

**MEMORANDUM**

DATE: March 25, 2005
TO: Montgomery County Planning Board
FROM: Sandra Youla, AICP (301-495-4624) *SZY*
 for the Department of Park and Planning,
VIA: Carlton Gilbert, Zoning Supervisor, and *CG*
 Rose Krasnow, Chief, Development Review Division *RK*
REVIEW TYPE: Remand -- Schematic Development Plan Amendment

APPLICANT: Auto Park Investment General Partnership II
CASE NUMBER: DPA-04-2 (Staff Report #2)
REVIEW BASIS: Chapter 59, Zoning Ordinance
ZONE: C-3
LOCATION: Parcel 970 and Part of Outlot E/Parcel 973
 Briggs-Chaney Road, approx. 500 feet east of its
 intersection with Robey Road
MASTER PLAN: 1997 Fairland Master Plan
FILING DATE: April 8, 2004
PUBLIC HEARING:

RECOMMENDATIONS

Pursuant to an Order of Remand issued March 3, 2005 by the County Council of Montgomery Council sitting as the District Council:

- Staff recommends that the **EVIDENTIARY RECORD BE REOPENED** to receive into evidence an amended schematic development plan and amended declaration of covenants for (Schematic) Development Plan Amendment 04-2 and the staff and Planning Board recommendations on the application in light of these amendments.
- Staff recommends **APPROVAL** of the amended schematic development plan received by MNCPPC on 3/14/2005, the amended declaration of covenants received by MNCPPC on 3/14/2005, and hence the application as amended thereby. The amended schematic development plan and amended declaration of covenants have been comprehensively revised to include binding commitments that state that:

“All parking shall be restricted to designated parking areas, without limiting the foregoing:

- (1) No parking shall be allowed in the green area as currently defined in section 59-A-2.1 of the Montgomery County Code.
- (2) No parking shall be allowed within the stormwater access easement to be established at site plan.”

DISCUSSION

The Planning Board reviewed DPA 04-2 at its regular meeting on October 28, 2004, and recommended approval of the staff recommendations, including that the applicant make certain revisions prior to transmission of the file to the Hearing Examiner for transmission to the County Council. The applicant made such revisions, and the Planning Board issued its letter of recommendation on December 3, 2004. The file was transmitted to the Hearing Examiner on December 17, 2004, and several minor additional exhibits were sent to the Hearing Examiner on December 23, 2004. The Hearing Examiner did not hold a public hearing, but reviewed the file and recommended further revisions to the declaration of covenants. Staff requested such revisions from the applicant, and the further revised covenants with exhibits were transmitted to the Hearing Examiner on February 2, 2005. (See Appendix, no exhibits.) The Hearing Examiner transmitted the application to the County Council with a cover memo dated February 15, 2005.

The County Council sitting as the District Council reviewed DPA 04-2 at its public session on March 3, 2005. (See Appendix for the County Council packet item including staff report, Planning Board recommendation, and Hearing Examiner transmittal memo.) Concern was expressed that parking restrictions should be clarified and expressed as binding elements, and that the schematic development plan and declaration of covenants should be amended accordingly. The Council therefore remanded DPA 04-2 to the Planning Board to allow the Planning Board to reopen the record and make recommendations on the application in light of any subsequently submitted amendments. The Council's Order of Remand was issued March 3, 2005. (See Appendix.)

The applicant's attorneys worked with the Hearing Examiner to craft language to address the Council's concerns, and submitted to the Chairman of the Planning Board a letter dated March 11, 2005, received by MNCPPC 3/14/2005. This letter included the amended schematic development plan and amended declaration of covenants with exhibits. (See Appendix.)

Staff reviewed the Order of Remand, the amended schematic development plan received by MNCPPC on 3/14/2005, and amended declaration of covenants received by MNCPPC on 3/14/2005 and compared them to the prior schematic development plan and declaration of covenants.

DPA 04-2 Remand
Staff Report # 2

The prior declaration of covenants (as submitted to MNCPPC February 2, 2005 -- Exhibit 50A in the record) included language that stated "no parking shall be allowed in the green area", but did not explicitly label this provision as a binding element and did not define green area. Further, the language restricting parking from the green area was not reflected on the prior schematic development plan (as submitted to MNCPPC November 23, 2004 -- Exhibit 46A in the record). This schematic development plan also had a note (Note 26 under General Site Notes) that stated "no designated parking spaces may be located within the storm water access easement." This note was not a binding element and was not reflected in the declaration of covenants. Neither the schematic development plan nor the declaration of covenants had any language restricting parking to designated areas.

Staff finds that the amendments clarify parking restrictions by being more comprehensive, making all parking restrictions binding elements, and ensuring that both the schematic development plan and declaration of covenants reflect all parking restriction binding elements. Staff also finds that these amendments address the community's long-standing concerns about parking within the green space on properties within the Auto Park.

Consequently, staff recommends that the record be reopened, that the amended schematic development plan received by MNCPPC on 3/14/2005 and amended declaration of covenants received by MNCPPC on 3/14/2005 be approved, and hence that the application as amended thereby be approved.

APPENDICES FOR DPA 04-2 STAFF REPORT # 2

Letter from Applicant's Attorneys, dated 3/11/2005, received by MNCPPC
3/14/2005, with amended declaration of covenants with exhibits A, B, and C and
amended schematic development plan, pursuant to the County Council Order of
Remand (3/11/05 SOP = 22)

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Order of Remand for DPA 04-2, issued 3/8/2005 from Montgomery County
Council, sitting as the District Council

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County Council Packet Item for DPA 04-2, including Council staff memo, Hearing
Examiner transmission memo dated 2/15/2004, Planning Board
Recommendation dated 12/3/2004, Revised Recommendation #2 distributed at
the Planning Board meeting, Staff Report dated 10/21/2004

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Letter from Applicant's Attorneys, dated 2/2/2005, received by MNCPPC
2/2/2005, with revised declaration of covenants (without exhibits A, B, and C),
pursuant to Hearing Examiner's request

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