁵ Section 59-C-18.141(a) (emphasis added). The other four purposes include 1) establish a uniform set of development standards for the zone; 2) allow a limited amount of retail and service uses that will primarily serve the employees of the industrial area; 3) encourage the use of traffic-limiting measures such as car pools and use of mass transit; and 4) eliminate uses not considered compatible with the intent of this overlay zone. *Id.*, (b)-(e).

⁶ The Planning Board notes that there are other uses permitted in the Overlay Zone that traditionally do not generate much employment that may also be restricted in accordance with the Master Plan’s recommendations.

⁷ At the Hearing, one of the Applicant’s consultants testified that 35% of the land would remain undeveloped.

essentially achieved by the adoption of the Overlay Zone and that since a self-storage use is permitted in the Overlay Zone, the Board lacked the authority to deny the preliminary plan based on the use. It further argued, with respect to the use of the Property, the extent of the Planning Board's authority was limited to reviewing the compatibility of the use at site plan review.

In denying the Application, the Planning Board found that, notwithstanding the fact that the proposed use is permitted by the applicable zoning designation, the Board does have the authority to deny a preliminary plan application if it does not substantially conform to the Master Plan in accordance with the provisions of Chapter 50 of the Montgomery County Code. In addition, the Planning Board finds that substantial conformance with the Master Plan recommendations is a separate and distinct finding from whether the Preliminary Plan meets the requirements of the zoning designation and that the Master Plan recommendations were not rendered a nullity when the Council adopted the Overlay Zone. The Board further finds that the purposes of the Overlay Zone support the Board's denial since the proposed development does not contribute to a "mix" of uses and does not help generate an "employment area." Moreover, the Planning Board finds that whether the Preliminary Plan is in substantial conformance with the Master Plan is a completely different and separate finding from whether the proposed use is compatible with surrounding uses.

The Applicant also argued that the Planning Board's review of substantial conformance to the Master Plan was limited to only those matters the Applicant found to be related to preliminary plan matters. Specifically, the Applicant identified certain matters as appropriate for Planning Board review at preliminary plan including, but not limited to, the following: 1) adequate public facilities; 2) transportation related matters; and 3) dedication of rights-of-way. The Planning Board notes that there is no such limiting language in the Master Plan finding set forth in Chapter 50.

The Applicant pointed to the other existing self-storage facility in support of its position that self-storage is a permitted use. The Planning Board does not dispute that the Overlay Zone allows for a self-storage use. The Planning Board cannot find, however, that this use, in this location, is in substantial conformance with the Master Plan's recommendation that there be a diversity of uses that generate employment.⁸

⁸ Significantly, the developer of the existing self-storage facility was the contract purchaser of that site at the time the Master Plan was considered and adopted and participated in the Master Plan process.

Finally, in response to questioning, the Applicant stated that the Planning Board lacked the authority to keep the Burtonsville Industrial Area from being completely developed as self-storage facilities. It maintained that, even if every property within the Overlay Zone sought approval for development of a self-storage facility, the Planning Board would be required to approve the uses subject to finding compatibility at site plan. The Planning Board finds that such an outcome would be completely in violation of the recommendations of the Master Plan and further finds that it has the authority, in this case, to deny this use given the goal and objective of the Master Plan.

§ -1 2008 BE IT FURTHER RESOLVED, that the date of this Resolution is _____ (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 Commissioner Robinson, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, and Cryor voting in favor of the motion, and Commissioners Alfandre and Presley abstaining, at its regular meeting held on Thursday, July 31, 2008, in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board