

McMillan Metro, P.C.

ATTORNEYS AT LAW

May 28, 2020

VIA E-MAIL ONLY

Jeremy Hurlbutt, Staff Reviewer
Planning Board for Prince George's County,
Maryland-National Capital Park
and Planning Commission
(Jeremy.hurlbutt@ppd.mncppc.org)

Peter E. Ciferri

Direct: 240-778-2307
pciferri@mcmillanmetro.com

Maryland Bar
District of Columbia Bar

Re: DSP-19050-01, Dewey Property
Written Comments for SDRC Consideration

Dear Mr. Hurlbutt:

As you know, 6525 Belcrest Road, LLC, owns the adjacent property on which the Metro III Building is situated, and objects to this Application. My client is interested in protecting its property rights. Please distribute this letter to the reviewing agencies.

As has been explained in greater detail in our earlier submissions to the Planning Board, the Applicant has not considered the effect of valid prior approvals that continue to bind the Dewey Property as inextricably linked to the Metro III Building property. It is our view that there is no legal avenue through which this Applicant can modify, through its development plans, the Metro III Building property owner's valid and lawful parking entitlements. Applicant needs Metro III's consent for such a change, and it does not have our consent.

The Metro III Building was originally constructed, and the Dewey Property was originally improved as a parking lot, as part of the same joint development project between several entities all controlled by Herschel Blumberg. During the course of development for the Metro III Building, the County enacted new zoning text amendments which revised the applicable parking rules for the Metro III Building. The new regulations allowed for a parking compound on a lot other than the lot on which the principal use is located, provided three conditions are met, summarized as follows: (1) The parking compound is within 500 feet of the building lot; (2) the parking compound does not exceed 100 spaces or 20% of the required parking; and (3) "an appropriate legal arrangement assures the permanent availability of the compound." See 1970 Zoning Ordinance, § 24.222. The zoning ordinance changes also resulted in a new Section 24.16, which requires: "All required automobile parking compounds and loading areas together with driveways giving access thereto are deemed to be required space in connection with the uses to which they are accessory and shall not be encroached upon in any manner. ..."

In response to these new regulations, Mr. Blumberg's entities, through counsel and on behalf of both the Metro III Building property and the Dewey parking property, requested a District

Jeremy Hurlbutt, Staff Reviewer
Maryland-National Capital Park
and Planning Commission
May 28, 2020
Page 2 of 4

Council waiver for relief from (1) the 500-foot requirement and (2) the 20% limitation. However, the waiver request and the waiver approval decidedly did not request waiver of the *permanency* requirement. District Council Resolution 636-1970 grants the waiver requested, but does not modify the permanency requirements. The result of the new zoning ordinance, as modified by the waiver, is a permanent parking compound on the Dewey parcel for the benefit of the Metro III Building property. The approved parking for the Metro III Building is therefore 1,550 parking spaces, all of which are located on the parking parcel. This calculation has been relied upon in every site plan and building permit for Metro III Building parcel since then, until now.

The zoning text amendments and District Council waiver decision both appear to be intended to prevent the exact type of situation that is now occurring: An owner gets approval for building plans that rely on off-site parking, then years later a successor owner has a completely different vision for the parking lot, without giving due consideration to continued permanent parking for the building property, and asks the Board to ignore the earlier approvals.

This history is important because unlike other properties around the UTC neighborhood, this specific Metro III Building property has never undergone significant redevelopment and, as a result, the standards of the TDDP have not been triggered. The original approvals constitute the current entitlements for Metro III and, therefore, the parking restriction continues to bind on the Dewey Property. The Applicant has previously supplied the Board with a lengthy history of the TDDP and approved TDOZ, from the adoption in 1992 onward. The Applicant's argument is apparently that the passage of two specific approvals: CSP-00024 and DSP-00052, both in 2001, are triggering events that subject Metro III Building to the TDDP standards that the Applicant is relying upon for its project. The Applicant is not correct.

The Resolution for CSP-00024 makes clear that a parking demand analysis is to be submitted by each property owner at the time that property owner submits a DSP for his parcel. (See Page 32, Condition 15). Likewise, DSP-00052 is the only detailed site plan that has ever been submitted for the Metro III Building and Finding No. 17 makes clear: "The total number of proposed parking spaces shown in the submitted detailed site plan is exactly the same as the total number of parking spaces that were existing on the Subarea 2 and 3 prior to the approval of the TDDP. **Pursuant to the TDDP applicability, replacement or alternatives to legally pre-existing parking spaces are exempt from meeting the TDDP transportation and parking mandatory requirements. therefore, the review of the submitted detailed site plan will be limited** to the adequacy determination of access points, vehicular and pedestrian circulations, and the level of compliance with the transportation related requirements of the approved conceptual site plan."

The Metro III Building is exempt from the Transit District Standards until a Detailed Site Plan is submitted for the Metro III Building parcel. TDDP Chapter 6, p. 198. Until a DSP is submitted, all legally existing parking spaces in the transit district need not be reduced, and are exempt from the transit district standards and DSP review. *Id.* There has been no DSP submitted for the Metro III property and so neither the requirements of the TDDP plan or the approved CSP have been triggered, and original approvals still apply to the Metro III Building. The Application

Jeremy Hurlbutt, Staff Reviewer
Maryland-National Capital Park
and Planning Commission
May 28, 2020
Page 3 of 4

is fundamentally flawed because Metro III is not being redeveloped as part of this Application. Therefore, the Applicant is really asking you to recommend approval to change the valid and lawful entitlements belonging to a different property which the Applicant does not control.

6525 Belcrest Road, LLC has every right to rely on its entitlements for its building and its parking until a DSP is submitted for the Metro III Building, at which time the Metro III owners, not the owners of adjacent properties, will request an appropriate recalculation of parking using a parking demand analysis.

The Applicant's approach also does not address the Planning Board's finding made at the Preliminary Plan phase, in which the Board instructed the Applicant twice that a determination of adequate parking *for uses that depend on this parking lot* must be made prior to the approval of the detailed site plan.

The Applicant has proposed only temporary leasing fixes which do not guarantee that parking would continue permanently, as is required by the public approvals, and also would not guarantee that the leased parking would not otherwise become subordinate to other matters affecting the third-party garage owner. Frankly, because no Detailed Site Plan is being submitted for Metro III and no redevelopment of any kind is being proposed there, the Applicant's parking demand analysis is irrelevant to this question, also. The Applicant has consistently failed to address the primary issue of Metro III's continued permanent right to park on the Dewey Property at the calculations originally approved in 1970.

Staff cannot recommend approval for a project that allows one property owner to divest another property owner of its prior approvals and entitlements. Doing so sets an incredibly dangerous precedent that would upset the rights that any developer obtains when he gets entitlement approvals.

Thank you for your continued consideration of our objection and concerns.

Very truly yours,

McMillan Metro, P.C.

A handwritten signature in blue ink, appearing to read 'Peter E. Ciferri', is written over a faint circular stamp.

Peter E. Ciferri, Esq.

PEC/mb

CC: Mr. Thomas Haller