



**Limited Site Plan Amendment No. 81994026B, Darcars at Montgomery Industrial Park, Lot 33**

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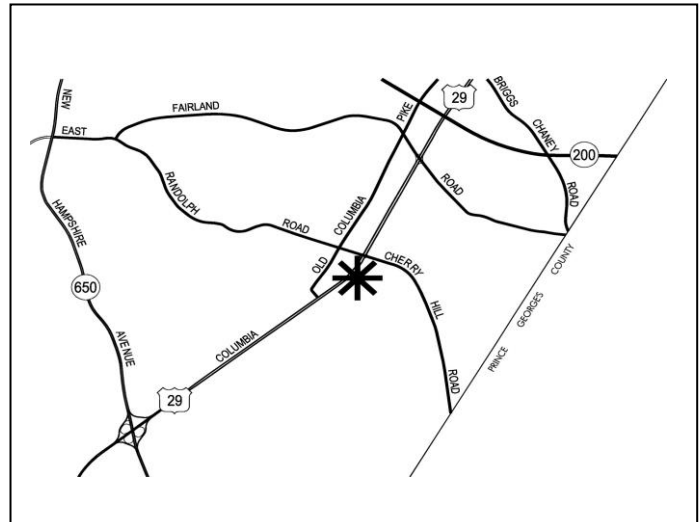
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**Completed: 08/23/13**

**Description**

- A Request to add 2,505 square feet of office use to an existing auto showroom and service use, update Landscape Plan, and update employee surplus parking requirements;
- I-1 Zone;
- Located at the southeast corner of Prosperity Drive and Whitehorn Court;
- 1994 Fairland Master Plan;
- Lot 33, 4.10 acres;
- Eastern Diversified Properties Inc.;
- Submitted Date: June 10, 2013.



- Staff recommends approval of the Site Plan Amendment with conditions;
- The required employee surplus parking on Lot 33 for Lots 26 and 32 is no longer needed. The Applicant has acquired an additional parcel to store storage vehicles for all of these lots, which allows for some of their on-site storage spaces to be converted into additional employee spaces when needed;
- The Applicant and Staff disagree on whether this Site Plan amendment meets forest conservation requirements.

## RECOMMENDATIONS AND CONDITIONS

Staff recommends approval of Site Plan Amendment 81994026B, Darcars at Montgomery Industrial Park, Lot 33, for 2,505 square feet of additional office use and the removal of the surplus employee surface parking requirements in Site Plan 819940260. All site development elements shown on the Site Plan and Landscape Plan, stamped by M-NCPPC on August 19, 2013, are required except as modified by the following conditions:

1. Conformance to Conditions of Approval

- a) The proposed development must comply with the conditions of approval for Site Plan 819940260 as enumerated in the Planning Board Opinions dated September 11, 1995 and March 25, 1996, except as modified in this report.

2. Final Forest Conservation Plan

The Applicant must revise the Forest Conservation Plan to meet the 0.62 acres of afforestation, as required by Chapter 22A.

3. Landscape Surety

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

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

4. Development Program

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

- a) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- b) Landscaping improvements and shade tree plantings must be completed by the next growing season.

5. Certified Site Plan

The Certified Site Plan must include the following:

- a) The Final Forest Conservation Plan approval, stormwater management concept approval, development program, inspection schedule, and the approved Site Plan Resolution on the cover sheet.

- b) A note stating that “M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading”.
- c) A data table reflecting the development standards enumerated in the Staff Report.
- d) Consistency of all details and layout between Site Plan and Landscape Plan.

## PROJECT DESCRIPTION

### Site Vicinity and Description

The 4.10-acre Subject Property is zoned I-1 and is in the US 29/Cherry Hill Employment Area Overlay Zone. It is located at the southeast corner of the Prosperity Drive and Whitehorn Court intersection. It is identified as Lot 33 in Montgomery Industrial Park and is occupied by an automobile dealership and an auto repair shop. I-1 light industrial and office uses surround the property.

Vicinity Map



## Site Map



### Previous Approvals

#### *Preliminary Plan*

The Subject Site was platted according to Preliminary Plan 11981107R, approved on July 24, 1984. However, the Adequate Public Facilities testing on the Site was done as part of the previous Preliminary Plan, 119820080, approved on August 17, 1982. This earlier plan approved 300,000 square feet of office development on a larger 17-acre area consisting of the Subject Property and lots 21, 22, 23, and 24.

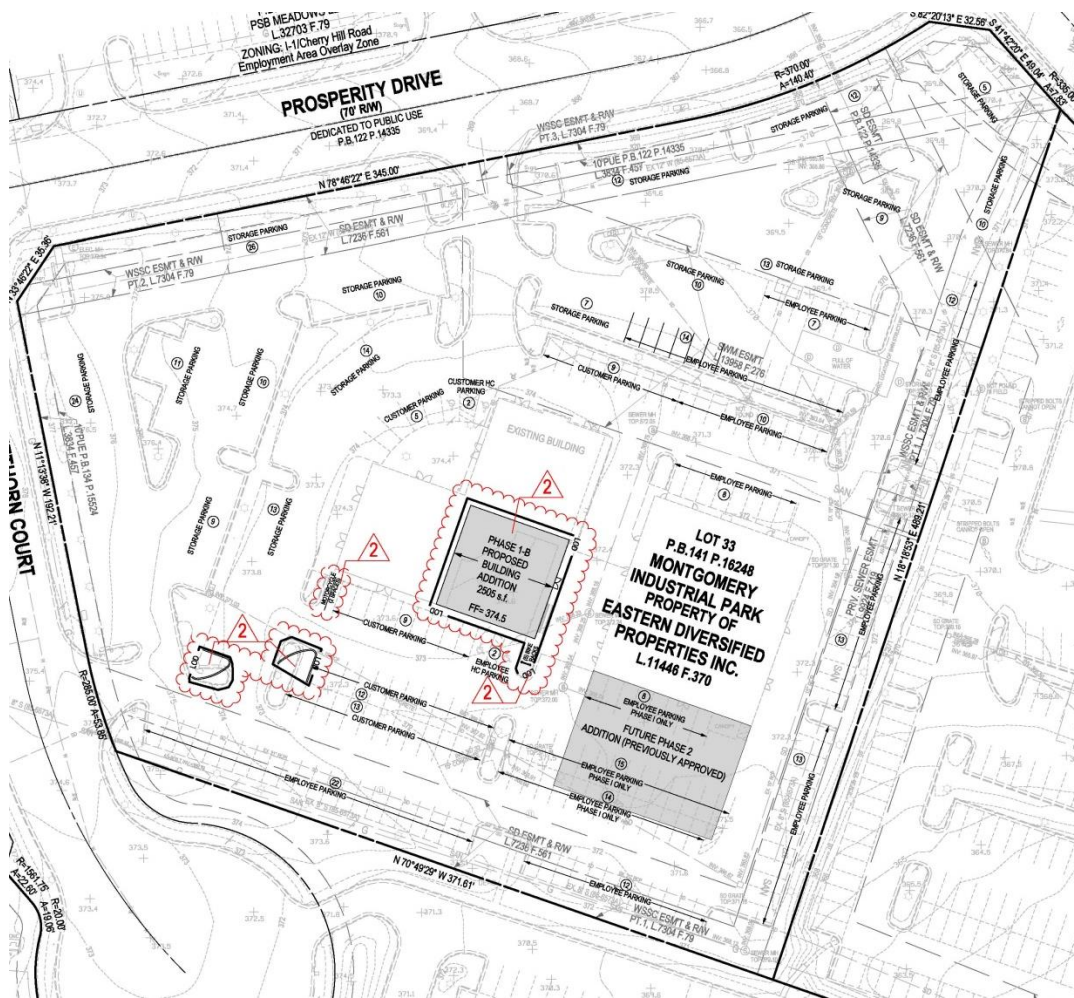
#### *Site Plan*

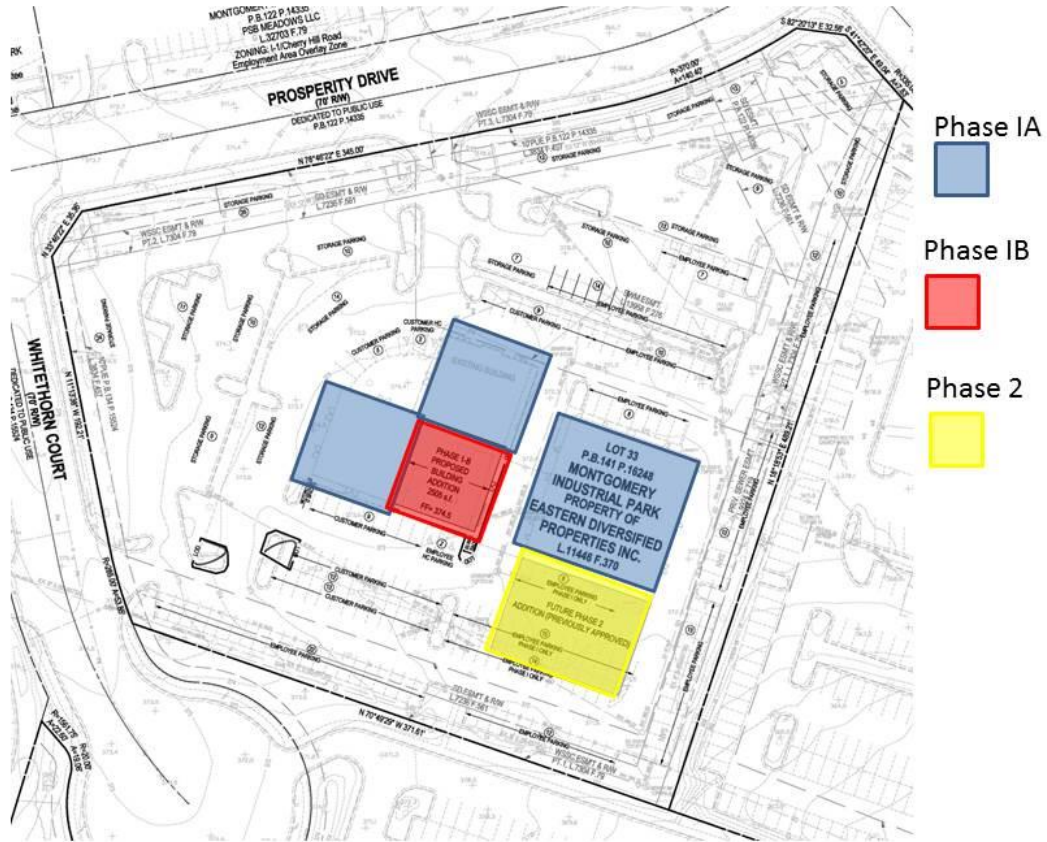
Site Plan 819940260 for Lot 33 was approved with conditions on September 11, 1995 but two of the conditions were by an amended Planning Board Opinion dated March 25, 1996. The Site Plan approved 21,900 square feet of automobile sales and service uses to be constructed in two phases: 16,150 square feet in Phase 1; and 5,750 square feet in Phase 2. Site Plan 81994026A was submitted on May 16, 2012 for 86,000 square feet of automobile sales and office development on Lot 33 but it was later withdrawn.

# Proposal

The Applicant is proposing to construct an auto sales and office building of 2,505 square feet, reduce surplus employee parking, and update the Landscape Plan. The one-story addition will enclose space currently being used as an outdoor automobile display area. The addition will provide additional office spaces for employees in the main building.

In this report, Phase 1 of the original application is called Phase 1A, the proposed addition is called Phase 1B, and the previously approved development in Phase 2 will remain unchanged. As a result of the proposed addition of 2,505 square feet, the total buildout of Phase 1A, Phase 1B, and Phase 2 will be 24,405 square feet.





*Landscape Plan*

The Applicant is proposing to make minor updates to the Landscape Plan. The Amended Landscape Plan is consistent with the proposed Site Plan.

**ANALYSIS**

**Reconsideration of Employee Surplus Parking Conditions**

The Applicant is requesting that the Site Plan requirement for surplus employee parking spaces be removed from the Subject Property. Site Plan 819940260, approved on September 11, 1995, required that surplus employee parking for Lots 26, 32 and 33 be provided on the Subject Property (Lot 33). All three lots were owned by the Applicant. Condition 3 in the Planning Board Opinion required that 101 spaces be reserved for employee surplus parking and Condition 4 required the Applicant to demonstrate to Staff that the surplus parking is adequately meeting the employee parking needs. It also stipulated that Phase 2 would reduce the 101-space requirement down to 70 spaces to accommodate the additional 5,750-square-foot development in Phase 2. Conditions 3 and 4 state:

**Condition 3:**

*Applicant to reserve at least 101 parking spaces over those associated with uses on this site, for overflow parking from lots 26 and 32.*

**Condition 4:**

*Prior to seeking building permit for Phase II, applicant to demonstrate to the satisfaction of staff that designated employee parking including overflow parking on lot 33 or any other off-street location for lots 26, 32, and 33 is being used and is suitable to accommodate applicant's needs and that overflow employee parking is not consistently occurring off-site on public streets where "No-Parking" signs are posted, or on the Marriott Courtyard property, or Home Depot property.*

These conditions were placed on the Subject Property because in 1995 there was concern about employees from lots 26, 32, and 33 parking on the adjacent streets and creating unsafe traffic conditions. Since the approval of Site Plan 819940260, "No-Parking" signs have been placed along Prosperity Drive and Whitehorn Court, and the Applicant has acquired Parcel FFFF. Parcel FFFF is immediately south of the Subject Property, and is being used to store vehicles for the Subject Property and lots 26 and 32, freeing up spaces on the three lots for required employee parking. According to the Applicant's Justification Statement, Parcel FFFF can accommodate up to 550 vehicles, which greatly exceeds the 101 surplus spaces required on the Subject Property. Staff concurs with the Applicant and believes that the employee surplus parking requirement can be removed from the amended Site Plan without any negative parking impacts on the surrounding streets. Any improper on-street parking should be corrected by enforcement of the "No-Parking" signs in the area, which were installed per condition 6 of Site Plan 81994026B. Therefore, Staff recommends removing condition 3 and revising condition 4 as follows.

**Modify Condition 4:**

*Prior to seeking building permit for Phase II, applicant to demonstrate to the satisfaction of staff that ~~designated~~ required or any additional employee parking ~~including overflow parking on lot 33 or any other off-street location for lots 26, 32, and 33 is being used and is suitable to accommodate applicant's needs and that overflow employee parking~~ is not occurring off-site on public streets where "No-Parking" signs are posted, or on the Marriott Courtyard Home Depot properties.*

**Master Plan**

The Subject Property is within with the 1997 Approved and Adopted *Fairland Master Plan*, and is part of the Montgomery Industrial Park site in the US 29/Cherry Hill Employment Area Overlay Zone (page 72). The Plan envisions the area becoming a more diverse employment center. "The employment area has the potential to be a modern day employment center with a diversity of uses in a park-like setting, but the existing zoning pattern and allowable uses hinder coordinated development..., (p. 76)" In response to this concern, the Plan recommended creating the Cherry Hill Employment Area Overlay Zone. The Overlay Zone originally banned automobile sales and repair services, but this restriction was later amended on July 19, 2011 through ZTA 11-05.

The Subject Property is also included in the pending White Oak Science Gateway Master Plan. The proposed use is consistent with the goals and objectives of the proposed Public Hearing Draft of the Master Plan Amendment.

**Parking Space Distribution**

This proposed Amendment will change the distribution of parking spaces as approved in Site Plan 819940260. The Zoning Ordinance requires a total of 24 new parking spaces for the combined existing development and proposed addition: 8 for the office use, and 16 for the auto repair/service uses. And, if approved, the surplus employee parking space requirement will be removed from the Site Plan. The

Parking breakdown chart below shows the proposed cumulative parking requirement for existing (Phase 1A), Phase 1B and future Phase 2.

**Table 1: Required Parking**

	<b>Phase 1A (Approved)</b>	<b>Proposed Phase 1B (including Phase 1)</b>	<b>Future Phase 2 (Total Build Out)</b>
<b>Zoning Requirement</b>			
Auto Repair/Service Employees	10	26	29
Service	19 (5,705 x 3.3/1000 sf)	19 (5,705 x 3.3/1000 sf)	38 (11,500 x 3.3/1000sf)
Office	19 (6,504 x 2.9/1000 sf)	27 (9,009 x 2.9/1000 sf)	27 (9,009 x 2.9/1000 sf)
Retail	20 (3,896 x 5/1000 sf)	20 (3,896 x 5/1000 sf)	20 (3,896 x 5/1000 sf)
<b>Total Zoning Requirement</b>	<b>68</b>	<b>92</b>	<b>114</b>
<b>Site Plan Requirement</b>			
<b>Employee Surplus</b> (for lots 26, and 32)	101	0	0
<b>Vehicle Storage spaces</b>	382	323	259
<b>Total parking spaces on site</b>	551	415	373

**Adequate Public Facilities**

The Adequate Public Facilities (APF) test originally applied to the Subject Property in Preliminary Plan 119820080 has expired. The proposed 2,505 square feet (this amendment) and the future 5,750 square feet in Phase 2 is exempt from undergoing a new APF test pursuant to the July 19, 2011 Montgomery County Council Resolution No. 17-222, which was adopted, “to encourage the retention and modernization of automobile-related uses in the Cherry Hill Employment area.” The Resolution removed the requirement of Policy Area Mobility Review (and subsequently the Transportation Policy Area Review) and Local Area Transportation Review for: “... any property located in the Cherry Hill Employment Area with automotive repair, service, sales, parking, storage., or related office use.” The Resolution states that “this provision applies to any preliminary plan of subdivision, site plan, or building permit approved before July 26, 2016.” Therefore, properties containing automotive related uses in the Cherry Hill Employment Area do not require Transportation Policy Area Review or a traffic study to satisfy Local Area Transportation Review.

**Outside Agency Reviews**

*Fire and Rescue Service:*

The County’s Fire and Rescue Service approved the Fire Access Plan for the Proposed Amendment on July 31, 2013.

*Department of Permitting Services- Water Resources:*

The proposed Amendment is for a building addition that is less than 5,000 square feet so it is exempt from the stormwater management review process.



## SITE PLAN FINDINGS

Section 59-D-3.4. (c) of the Zoning Ordinance states that the Planning Board, in reaching its decision, must require that:

1. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

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

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

The Subject Property is zoned I-1 and is within the US 29/Cherry Hill Employment Area Overlay Zone. ZTA 11-05, approved on July 19, 2011, exempted automotive repair, service, sales, parking, storage, or related office uses from the standards and requirements of the Cherry Hill Employment Overlay Zone. The proposed automobile related office use is allowed in the I-1 Zone. The proposed Amendment meets all the requirements of the zone as shown in the table below.

**Table 2: Project Data for the I-1 Zone**

<b>Development Standard</b>	<b>Permitted/Required</b>	<b>Provided (Proposed amendment-Phase 1B)</b>	<b>Provided (future Phase 2)</b>
<b>Maximum Building Height (59-C-5.31)</b>	42'	28'	28'
<b>Minimum Green Area (59-C-5.32)</b>	10%	19.8%	19.8%
<b>Building Setbacks (59-C-5.33)</b>			
Minimum Front Yard	10'	125' <sup>1</sup>	125' <sup>1</sup>
Minimum Rear Yard	10'	124' <sup>1</sup>	60' <sup>1</sup>
Minimum Side Yard	10'	52' <sup>1</sup>	52' <sup>1</sup>
Minimum Side Yard	10'	135' <sup>1</sup>	135' <sup>1</sup>
<b>Parking Setbacks (59-C-4.367)</b>			
Minimum Front Yard	10'	10'	10'
Minimum Rear Yard	10'	10'	10'
Minimum Side Yard	10'	10'	10'
Minimum Side Yard	10'	10'	10'
<b>Maximum Building Coverage (59-C-4.367)</b>	35%	10.4%	13.6%

Development Standard	Permitted/Required	Provided (Proposed amendment-Phase 1B)	Provided (future Phase 2)
<b>Parking (59-E-3.7):</b>			
Total parking		92 required 92 provided	114 required 114 provided
Employees	1 space per employee	26 required 26 provided	29 required 29 provided
Service	3.3 spaces /1000 sf	19 (5,705 x 3.3/1000 sf)	38 (11,500 x 3.3/1000 sf)
Office	2.9 spaces /1000 sf	27 (9,009 x 2.9/1000 sf)	27 (9,009 x 2.9/1000 sf)
Showroom/Retail	5 spaces. /1000 sf	20 (3,896 x 5/1000 sf)	20 (3,896 x 5/1000 sf)
<b>Handicap Accessible (59-E-2.3)</b>			
		4	4
<b>Bicycle and Motorcycle Parking (59-E-2.3)</b>			
Minimum Bicycle Spaces	1 space/20 auto spaces	4 Required 5 Provided	5 Required 5 Provided
Minimum Motorcycle Spaces	2% of parking	2	2
<b>Internal landscaping in surface parking (59-E-2.73)</b>			
	5%	11.7%	11.7%

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

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

#### **Building and Structures**

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

#### **Open Area/Green Area**

The I-1 Zone has a 10% green area requirement. The proposed Amendment provides 19.8% green area on the Subject Property, as shown in Table 2 above. Staff finds the proposed green area to be adequate.

#### **Landscaping and Lighting**

The Landscape Plan shows mostly shade trees throughout the parking lot and along the property borders. The proposed Amendment is reducing the Green Liriope plantings currently located near the customer parking spaces near the proposed building addition to accommodate the new bicycle racks required on the Site. However, the Landscape Plan is meeting the zoning requirement by providing landscaping on more than 5% of the Site’s surface parking lot as shown in Table 1. The Applicant is proposing to improve the Subject Property’s landscaping by replanting missing plants and relocating a few plants to different parts of the site.

The Applicant is not proposing any changes to the approved Lighting Plan. Staff finds that the proposed landscaping and lighting is adequate, safe, and efficient.

### **Pedestrian and Vehicular Circulation**

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

#### *Master-Planned Roadway and Bikeway*

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

#### *Pedestrian Facilities*

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

#### *Vehicular Circulation*

The proposed Site Plan 81994026B is for a new Phase 1B of automotive office use of 2,505 square feet, which will increase the total approved square footage on the Subject Property to 24,405 square feet. Although an Adequate Public Facilities test is not required, Staff calculated that the increase of 2,505 square feet will generate three additional peak-hour trips within the morning peak hour and six additional peak-hour trips within the evening peak hour. The current road network is adequate to handle the additional trips.

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

### **Recreation Facilities**

Not Applicable. The Subject Property does not contain any residential uses.

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

The proposed addition is compatible with the surrounding area. The Subject Property has already been approved for, and developed with, automobile sales, office and service use, and the surrounding area is composed of similar office and industrial uses. The proposed addition will not change the character of the Subject Property.

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

### **Environmental Guidelines**

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #419941280) on February 24, 1994. The 4.10-acre Subject Property is located in the Paint Branch watershed, a Use III watershed; and contains no forest, streams, wetlands, or environmental buffers. The proposed project is in compliance with the *Environmental Guidelines*.

## **Forest Conservation**

This property is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code). However, the Applicant and Staff disagree on whether the proposed Forest Conservation Plan (FCP) meets forest conservation requirements.

The site has a 0.62-acre afforestation requirement. On the previously approved FCP, this planting requirement was met through the use of native canopy cover. As part of this proposed amendment, the Applicant was required to either demonstrate compliance with the approved FCP or amend the approved FCP. Staff believes that the Applicant cannot demonstrate compliance with the approved FCP because the existing landscape does not match the approved FCP.

The existing landscaping is deficient for forest conservation credit for the following reasons.

1. The tree species planted do not match the ones shown on the approved FCP. Japanese Zelkova trees were substituted for native Red Maples.
2. Not all of the trees shown were planted as per the approved FCP nor can these trees be replaced in the same locations.

The Applicant has submitted an amendment to the approved FCP, showing the existing plantings and proposed replacements for the missing trees. However, most of the existing trees do not qualify for forest conservation credit because they are not native canopy trees. Staff has consistently used a table in Appendix C of the Trees Technical Manual to calculate credit for individual landscape trees. The table only contains native canopy trees and two native understory trees as suitable to earn forest conservation credit. Staff agrees with the Applicant that Japanese Zelkovas are appropriate landscape trees. However, as they are non-natives, they receive no credit for forest conservation purposes. The Applicant has not demonstrated that the afforestation requirement of 0.62 acres is met on this FCP. Therefore, Staff recommends that the FCP be amended to show how 0.62 acres afforestation requirement is being met. This requirement can be met on-site, off-site, by fee-in-lieu or any combination of means.

## **COMMUNITY OUTREACH**

The Applicant has complied with all submittal and noticing requirements. When 81996026A for 86,000 square feet of additional automobile sales and office development was being considered last year, Staff received a phone call on July 30, 2012 from Ed Wetzler, President of the Greater Colesville Civic Association. Mr. Wetzler said that in his personal experience the intersection of Whitehorn Court and Prosperity Drive was dangerous when making left turns. Mr. Wetzler was concerned that the increased traffic generated (by the additional development of 86,000 square feet) would make the intersection more dangerous. Transportation Staff has reviewed this intersection and has determined that the proposed addition of 2,505 square feet would not create any safety issues. Staff has not received any community comments about the proposed Site Plan Amendment 81996026B.

## **ATTACHMENTS**

- A. September 11, 1995 Site Plan Opinion
- B. March 25, 1996 Site Plan Opinion
- C. Zoning Text Amendment 11-05
- D. Council Resolution No. 17-222
- E. Amended Forest Conservation Plan



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

O P I N I O N

DATE MAILED: September 11, 1995

SITE PLAN REVIEW #8-94026

PROJECT: MONTGOMERY INDUSTRIAL PARK - LOT 33

*Action: Approval subject to conditions. Motion was made by Commissioner Baptiste, seconded by Commissioner Aron, with a vote of 4-0, Commissioners Baptiste, Aron, Holmes and Hussmann voting for. Commissioner Richardson was absent.*

The date of this written opinion is September 11, 1995 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before October 11, 1995 (which is thirty days from the date of this written opinion). If no administrative appeal is filed, then this site plan unless otherwise provided for in the adopted Guidelines and Policies for Site Plan Extensions, shall remain valid.

On May 17, 1994, Eastern Diversified Services submitted an application for the approval of a site plan for property in the I-1 zone. The application was designated Site Plan Review #8-94026.

On June 30, 1994, Site Plan Review #8-94026 was brought before the Montgomery County Planning Board for a public hearing. After taking testimony, the Board voted to deny the application for reasons related to concerns over landscaping, parking, and other site design and compatibility matters. Thereafter, upon request of the applicant, the Board, on August 4, 1994, voted to reconsider the application and scheduled a resumption of the public hearing for March 16, 1995. At the March 16th public hearing, the Montgomery County Planning Board heard additional testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented by the staff and on the staff report with modifications to the conditions hereby adopted by the Montgomery County Planning Board, and which is made a part hereof, the Montgomery County Planning Board finds:

EXHIBIT B

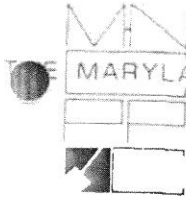
1. The Site Plan meets all of the requirements of the zone in which it is located.
2. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.
3. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The Montgomery County Planning Board approves Site Plan Review #8-94026 as follows:

Staff recommends APPROVAL of 10,400 square feet of automobile sales and 11,500 square feet of automobile service, subject to the following conditions:

1. Submit a Site Plan Enforcement Agreement and Development Program for review and approval prior to approval of the signature set. Enforcement agreement to include agreement to maintain hedges at approximately three-foot height. Development Program to include a clearing and grading schedule, and a phasing program.
2. Phasing program to include agreement to refrain from seeking or receiving building permits for Phase II until two years from date of building permit for Phase I.
3. Applicant to reserve at least 101 parking spaces over those associated with uses on this site, for overflow parking from lots 26 and 32.
4. Prior to seeking building permit for Phase II, applicant to demonstrate to the satisfaction of staff that designated employee parking including overflow parking on lot 33 for lots 26, 32, and 33 is being used and is suitable to accommodate applicant's needs and that overflow employee parking is not consistently occurring off-site on public streets, Marriott Courtyard property, or Home Depot property.
5. Parking spaces are to be designated for employees and customers with signs and pavement markings. Areas for inventory cars must also be designated with pavement markings, distinguishing between storage and drive aisles.
6. Prior to submission of signature set for staff review and approval, applicant to provide written confirmation from MCDOT indicating that no parking signage will be installed on the site's frontage on Prosperity Drive and on the entirety of Whitethorn Court and Prosperity Court, and when it will be installed. Applicant to urge MCDOT to complete installation prior to occupancy.

7. Incorporate the following items into the signature set landscaping, signage, and lighting plan:
  - a. Lighting to be of same design and height as on adjacent Lexus auto sales lot. Lighting to be designed to avoid spillover beyond site.
  - b. Signs to be posted at all exit points directing Route 29-bound traffic to use Tech Road rather than Cherry Hill Road.
  - c. Size and location of signs to comply with standards of the Zoning Ordinance.
  - d. Landscape maintenance program.
8. The following information must be clearly shown on the signature set of site and landscape plans and must be incorporated into the sediment and erosion control plan for staff review prior to approval by MCDEP:
  - a. Limit of disturbance line;
  - b. Conditions of MCDEP Concept waiver letter dated 4/4/94;
  - c. The development program inspection schedule.
9. No clearing or grading prior to Planning Department approval of signature set of plans.
10. No outdoor loudspeakers will be allowed.
11. No internal connections between subject property and adjacent Lexus site will be allowed.



MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

O P I N I O N

DATE MAILED: March 25, 1996 *KE*

SITE PLAN REVIEW #8-94026

PROJECT: MONTGOMERY INDUSTRIAL PARK - LOT 33

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*Action: Approval subject to amended conditions as stated below. Motion was made by Commissioner Richardson, seconded by Commissioner Holmes, with a vote of 4-0, Commissioners Baptiste, Aron, Richardson and Holmes voting for. Commissioner Hussmann was temporarily absent.*

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The date of this written opinion is March 25, 1996 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before April 24, 1996 (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, then this site plan shall remain valid.

On March 14, 1996, Site Plan Review #8-94026 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented by the staff and on the staff report including modifications to the conditions previously adopted by the Montgomery County Planning Board, and which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with an approved development plan



- or a project plan for the optional method of development, if required;
2. the Site Plan meets all of the requirements of the zone in which it is located;
  3. the locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;
  4. each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development;
  5. the site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

#### Introduction

The Montgomery County Planning Board ("Board") on September 11, 1995, approved Site Plan Number 8-94026, subject to certain conditions of approval. Subsequent to the approval, Eastern Diversified Properties ("Applicant") filed an appeal with the Montgomery County Circuit Court, seeking relief from Conditions four and six of the Board's approval. In an effort to resolve the litigation and provide mutually acceptable conditions of approval, the parties jointly requested the Circuit Court to remand the Site Plan to the Board for the limited purpose of reopening the record to review the conditions as approved.

At a public hearing held on March 14, 1996, Board staff recommended approval of conditions four and six, as revised below:

4. Prior to seeking building permit for Phase II, applicant to demonstrate to the satisfaction of staff that designated employee parking including overflow parking on lot 33 or any other off-street location for lots 26, 32, and 33 is being used and is suitable to accommodate applicant's needs and that overflow employee parking is not consistently occurring off-site on public streets where "No-Parking" signs are posted, or on the Marriott Courtyard property, or Home Depot property.

6. Within 30 days after final inspection by M-NCPPC staff, applicant and Planning Board to submit a joint request to MCDOT seeking installation of "No-Parking" signs on portions of Prosperity Drive, Whitethorn Court, and Prosperity Terrace, shown on Exhibit A (attached hereto). Site Plan Enforcement Agreement to include this condition.

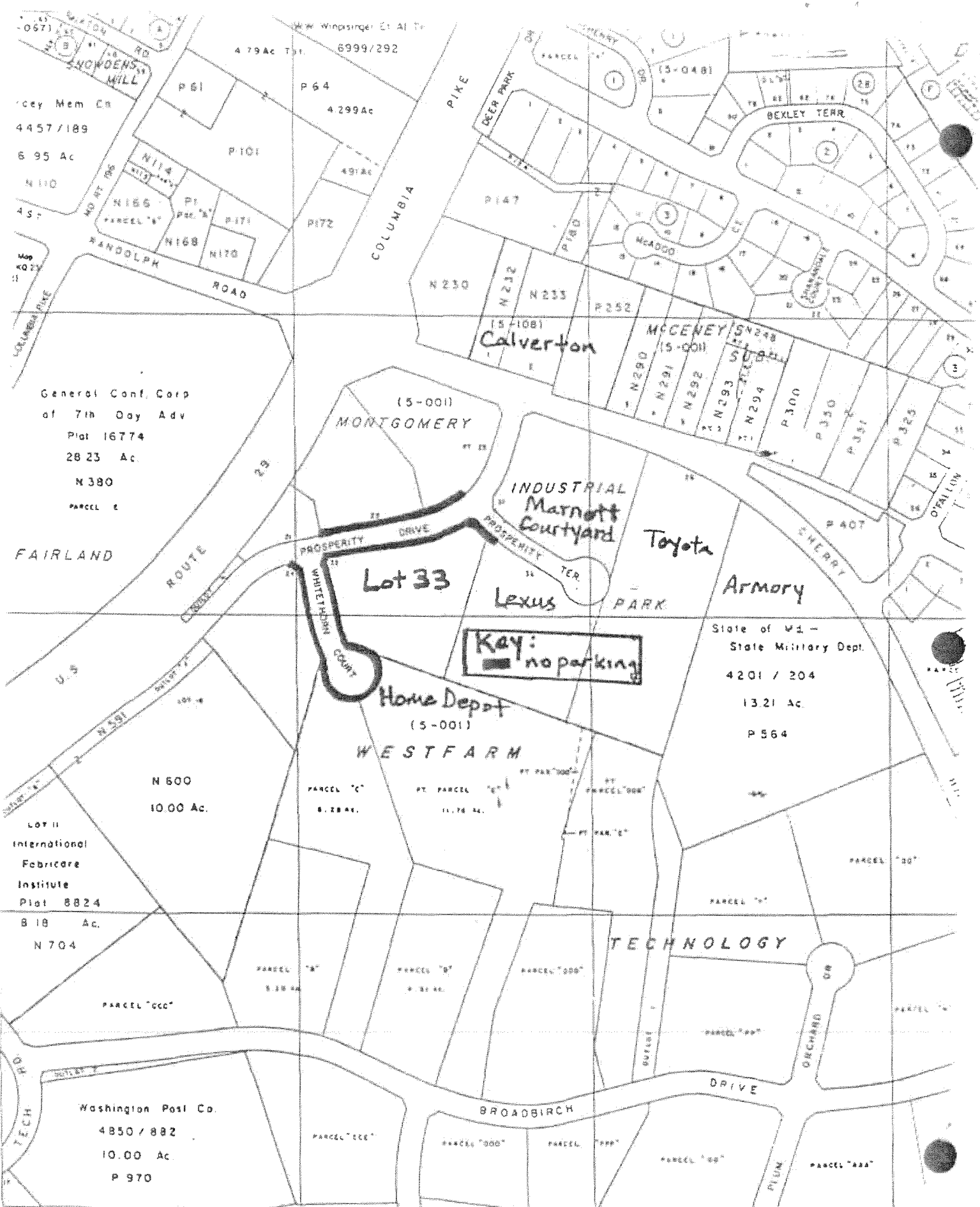
The original conditions required, among other things, that the Applicant obtain from MCDOT written confirmation that no parking signage would be installed on the entire frontage of Prosperity Drive and on the entirety of Whitethorn and Prosperity Courts. MCDOT had declined to make such a confirmation pending the Court case. In an effort to expedite the matter, the Board and Applicant believe that a joint submission to MCDOT seeking "No-Parking" signage on the roadways will be approved in a more timely manner.

This opinion expressly removes the original condition numbers four and six, in full, and replaces these two conditions with the revised conditions stated above. This opinion incorporates by reference, in full, the remainder of the Opinion dated September 11, 1995.

Attachments:

- Exhibit A: Map
- Exhibit B: September 11, 1995 opinion

MMR:mmr/ke



**EXHIBIT "A"**

**K3**

**KQ 342**

ROADS AND STREAMS ARE CONTROLLED FROM PLANIMETRIC MAPS COMPILED BY MCGP&C AND US&S; COORDINATES SHOWN ARE BASED ON W 33 C COORDINATE SYSTEM. PROPERTY LINES ARE COMPILED BY THIS OFFICE FROM DEED.

**LEGEND**  
 - - - - - ELECTION DISTRICT BOUNDARY  
 - - - - - CORPORATE BOUNDARY

THESE MAPS ARE PROTECTED BY COPYRIGHT AND MAY BE COPIED OR REPRODUCED IN ANY ELECTRONIC MEANS SUCH AS DIGITIZATION.

Ordinance No.: 17-08  
Zoning Text Amendment No.: 11-05  
Concerning: U.S. 29/Cherry Hill Road  
Employment Area Overlay Zone –  
Automobile Sales and Service  
Draft No. & Date: 2 – July 12, 2011  
Introduced: May 10, 2011  
Public Hearing: June 14, 2011  
Adopted: July 19, 2011  
Effective: August 8, 2011

**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"

**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.*

#### OPINION

Zoning Text Amendment No. 11-05 was introduced on May 10, 2011 and sponsored by Council President Ervin, Councilmember Leventhal, and Councilmember Floreen.

The Montgomery County Planning Board, in its report to the Council on June 16, 2011, recommended that the text amendment be approved as introduced.

The County Council held a public hearing on June 14, 2011 to receive testimony concerning the proposed text amendment. Testimony supported the approval of ZTA 11-05. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on July 11, 2011 to review the amendment. The Committee recommended revising ZTA 11-05 so that it only would allow existing auto-related uses to expand and rebuild.

The District Council reviewed Zoning Text Amendment No. 11-05 at a worksession held on July 19, 2011 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 11-05 will be approved as amended.

#### 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:*

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

2 **DIVISION 59-C-18. OVERLAY ZONES**

3 \* \* \*

4 **59-C-18.132. Regulations.**

5 **(a) Land uses.**

6 \* \* \*

7 (2) The following uses are prohibited in the U.S. 29/Cherry Hill Road

8 Employment Area overlay zone:

9 Adult entertainment business.

10 Automobile parts, sales and services, including but not limited to tire  
11 sales and transmission service.

12 [Automobile repair and service.<sup>1</sup>]

13 [Automobile sales, indoors and outdoors.]

14 Automobile repair and service.<sup>1</sup>

15 Automobile sales, indoors and outdoors.<sup>1</sup>

16 Bakery.

17 \* \* \*

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

26  
27 <sup>1</sup> These uses are permitted on any property improved before May 5, 2011 for the use of  
28 automobile repair, service, sales, or storage. Automobile repair, service, sales, or related  
29 office, automobile parking, or automobile storage use may be built, rebuilt, repaired, or  
30 expanded on these properties under the standards and procedures of the property's underlying  
31 zone.

32  
33 \* \* \*

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

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

39

40

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

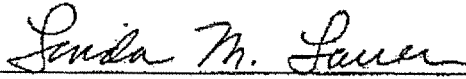
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44        This is a correct copy of Council action.

45

46

47

48          
Linda M. Lauer, Clerk of the Council

Resolution No.: 17-222  
Introduced: July 12, 2011  
Adopted: July 19, 2011

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Leventhal and Council President Ervin

SUBJECT: Amendment to County Subdivision Staging Policy regarding automobile-related uses in the Cherry Hill Employment Area

Background

1. Under County Code §33A-15(f), the County Council may amend an adopted County Subdivision Staging Policy by resolution after notifying certain agencies and holding a public hearing.
2. Under County Code §33A-15(f), the County Council may declare an emergency and hold a public hearing, without waiting 45 days for comments from the Planning Board and the County Executive.
3. A public hearing was held on this resolution on July 19, 2011.
4. This amendment is necessary to encourage the retention and modernization of automobile-related uses in the Cherry Hill Employment area.

Action

*The County Council for Montgomery County, Maryland approves the following resolution as an emergency action:*

The 2009-2011 County Subdivision Staging Policy (formerly the County Growth Policy), as adopted by Resolution 16-1187 and amended by Resolution 17-185, is further amended by the addition of subsection TA7 as follows:

ATTACHMENT "D"



\* \* \*  
**Guidelines for Transportation Facilities**

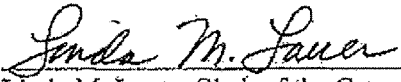
\* \* \*  
**TA7 Automobile related uses in the Cherry Hill Employment Area**

For any property located in the Cherry Hill Employment Area with automobile repair, service, sales, parking, storage, or related office uses:

TA7.1 TP Policy Area Mobility Review and TL Local Area Transportation Review are not required.

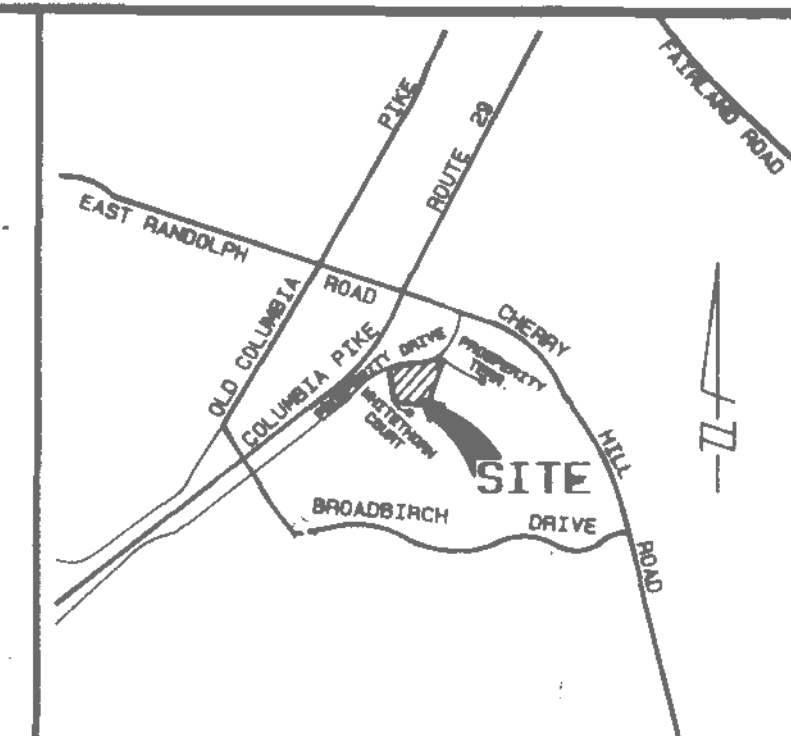
TA7.2 This provision applies to any application for a preliminary plan of subdivision, site plan, or building permit approved before July 26, 2016.

This is a correct copy of Council action.

  
\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

LANDSCAPE NOTES

1. ALL PLANT MATERIALS AND METHODS TO CONFORM TO THE LATEST EDITION OF "AMERICAN STANDARDS FOR NURSERY STOCK" AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERMEN, INC., 1500 L STREET, N.W., WASHINGTON, D.C., 20005
2. PLANT MATERIAL SUBSTITUTIONS MAY BE MADE ONLY UPON APPROVAL OF THE LANDSCAPE ARCHITECT OR DESIGNER.
3. ALL GROUND AREA NOT COVERED BY PLANT MATERIAL OR REQUIRED MULCHING SHALL BE SOODED OR SEEDED.



GENERAL NOTES

1. Area of the site - 4.1 Ac
2. Zoning of the site - I-1
3. Proposed use: Auto Sales & Service
4. Total building area proposed: 24,000 SF  
(Note: 19,000 SF of 5 service in Upper Level to included)
5. Required parking: Sales, Show & Office  
5 sp/1,000 SF x 9,500 SF = 47  
Parts & Service  
1.5 sp/1,000 SF x 15,500 = 23  
Total Reg. Parking 93
6. Proposed Parking: Employee 40  
Customer 60  
Total Parking 100  
(including 4 HC spaces)
7. Proposed Site Coverage:  
Building = 22,200 SF = 12.5% (35% Max. permitted)  
Paving = 120,298 SF = 67.1%  
Green Space = 178,596 SF = 10.4% (10% Min. Required)  
178,596 SF = 15.4% (35% Min. Req.)
8. Green space within internal parking: 18,486 SF = 15.4% (35% Min. Req.)
9. Public Water and Sewer are available
10. Building Height: Permitted - 40' max. Provided - 24'
11. Building Setbacks: Required - 10' min. Provided - 52' min.
12. Flagpole Setback: Required - 10' min. Provided - 10' min.

PLANT MATERIALS LIST					
SYMBOL	SCIENTIFIC / COMMON NAME	SIZE	QUANTITY	REMARKS	
A	Tilia cordata	2'-3 1/2" CAL.	23	B+B	
B	Fraxinus pennsylvanica	2'-3 1/2" CAL.	12	B+B	
C	ZELKOVA SERRATA / ZELKOVA	2'-3 1/2" CAL.	21	B+B	
D	Cornus Kousa / Kousa Dogwood	5'-6" HT.	2	B+B	
E	Magnolia stellata	5'-6" HT.	11	B+B	
F	Hypericum erythrorhizon / St. John's Wort	10 1/2" HT.	101	Cont.	
G	Ulmus parviflorus / Elm	12 1/2" HT.	65	Cont.	
H	Carpinus betulus / Hornbeam	12 1/2" HT.	82	Cont.	
I	Pteris aquilina / Bracken Fern	12 1/2" HT.	78	Cont.	

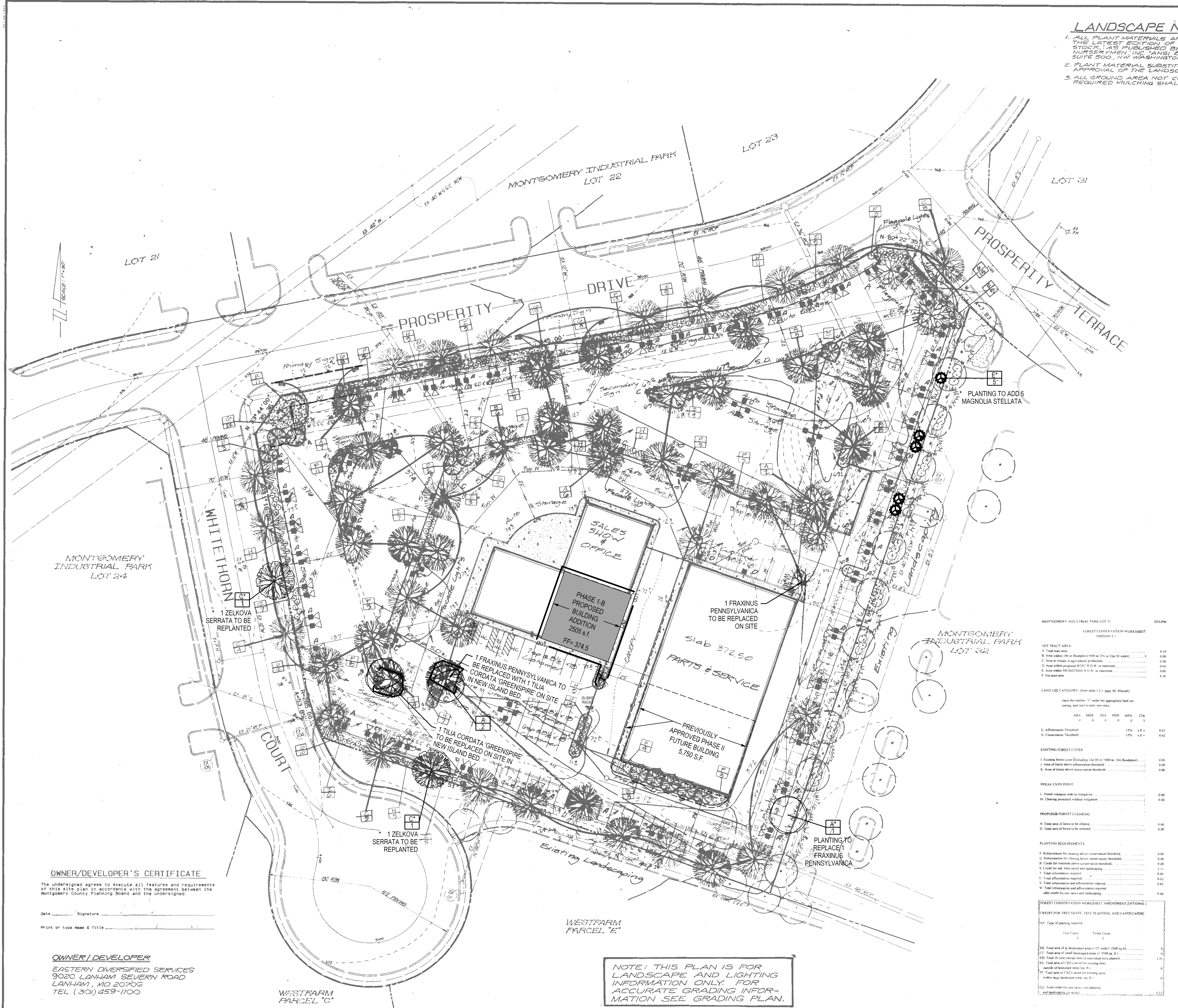
This is NOT included in FEL approval - need to add size of shade trees.

- AMENDMENT REVISIONS INCLUDE:
- PROPOSED 2,505 SF. AUTOMOBILE OFFICE BUILDING ADDITION
  - MODIFICATIONS AND ADDITIONS TO SURFACE PARKING
  - ADDITION OF TWO MOTORCYCLE SPACES
  - ADDITION OF FIVE BIKE RACKS
  - ADDITION OF FIVE MAGNOLIA STELLATA ON SITE.
  - REPLANT TWO MISSING ZELKOVA SERRATA.
  - REPLACE ONE MISSING FRAXINUS PENNSYLVANICA WITH ONE TILIA CORDATA 'GREENSPIRE' ON SITE.
  - REPLACE ONE FRAXINUS PENNSYLVANICA WITH ONE TILIA CORDATA 'GREENSPIRE' ON SITE.
  - REPLACE ONE TILIA CORDATA 'GREENSPIRE' ON SITE.

DEVELOPER'S CERTIFICATE

The undersigned agrees to execute all the features of the Approved Final Forest Conservation Plan No. 819940288 including, financial bonding, forest planting, maintenance, and all other applicable agreements.

Developer's Name: \_\_\_\_\_  
 Contact Person or Owner: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone and Email: \_\_\_\_\_  
 Signature: \_\_\_\_\_



NOTE: THIS PLAN IS FOR LANDSCAPE AND LIGHTING INFORMATION ONLY. FOR ACCURATE GRADING INFORMATION SEE GRADING PLAN.

OWNER/DEVELOPER'S CERTIFICATE  
 The undersigned agrees to execute all features and requirements of this site plan in accordance with the agreement between the Montgomery County Planning Board and the undersigned.

OWNER / DEVELOPER  
 EASTERN DIVERSIFIED SERVICES  
 9020 LANHAM SEVERN ROAD  
 LANHAM, MD 20703  
 TEL. (301) 459-1100

**SOLTESZ**  
 Rockville, Lanham, Waldorf, Leonardtown  
 ROCKVILLE OFFICE  
 2 Research Plaza, Suite 100  
 Rockville, MD 20850  
 P. 301.948.2750 F. 301.948.9067 www.soltesz.com

Designed	GKG				
Drafted	HN				
Checked	GKG				
Proj. Eng.	GKG				
OFFICE	ROCKVILLE				
DATE	DEC., 1993	1. REVISE PER MNCPPC COMMENTS	AZ	7/29/13	
		NO. REVISIONS	BY	DATE	

FOREST CONSERVATION PLAN AMENDMENT

LOT 33  
 MONTGOMERY INDUSTRIAL PARK  
 5TH. ELECTION DISTRICT  
 MONTGOMERY COUNTY, MARYLAND

SCALE 1"=20'  
 SHEET 1 OF 2 SHEETS  
 JOB NO. 381-02  
 DATE MAY 13 1994  
 LOEDERMAN ASSOCIATES