



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

**MCPB**  
**Item #8**  
**6/09/11**

**DATE:** May 27, 2011  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Area 1 *RK*  
**FROM:** Greg Russ, Zoning Coordinator, Functional Planning & Policy *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To delete certain automobile related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

**TEXT AMENDMENT:** No. 11-05  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Council President Ervin, Councilmembers Leventhal and Floreen  
**INTRODUCED DATE:** May 10, 2011

**PLANNING BOARD REVIEW:** June 9, 2011  
**PUBLIC HEARING:** June 14, 2011, 1:30pm

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**STAFF RECOMMENDATION:** APPROVAL for automobile sales, indoors and outdoors, and automobile repair and service uses to be deleted from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone and to require automobile repair, service, and sales and related offices, storage, and parking uses existing as of May 5, 2011, to satisfy the requirements of the underlying zone.

DarCars auto sales and repair (located along Cherry Hill Road and along Prosperity Road within the Cherry Hill Road Employment Overlay zone) predates the employment overlay zone and is a permitted use in the underlying I-1 zone. Because the overlay zone prohibits auto sales and auto repair, expansion opportunities are limited. The Fairland Master Plan acknowledges the existence of the dealership and does not specify it as an incompatible use in the overlay zone. No apparent inconsistency with the overall purpose of the overlay zone is created by allowing these uses.

Staff believes the existing auto sales and repair service is an appropriate use in the overlay zone. The proposed ZTA would allow expansion of the existing dealership to occur, subject to the requirements of the underlying I-1 zone. This also appears reasonable, especially since the I-1 zone requires site plan review for auto sales uses and for any use over three stories in height (Section 59-C-5.41-Attachment 2) and further requires auto sales to adhere to special regulations established for automobile-related uses (Section 59-C-4.367—Attachment 2) pertaining to setbacks, lighting and building coverage.

## **BACKGROUND/ANALYSIS**

In 1997 staff developed the US 29 Cherry Hill Employment Area Overlay Zone to implement the recommendations of the *1997 Approved and Adopted Fairland Master Plan*. The overlay zone was applied to a 500-acre area with four different industrial classifications including: light (I-1 and I-4); heavy (I-2); and research/development (I-3) zoning. During the 1980s the area developed with light industrial uses and some commercial and service uses such as a hardware store (Home Depot), DarCars auto sales and repair and a hotel (Courtyard by Marriott). One hundred acres served as the Site 2 WSSC composting facility (I-2 zone) and 180 acres contained the Percontee gravel washing facility (I-2). The area, which is strategically located at the intersection of US 29 and Cherry Hill Road and a mile or so from the Powder Mill/I-95 interchange, was adjoined to the south by the proposed Food and Drug Administration (FDA) site.

The idea of the overlay zone was to be able to provide services for the local residential communities and new development once the FDA relocated, Site II closed and Percontee ended gravel operations. The overlay zone intended to create a self-supporting employment area with on-site services. Commercial uses were to be added in two ways: by rezoning a forty-acre area to allow for large-scale regional retail (C-6 zoning located along Cherry Hill Road between Broadbirch Drive and Plum Orchard Drive) and allowing a smaller amount of commercial retail per underlying zone (50,000 square feet per zone, 15,000 square feet per lot—restaurant floor area is in addition to this maximum square footage) to provide for smaller scale goods and services throughout the 500 acre area. Restaurants, but not drive-ins, were especially desirable because that type of restaurant was lacking in the eastern part of the county, especially near the employment area.

Staff is now setting the stage for a new master plan in the eastern portion of the county (East County Science Center). The consolidation of the Food and Drug Administration (FDA) at the White Oak Federal Research Center (FRC) provides an opportunity for the county to re-examine its long-term goals and objectives for this area.

The East County Science Center planning effort will explore options for a new research and technology node that capitalizes on the growing presence of the FDA and is complemented by mixed-use development. The plan will address land uses, urban design, transportation, and environmental issues, including the future growth of sites within the Cherry Hill Road Employment area – particularly Site 2 and Percontee.

Staff believes that ZTA 11-05 provides an opportunity for an existing, long standing employment generator within the Cherry Hill Road Employment area to continue to thrive in an environment consistent with the overlay zone's purpose to create development containing a compatible mix of employment uses.

### **U.S. 29/Cherry Hill Road Employment Area Overlay Zone of the Fairland Master Plan**

The purpose of this overlay zone is to:

- (a) Develop a compatible mix of office, regional commercial, and light industrial uses within a designated employment area.
- (b) Establish a uniform set of development standards for the zone.
- (c) Allow local and regional retail and service uses.
- (d) Encourage the use of appropriate traffic-limiting measures, where such measures are not already in place, such as car pools and use of mass transit.
- (e) Eliminate uses not considered compatible with the intent of this overlay zone.

ZTA 11-05 requests that automobile sales, indoors and outdoors, and automobile repair and service uses be deleted from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone. Currently, the only auto sales establishment in the overlay zone is the DarCars establishment that predates the employment overlay zone. The existing dealership (which includes property located along Cherry Hill Road, Prosperity Terrace, Prosperity Drive and White Thorn Court—see Attachment 3) is a grandfathered use but it is limited in its ability to upgrade their facilities because both auto sales and auto repair and service land uses are prohibited in the overlay zone. The Fairland Master Plan mentions DarCars as an establishment existing prior to formulation of the master plan but provides no guidance on whether the use is appropriate in the overlay zone. Staff believes that the auto sales and auto repair and service uses are consistent with the purpose of the overlay zone as long standing employment generating uses within the area.

### **Adherence to I-1 Zone Standards vs. Overlay Requirements**

ZTA 11-05 requests that the existing automobile repair, service, and sales and related offices, storage, and parking uses be permitted to satisfy the requirements of their underlying zone. The only existing dealership (DarCars) is

located in the I-1 zone. Although the I-1 zone is considered one of the more flexible industrial zones, it also requires a number of additional development standards applicable to new buildings over three stories. These requirements include site plan approval and more stringent green area and setback standards. The I-1 zone also requires site plan approval for auto sales uses and adherence to certain setback, building coverage and lighting special regulations (Section 59-C-4.367—Attachment 2) as they pertain to automobile-related uses. The overlay zone requires site plan review for all retail commercial development and for all other development where site plan review is required in the underlying zone.

The overlay zone requires a minimum building setback 100 feet from residentially zoned land that is recommended for residential use and development in the Fairland Master Plan. In the case of DarCars, this setback requirement is applicable along Cherry Hill Road where there is residential use on the other side of the road. However, since the auto sales use existed prior to establishment of the overlay zone, the existing setbacks along Cherry Hill Road are established based on the I-1 zone standards.

The overlay zone also requires certain trip reduction measures in accordance with Section 59-C-5.436. Under the I-1 zone, any expansion, redevelopment, etc. of the existing auto related uses that triggers site plan approval and/or preliminary plan approval/amendment will be required to address adequate public facilities requirements at that time.

### **Area 2 Comments**

Area 2 staff believes that the proposed changes to the overlay zone are consistent with the Fairland Master Plan and with the purpose of the overlay zone to provide development that supports current and future employment in the vicinity.

### **RECOMMENDATION**

Based on the analysis above, staff supports the proposed text amendment to delete automobile sales and automobile repair and service uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and require the existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

GR

### **Attachments**

1. Proposed Text Amendment 11-05

2. Section 59-C-4.367. Special regulations applicable to designated automobile-related uses. & Section 59-C-5.41. Special regulations-I-1 zone
3. Locational Maps Depicting DarCars properties

# ATTACHMENT 1

Zoning Text Amendment No.: 11-05  
Concerning: U.S. 29/Cherry Hill Road  
Employment Area Overlay Zone –  
Automobile Sales and Service  
Draft No. & Date: 1 - May 5, 2011  
Introduced: May 10, 2011  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Council President Ervin, Councilmembers Leventhal and Floreen

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- delete certain automobile related uses from the list of prohibited land uses in the U.S. 29/Cherry Hill Road Employment Area Overlay zone; and
- require existing automobile repair, service, and sales and related offices, storage, and parking uses to satisfy the requirements of the underlying zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 59-C-18	“OVERLAY ZONES”
Section 59-C-18.132	“Regulations”

And by adding the following subsection to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Subsection 59-C-18.132(i)	“Special provisions for automobile repair, service, and sales”
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**EXPLANATION:** *Boldface indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. Division 59-C-18 is amended as follows:**  
**DIVISION 59-C-18. OVERLAY ZONES**

\* \* \*

**59-C-18.132. Regulations.**

**(a) Land uses.**

\* \* \*

- (2) The following uses are prohibited in the U.S. 29/Cherry Hill Road Employment Area overlay zone:
  - Adult entertainment business.
  - Automobile parts, sales and services, including but not limited to tire sales and transmission service.
  - [Automobile repair and service.<sup>1</sup>]
  - [Automobile sales, indoors and outdoors.]
  - Bakery.

\* \* \*

[<sup>1</sup> Except that an automobile repair and service use may be established in a warehouse and storage building constructed before July 16, 2001 if the automobile repair and service use is a permitted use in the underlying zone. The exterior dimensions of a warehouse and storage building may not be extended, or enlarged beyond the dimensions of the building that existed on July 16, 2001 for the purpose of accommodating an automobile repair and service use. The automobile repair and service use and building are conforming and may be structurally altered, repaired, or reconstructed, so long as the building is not increased, extended, or enlarged beyond the exterior dimensions of the building that existed on July 16, 2001.]

\* \* \*

(i) **Special provisions for automobile repair, service, and sales.**

Any structure or improvement existing before May 5, 2011 and used for automobile repair, service, sales, or related office, automobile parking, or automobile storage use may be built, rebuilt, repaired, or expanded under the standards and procedures of the property's underlying zone.

**Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council



**59-C-4.367. Special regulations applicable to designated automobile-related uses.**

(a) **Setbacks.** All buildings, off-street parking and maneuvering areas (not to include access driveways), and all outdoor storage and display of motor vehicles must be set back from all property lines, in accordance with the requirements of the zone, except as follows:

- (1) 10 feet from any adjoining land classified in a commercial or industrial zone.
- (2) 50 feet from any adjoining or abutting land classified in a residential zone.
- (3) 50 feet from a controlled major highway or a limited access freeway.
- (4) From any other street with a planned right-of-way of 120 feet or greater, buildings must be set back at least 50 feet from the street right-of-way. The Planning Board, however, may reduce this building setback at the time of site plan approval upon a finding that such reduction will not adversely affect the character of the roadway and surrounding uses taking into consideration setbacks on nearby properties.

The storage of waste material, auto parts, refuse and motor vehicles is prohibited in any required setback.

(b) **Building Coverage.** No more than 35 percent of the area of a lot may be covered by buildings, except that parking structures are excluded from the building coverage calculation.

(c) **Lighting.** In order to prevent any objectionable glare on surrounding properties or streets, the exterior lighting plan that is submitted as part of the required site plan must indicate the height, number and types of lighting fixtures, and a diagram showing their light distribution characteristics.

(d) **Signs.** The display of a sign must comply with the requirements established in Article 59-F of this chapter.

(e) **Exemption for Buildings Constructed Prior to August 22, 1988.** Any building constructed prior to August 22, 1988, that does not satisfy the provisions of subsections (a) and (b) above is a conforming use, provided that the building satisfies all other lawful requirements. Any future alterations or expansions of the building may be done only if the work does not increase the lack of conformity with either subsection (a) or (b); however, in considering site plans for alterations or expansions subject to subsection (a) (2), the Planning Board may waive the setbacks required to not less than that required in the adjoining residential zone in cases where the adjoining residentially zoned land is developed with a structure used entirely or in part for a non-residential purpose and upon a finding that the proposed development is compatible with, and will not be detrimental to, the use and enjoyment of the adjoining residential property.

**Sec. 59-C-5.4. Special regulations.**

In addition to the above requirements, the following special regulations shall apply to certain zones.

**59-C-5.41. Special regulations-I-1 zone.**

(a) **Off-street parking.** The off-street parking required by article 59-E shall be provided on land which is in the I-1 zone unless provided through a joint use agreement.

(b) **Development above three stories.** In order to encourage planned development of employment centers, to preserve open space within such developments, and generally to enhance the environment of large employment centers, the height limit in this zone may be increased to 10 stories or 120 feet; provided, that the applicable approved and adopted master plan does not indicate that large employment centers are unsuitable for the applicable site; and provided further that the following site development standards and site plan review procedure shall be in effect. Development in accordance with this subsection shall be subject to all of the requirements of the I-1 zone except as specifically modified herein.

(1) **Height limit.** No building shall exceed 10 stories or 120 feet in height.

(2) **Green area.** In addition to the minimum green area required in section 59-C-5.32, green area shall be provided in an amount not less than 5 percent of the net lot area for each story over 3 stories. Where more than one building is constructed on a lot or tract, the amount of additional green area shall be not less than 5 percent of the net lot area multiplied by the ratio of the gross floor area (excluding the first 3 floors) to the area of the lot covered by buildings (excluding structures of 3 stories or less).

(3) **Setbacks.** Any building shall be set back from any lot line that adjoins a lot in a residential zone, which has not been recommended for a commercial or industrial zone on a local zoning plan duly adopted by the commission, a distance equal to one-half the height of the building.

(4) **Development procedure.** The procedure for site plan approval shall be as set forth in division 59-D-3.

US 29/CHERRY HILL AREA

FIGURE 32



