



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

MCPB

Item No.

Date: 07-20-2017

MEMORANDUM

Date: July 13, 2017

To: Montgomery County Planning Board

Via: Michael F. Riley, Director of Parks *MR*
Mitra Pedoeem, Deputy Director of Parks *Mitra Pedoeem*

From: Michael Ma, Park Development Division *MM*
Linda Komes, Park Development Division *LK*

Subject: Ourisman Honda of Bethesda- Right-of-way Encroachment and Improvements
Mandatory Referral, MR 2017015

DESCRIPTION

- Mandatory Referral for proposed improvements to the dealership property and the adjacent Capital Crescent Trail (CCT) by Ourisman Honda of Bethesda (Ourisman) within the Georgetown Branch right-of-way which is owned by Montgomery County.
- Located at 4800 Bethesda Avenue, Bethesda, approximately 200 feet west of Woodmont Avenue.
- Zoned CRT 2.25 (C-1.5 R-0.75 H-45)
- Applicant: Montgomery County Department of Transportation (DOT)
- Filing Date: July 7, 2017

SUMMARY

- Staff recommends **approval of the Mandatory Referral** with recommended conditions.
- Ourisman undertook certain improvements to its facilities in 2016, including a 3-level addition to its parking garage and a concrete screening wall, which encroach upon the Georgetown Branch right-of-way.
- The Department of Permitting Services (DPS) issued Ourisman a stop work order in November 2016 prohibiting further construction of the garage addition and a directive to remove the encroachment.
- Ourisman stopped its construction of the garage addition and has appealed the issuance of the stop work order to the Board of Appeals.
- Ourisman removed the concrete screening wall and the concrete block walls on the southern façade of the garage addition in April 2017.
- DOT proposes to allow the construction of the garage addition within the Georgetown Branch right-of-way and have Ourisman Honda improve the existing CCT by (1) widening the trail from 14 feet to 16 feet in width, (2) providing a public plaza adjacent to the trail entrance at Bethesda Avenue as a

community gathering place, (3) building a separate 160± linear foot long pedestrian path, (4) providing decorative metal screening on the eastern and southern garage facades and visual barriers and fencing along the trail, and (5) landscaping and signage to enhance trail use and safety.

RECOMMENDATION

Staff recommends approval of the Mandatory Referral with the following conditions:

1. Provide a minimum 16-foot-wide paved section of trail from Bethesda Avenue to the southeast corner of the new Ourisman garage, transitioning to the existing 10-foot-wide trail at the Linda Wiener Memorial plaza.
2. Increase the size of the proposed public plaza by a minimum of 600 square feet by decreasing the size of the adjacent private parking area.
3. Move the monumental Ourisman sign to the west side of the driveway entrance, away from the plaza. Move the guard shack to a location away from the plaza.
4. Ourisman must obtain a Park Permit for Construction from the Department of Parks prior to the construction of any improvements within the Georgetown Branch right-of-way or Parcel B.
5. Ourisman must complete all improvements to the trail corridor, including the decorative metal façade screening and fencing, trail improvements, and plaza prior to the issuance of the Use and Occupancy permit for the garage addition.

BACKGROUND & HISTORY

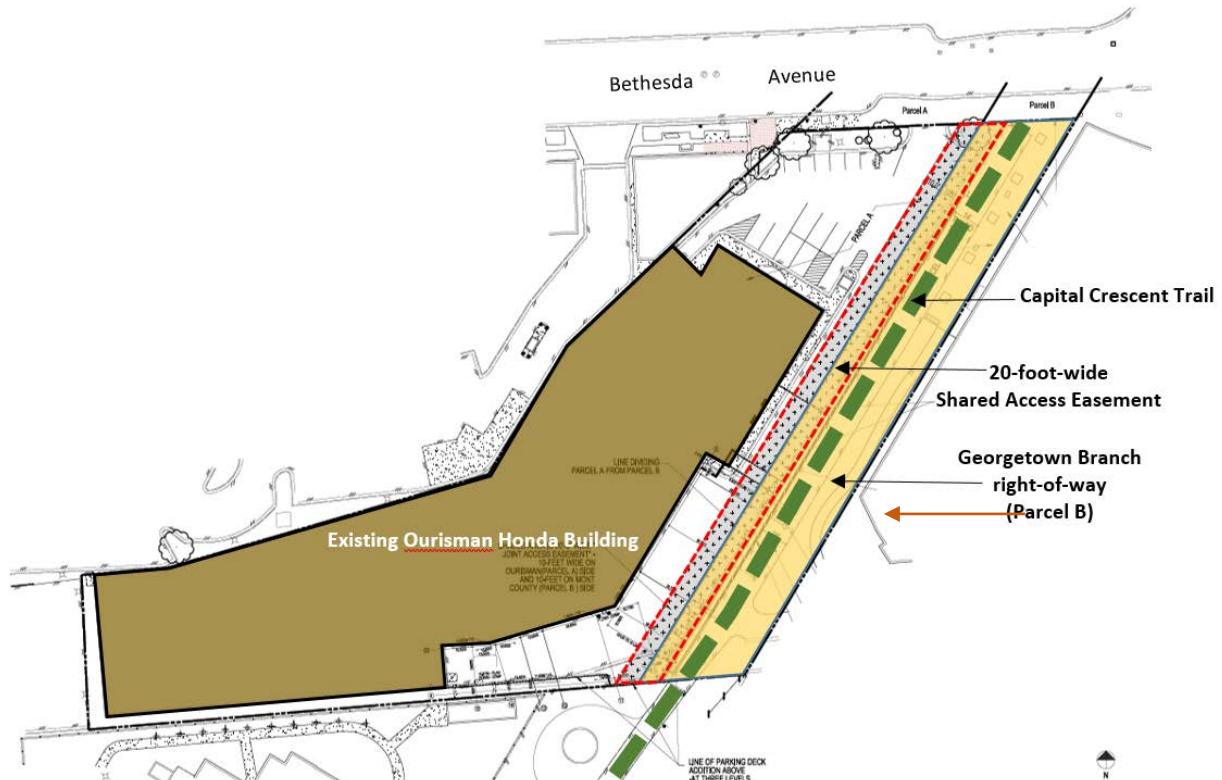
Ourisman is a car dealership located in downtown Bethesda, on the south side of Bethesda Avenue, approximately 200 feet west of Woodmont Avenue. The CCT runs through the eastern portion of the Ourisman property within the Georgetown Branch right-of-way which is owned by Montgomery County.



In October of 2016, Parks staff received a citizen's complaint regarding Ourisman's construction activity that was encroaching into the area used by the CCT. Since that time Parks staff has been working with Montgomery County Department of Permitting Services (DPS) staff to address this encroachment issue.

The Capital Crescent Trail and Easements on Ourisman Property

In March of 1986, Bethesda Avenue Limited Partnership (aka Ourisman Honda) acquired the subject property (Lot 13) from Mont Clare Properties (a successor and affiliate of CSX). In the deed conveying the property, Mont Clare Properties reserved an easement approximately 43-foot-wide (shown as Parcel B) along the easternmost property line of Lot 13. This was ostensibly to keep options open for CSX to continue its operations of a rail line across the property. In addition to the 43-foot-wide easement, a 20-foot-wide joint easement, which straddles Parcel B and A, was established to allow access to the uses on both parcels, i.e. the dealership on Parcel A and future uses on Parcel B (see [Attachment A](#)).



Montgomery County acquired the Georgetown Branch Rail Line running from Silver Spring to the D.C. line from CSX in December 1988. The portion of the Georgetown Branch between Bethesda Avenue and the D.C. line was intended to be developed by the M-NCPPC as the Capital Crescent Trail (CCT). The CCT was opened to public use in the early nineties. The northern end of the trail below Bethesda Avenue, approximately 330 feet in length, is located within the 43-foot-wide easement (Parcel B). The M-NCPPC manages, operates, and polices the CCT under a 1972 Agreement between Montgomery County and the M-NCPPC.

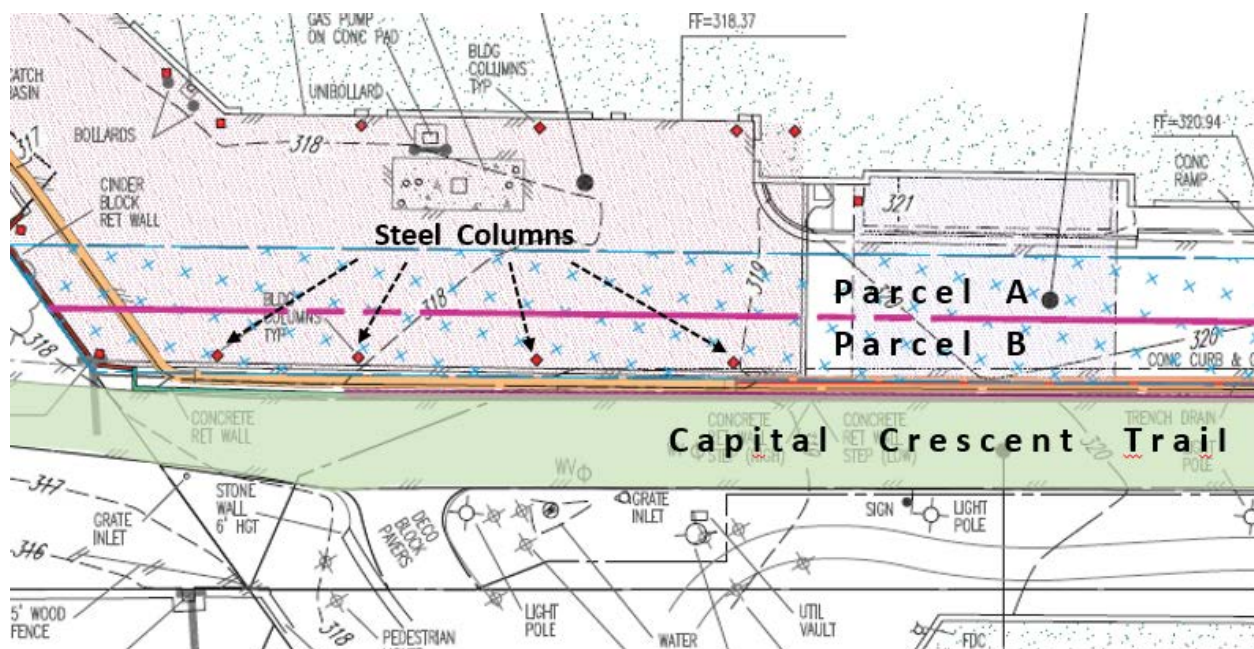
Ourisman Project

Ourisman has been renovating its existing facilities with building additions since early 2016. Site Plan approval by the Planning Board was not required and a building permit for the project was issued by DPS in December 2015. The project includes expansion of the three-level parking garage, a new canopy for the drop-off area, renovations to the existing office and showroom spaces, ADA improvements, a new

elevator, and other related items. A concrete wall approximately 100 feet in length, was constructed within Parcel B to screen the vehicle service operations from the view of the trail users and adjacent residential units. The concrete screening wall along the CCT and a taller concrete block wall on the southern façade of the garage addition were removed by Ourisman in April 2017.

ENCROACHMENT ON THE GEORGETOWN BRANCH RIGHT-OF-WAY

The County and Ourisman share a Joint Access Easement with 10 feet located in Parcel A on the Ourisman side and 10 feet in Parcel B on the County “Trail” side. In response to a citizen’s complaint, DPS determined that Ourisman encroached upon the “Trail” portion of the joint access easement by extending its three-story parking garage addition over top of the easement area and by constructing five steel supporting columns within the easement. The ground level area beneath the parking garage will be used to support Ourisman’s car dealership operations.



Ourisman also intends to construct an entrance canopy over top of the “Trail” easement area. Ourisman has identified a “pinch point” near the service entrance where they state that they absolutely need certain width of pavement, which is partially within the “Trail” easement for their operations to function. In addition, they propose to locate a portion of two parking spaces and a guard shack within “trail” portion of the joint access easement.



OURISMAN PROPOSED IMPROVEMENTS TO TRAIL CORRIDOR

DOT proposes to allow the construction of the garage addition within the Georgetown Branch right-of-way and have Ourisman Honda provide a number of improvements near the dealership to enhance the trail user's experience of the existing CCT as stated in the Mandatory Referral application (Attachment B). Below is staff's review of the proposal and recommended revisions.

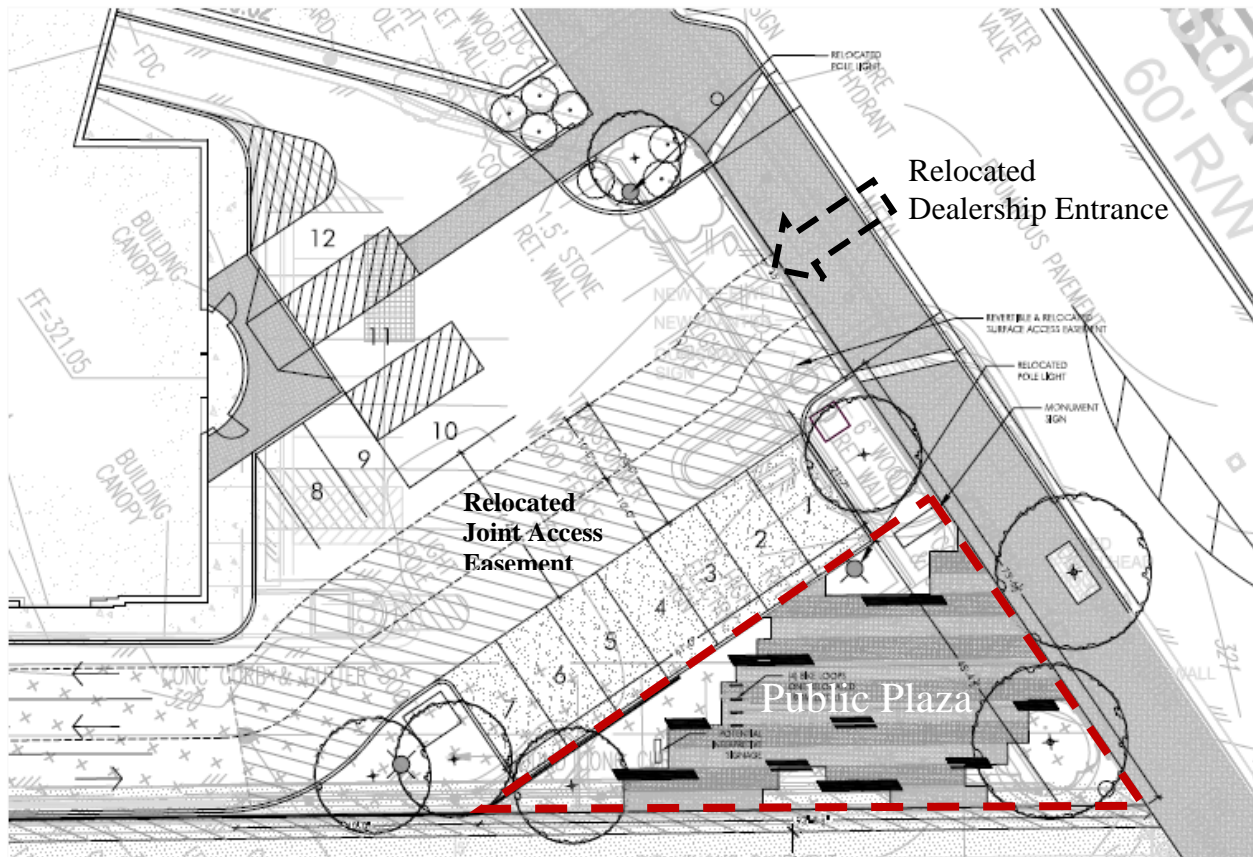
Trail Improvements

The proposal submitted by DOT as part of the Mandatory Review process includes a number of modifications to the CCT and surrounding area. The plan proposes to widen the existing 14-foot-wide asphalt trail to a total paved width of 16 feet. Within this widened paved area, two, three-foot-wide shoulder areas have been designated as pedestrian zones. The shoulder areas are located on either side of a 10-foot-wide asphalt bicycle zone, providing a buffer zone in front of the plaza areas on either side of trail corridor. The buffer zones will be painted or otherwise designated with special pavement for differentiation. The applicant believes that designating a separate space for pedestrians will improve trail user safety.

In order to widen the paved area to 16 feet, an approximately two to three-foot-wide strip of land will be needed from the existing public use area along the frontage of the Lot 31 development. A determination will be made as to whether this modification will require a revision to the approved Site Plan for Lot 31.

Public Plaza

The plan also proposes to create a 2,200± square foot, public plaza on the west side of the trail at Bethesda Avenue by relocating the existing vehicular entrance to the dealership, and rearranging its surface parking area. According to the subject Mandatory Referral application, “Ourisman offered an additional approximately 793 square feet of its own land to include in the Plaza”. As compensation for the area of encroachment onto Parcel B, staff is recommending that additional approximate 600 square feet be added to the plaza area from Ourisman’s surface parking lot adjacent to the plaza.

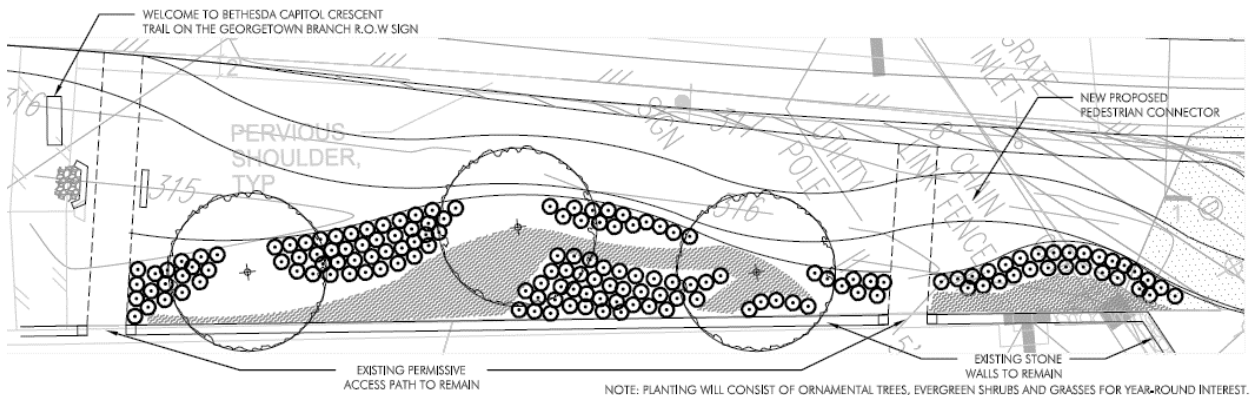


Although no details were included as part of the Mandatory Referral submission, the site plan indicates that the new plaza will include special paving in a striped pattern with custom-designed angled benches located to reinforce the design of the striped plaza paving, and landscape planting. Ourisman's monument sign is proposed to be located adjacent to the new plaza. Staff is recommending that the sign be located to the west side of the parking lot entrance and that the guard shack be relocated to an area outside of the existing easement away from the plaza.



Additional Pedestrian Path and Landscaping

Other improvements to the trail corridor include the addition of a pedestrian trail connector and landscape planting east of the Linda Wiener Memorial plaza. Based on input received during the community meeting held on May 15, 2017, adjacent neighbors were concerned about the proximity of the new path to their properties but support additional landscaping in this area.



Screening and Fencing

The Mandatory Referral application states that decorative metal screening will be provided on the eastern and southern facades of the three-story parking structure, and that decorative fencing to replace existing chain link fencing on the west side of the trail, and trail signage will be provided. No details on these items are included in the Mandatory Referral submission, so it is not possible to evaluate the value of these proffered amenities at this time or evaluate the aesthetics of the proposed materials.

In previous discussions with Ourisman, staff recommended that the materials and design of the metal screen on the garage façade as well as the visual barrier along the trail intended to screen Ourisman's service operations from public view, be compatible and consistent in materials. Staff emphasized that all improvements should be designed as a unified, coherent design treatment for this important and highly visible segment of the CCT.

Completion of the Improvements

To ensure timely completion of the proposed improvement, staff recommends that all improvements to the trail corridor, including the decorative metal façade screening and fencing, trail improvements, and plaza be completed prior to the occupancy of the garage addition. Staff will continue to work with DOT, DPS and Ourisman to refine the design of the amenities. The Department of Parks will issue a Park Construction Permit to Ourisman upon satisfactory review of the design plans for the construction of the improvements.

Forest Conservation Plan

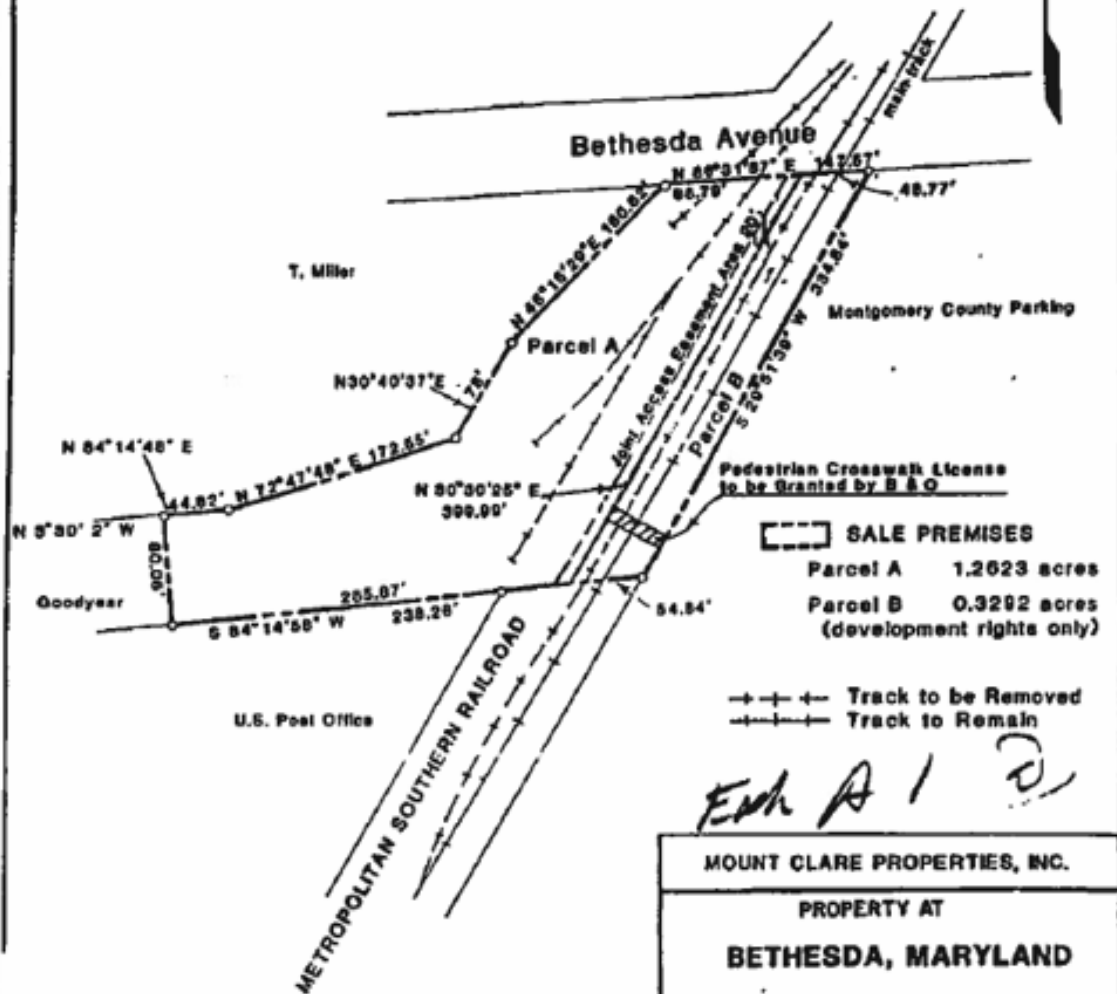
The Mandatory Referral application includes a Forest Conservation Exemption request for the proposed improvements. Implementation of the proposed improvements will not result in the clearing of any existing forest or specimen trees. One street tree is proposed to be removed and five additional trees will be planted. An exemption from the requirement to submit a forest conservation plan was confirmed on July 11, 2017 (42018004E).

ATTACHMENTS

- A. Access Easement Map
- B. Mandatory Referral Application Narrative

LIBER 7221 FOLIO 352

BETHESDA AVENUE BETHESDA, MARYLAND



MOUNT CLARE PROPERTIES, INC.

PROPERTY AT

BETHESDA, MARYLAND

MONTGOMERY COUNTY

SCALE: 1" = 100'

VALUATION
SECTION:

DRAWING NO.:

DATE: 11-30-84

V.S. 24.1

CUSTODIAN NO.:

Rev. 12-6-84

(2)

Rev. 5-9-85

The project site is a portion of the Georgetown Branch right-of-way which is owned by Montgomery County (the “Georgetown Branch”) and located adjacent to the existing Ourisman Honda dealership (“Ourisman”) at 4800 Bethesda Avenue, Bethesda, Maryland (“Site”). The Site includes a portion of the Capital Crescent Trail (“Trail”), pathways and certain landscaping and furnishings.

The Georgetown Branch includes a 6.5 mile portion of the railroad corridor that extends from the District of Columbia border into Montgomery County towards Silver Spring. Montgomery County acquired the 6.5 mile portion of the Georgetown Branch from the Metropolitan Southern Railroad Company, Washington and Western Maryland Railroad Company and CSX Transportation (successor by Articles of Merger to the Chesapeake and Ohio Railway Company and the Baltimore and Ohio Railroad Company) (collectively, the “Railroads”). The Railroads transfer to the County was done with the permission of the Interstate Commerce Commission¹ in a Certificate of Interim Trail Use issued under the Federal National Trails System Act, 16 U.S.C. §1247(d).

Historically, trains used this area until the mid-1980’s. Following the County’s acquisition of the Georgetown Branch line, a portion of the Site was converted to trail use. The Maryland - National Capital Park and Planning Commission, Department of Parks (“Parks”) maintains the trail.

The Site is bounded to the east by the recently completed Lot 31 mixed use development (the Lot 31 development landscaping and furnishings encroach into a portion of the County’s Georgetown Branch right-of-way) and to the west by Ourisman Honda. The County and Ourisman share a 20’ common access easement (“Common Easement”) at their respective property boundaries with 10’ of the easement being on the County side and 10’ being on the Ourisman side. See, Attachment 1. The surrounding land use for this area is predominantly mixed use with commercial office/retail and residential as the site leads directly to the heart of the Bethesda Central Business District and Bethesda Row. At the Georgetown Branch intersection with Bethesda Avenue, 3 of the 4 corners have seen retail and mixed use development. See, Attachment 2.

Ourisman undertook certain improvements to its operation at 4800 Bethesda Avenue which included interior renovations, certain accessibility improvements, and a 3-level addition to its parking structure to consolidate its inventory from remote locations in downtown Bethesda to its property at 4800 Bethesda Avenue (the “Ourisman Work”).² Following commencement of construction of the Ourisman garage, the Department of Permitting Services, in response to a complaint, investigated the Site and related information and found that the 3-levels of the garage addition extended across the Common Easement. The Department issued Ourisman a stop work order prohibiting further construction of the garage and a directive to remove the encroachment.

¹ The Interstate Commerce Commission has since the date of approval been replaced by the Surface Transportation Board as the federal agency with authority over regulation of railroad lines, their rights-of-way, operations, rates, transfers, etc.

² Ourisman advises that the parking garage is not for use by customers.

Ourisman stopped its construction of the garage addition and has appealed the issuance of the stop work order to the Board of Appeals. In its appeal to the Board of Appeals, while acknowledging the existence of County easements, Ourisman took the position that the County “retains all reasonable use of the easements, and there is no encroachment in the right-of-way.” While the appeal is pending, Ourisman removed walls that were affixed to the exterior of the garage addition. In an effort to settle the respective positions and avoid protracted and expensive legal proceedings, Ourisman has made certain proffers to the County. Provided that the County determines to allow the Ourisman Garage addition to remain and to occupy a volume of air space above the Common Easement with the existing column supports, Ourisman has proffered certain improvements.

In an effort to address existing conditions, improve Site conditions, and settle pending litigation, Ourisman has made a proffer of certain improvements, including modifications to the County’s Georgetown Branch right-of-way as shown on Attachment 3 and described generally as follows:

1. Reduction of vehicular, bicycle and pedestrian conflicts at Bethesda Avenue access to Trail. Ourisman will relocate the Ourisman Honda access driveway westerly on Bethesda Avenue, away from the Capital Crescent Trail to reduce conflicts between vehicles, pedestrians, and bikers. This relocated driveway will also lessen conflicts with other vehicles on Bethesda Avenue and, with relocation of a portion of the Common Easement wholly onto Ourisman property, will permit the development of a public plaza.
2. Relocation of portion of Common Easement to Create Plaza Area. Ourisman will relocate a segment of the Common Easement for the term of a Franchise Agreement entirely onto its property to make way for the plaza described below. This will encumber approximately 1,838 sf of Ourisman property.
3. Provide a Public Plaza to the west of the Bethesda Ave. Trail entrance. Ourisman will construct an approximately 2,236 square feet Plaza for public use adjoining the Capital Crescent Trail. The Plaza will be landscaped and furnished in accordance with plans submitted with this Application. To accommodate the Plaza, Ourisman has offered to relocate a segment of the Common Easement wholly onto its own property for the duration of a proposed Franchise Agreement as described in item 2. Additionally, Ourisman offered an additional approximately 793 square feet of its own land to include in the Plaza. The Plaza will connect users of the Trail and businesses in to the west and will enable pedestrians to gather safely, away from much of the bicycle traffic on the Trail. The Plaza will include public seating, interpretive signage and landscaping.
4. Trail Improvements. To address concerns that have been raised, some of which existed prior to the Ourisman Work, Ourisman has hired engineers and a landscape architect to design certain Trail improvements and landscaping relative to a need for trail shoulders for pedestrian refuge, improvements and markings to reduce conflicts between pedestrians and bicyclists, modifications to existing furnishings that creates potential hazards and conflicts, and to generally improve the appearance and functioning of the Trail and the Site. These proposed improvements, which are intended generally to

provide safer utilization of the Trail for pedestrians and bikers, are as shown on the plans submitted with this Application and include:

- a. Create an extension of the pedestrian path which parallels the Capital Crescent Trail, to provide more space for pedestrians.
 - b. Provide landscaping and signage along the Trail and generally on the Site, all as shown on the plans submitted with this Application.
 - c. Provide decorative fencing to replace existing fencing on the western edge of the Capital Crescent Trail.
 - d. Provide decorative metal screening on the eastern and southern facades of the expanded Ourisman Honda garage.
 - e. Relocate and improve portions of the landscaping and street furniture on a the adjoining the Trail within the Site.
5. Maintenance. Ourisman has offered to provide maintenance for the Plaza and the landscaping improvements.

The Department of Transportation proposes to have Ourisman Honda make modifications to the existing trail to further enhance the trail experience along with community identity by providing the above-described enhanced plaza gathering space to build upon the existing plaza area currently fronting the Barnes and Noble site across Bethesda Avenue. The gathering space will have seating areas and interpretative signage to highlight the past, present and future of this vibrant urban junction. Additionally, modifications to the trail will include providing better defined areas for walking and bicycling by better marking of lanes and providing pedestrian refuge areas along the shoulders of the trail. Landscaping will be added along with architectural screening elements to help screen the existing car dealership operations from the trail experience.

Montgomery County, M-NCPPC Parks and Ourisman Honda have met with the community and interested parties regarding proposed enhancements on May 15, 2017 and have revised the concepts to address community concerns. This project will be fully funded by Ourisman Honda. This project is to further enhance the overall trail experience with an extremely vibrant area within Bethesda. This project adds to the newly adopted Bethesda Downtown Plan by adding functional improvements along with increased plaza amenities within the Woodmont Avenue/Bethesda Avenue intersection. Modal trail improvements will be an added benefit and a first step to alleviate congestion in this area. The improvements will benefit both pedestrians and bicyclists by offering safety improvements and to maximize pedestrian and bicycle modal movement within the currently congested trail area.