

# McMillan Metro, P.C.

ATTORNEYS AT LAW

April 8, 2020

**VIA E-MAIL AND  
ELECTRONIC FILING**

Madam Chair and Members of the  
Planning Board for Prince George's County,  
Maryland-National Capital Park  
and Planning Commission  
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Maryland Bar  
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Re: Further Objections to the Staff Report for  
Detailed Site Plan Application No. DSP-19050;  
Dewey Parcel (the "**Application**")  
By Bald Eagle Partners (the "**Applicant**")

Dear Madam Chair and the Members of the Board:

This correspondence is submitted by Peter E. Ciferri, Esq., and McMillan Metro, P.C., attorneys on behalf of 6525 Belcrest Road, LLC (hereinafter "**Belcrest**"). In addition to each argument made in Belcrest's March 31, 2020 "Objection to the Detailed Site Plan", and for the reasons as set forth herein, and the facts, testimony, and evidence included in the record and to be included further into the record at this Board's April 16, 2020 public hearing, Belcrest requests that the Planning Board deny the Applicant's Detailed Site Plan Application.

The Applicant cannot meet its burden to demonstrate that adequate parking exists for adjacent land uses that currently rely upon the right to use the Applicant's parcel for parking. Staff's parking analysis misses the mark and avoids the requirements imposed by this Planning Board in the related preliminary plan cases. Planning Staff's position is that the Applicant has the right to strip Belcrest's dedicated parking rights because other parking lots may exist some place in the community. Staff's position creates a fiction that completely undermines Belcrest's original, valid approvals. Belcrest, as owner of Metro Center III, has the right to permanent, dedicated parking on the Applicant's parcel through its public development approvals, irrespective of any lease. If the Board follows Staff's recommendations, then Belcrest will be stripped of those rights and either relocated or forced out to find its own replacement without any guarantee that either replacement would be dedicated or permanent.

Resolution No. 19-82 for Case No. 4-18022 requires: "[A] determination of adequate parking for land uses that depend on this parking lot must be made prior to the approval of the detailed site plan for this property." Resolution at p. 36-7. Resolution No. 19-129 for Case No. 4-19033 requires: "[A] determination of adequate parking for land uses that depend on this parking lot must be made prior to the approval of the DSP for this property." Resolution at 6. Rather than

analyzing the parking issue and making an appropriate recommendation, Staff unfortunately acquiesces to the Applicant's fundamentally flawed approach to eliminating Belcrest's parking rights and adopts, wholesale, the Transportation Planning Section's comments, which do not even touch on Belcrest's objections. *See* Staff Report at 21. Staff's glancing treatment of the parking question is incomplete and, ultimately, incorrect. The Planning Board should also feel empowered to deviate from Staff's recommendation here, as Staff simply lifted the Transportation Planning Section's comments rather than undertaking any sort of reasoned analysis of Belcrest's rights.

The surface parking on the Applicant's Property has been used specifically for the use of Metro Center III, for decades. The use of the Applicant's Property as parking for Metro Center III derives from the original development approvals for both parcels. When Metro Center III was approved for construction, the owners of both properties obtained development approvals that had the effect of subjecting the Applicant's Property as off-site parking parcel for the benefit of the Metro Center III parcel. This agreement is reflected in the respective parcel owners' joint Parking Waiver through which the District Council approved the location of parking to be placed specifically on the Applicant's Property, while still requiring that the parking be permanently placed on that Property. The strict requirements of the 1970 Zoning Ordinance created a binding primary and accessory relationship between the Applicant's Property and the Metro Center III Parcel. Staff's analysis completely ignores this history even though these original approvals materially define the scope of property rights enjoyed by Belcrest and its tenants and users. Staff's reliance on the Applicant's parking analysis, or a private ground lease, is entirely misplaced and cannot undo those original approvals.

The fundamental disconnect in this Staff report is that Metro III is not undertaking the development process and objects to any Planning Board decision that alters or removes its existing approvals. Therefore, a parking analysis for the entirety of University Town Center is not relevant or probative evidence before this Planning Board. The TDDP was adopted with an express recognition that project phasing among multiple parcels owned by multiple property owners would be expected. (Ch. 3, page 72). The TDDP is not to be interpreted to require owners to redevelop their private properties. *Id.* Metro III exists under its original approvals and has not been redeveloped. (Ch. 2, pages 30, 32). *Accord* Applicant's Justification Statement, Section 4, Pages 3-9. It is fundamental that the site plan process is only to be implemented for the development of property for which a site plan application has been submitted. The TDDP, as such, requires a site plan process for each owner at the time its land is redeveloped. (Chapter 6, page 195-6). The TDDP is clear that until a property owner brings forth a Detailed Site Plan for its property, the TDDP zone requirements are inapplicable to the existing approvals and cannot serve to undo the validity of that property owner's prior approvals:

- "Until a Detailed Site Plan (DSP) is submitted, all buildings, structures, and uses which were lawful or could have been certified as legal nonconforming uses pursuant to Section 27-244 of the Zoning Ordinance on July 19, 2016, are exempt from the Transit District Standards and are not nonconforming."

- “Until a DSP is submitted, all legally existing parking and loading spaces in the Transit District that were lawful on July 19, 2016 need not be reduced, are exempt from the Transit District Standards and DSP review, and are not nonconforming.”

See Ch. 6, page 198. See also Chapter 6, Page 260 (legally existing surface parking lots are not nonconforming).

Even though Belcrest is not submitting a DSP, and is otherwise “exempt” from DSP review, Belcrest’s “legally existing parking” is being displaced and reduced. Here, contrary to the express requirements of the TDDP, Staff recommends that the Planning Board approve a DSP that removes Metro III’s 1,503 parking spaces<sup>1</sup>. Belcrest is an adjacent property owner who is not an applicant before the Board, and who has continuously relied upon its original approvals in its ownership, use, and occupancy, of the Metro III building. The sum result of the Applicant’s request is to fully raze the parking lot and eliminate Metro III’s legally established parking rights because purportedly there exists a “surplus” of parking somewhere in the general zoning district. Staff Report at 21. Staff opines:

While there might have been a factor of convenience for some uses within the University Town Center to use surface parking within the Dewey Property, there is sufficient parking within University Town Center to serve the uses on that site. Any matters regarding private agreements for the use of the parking on the Dewey property, are not relevant to the DSP requirements, or analysis.

*Id.* The Planning Board should use the utmost caution in relying upon Staff’s analysis here, because Staff is recommending a taking. This is not a matter of convenience and it is not a matter of implementing private agreements. Belcrest enjoys the legal right to use the Applicant’s parcel for its parking. Belcrest’s right arises from the original development approvals for Metro Center III, which continue to bind the Applicant.

Once again, the Staff is putting the burden of proof and persuasion back on Belcrest when it is not an applicant before the Board. The Board’s Preliminary Plan Resolutions put the burden on the Applicant to demonstrate parking adequacy, and Belcrest has a legal right to depend on this parking lot situated on the Applicant’s parcel. There is absolutely no obligation for Belcrest to go out into the free market and try to broker deals elsewhere simply because the Applicant submitted an unnecessary parking analysis which concludes that other parking may exist somewhere else in the community. The Applicant’s desire to strip Belcrest of its parking rights does not give it a carte blanche right to strip those rights and the Planning Board should not greenlight that scheme. The owner of Metro Center III should be allowed to continue to rely on

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<sup>1</sup> Per the Applicant’s request, the number of spaces may actually be higher.

Madam Chair and Members of the  
Planning Board for Prince George's County,  
Maryland-National Capital Park  
and Planning Commission  
April 8, 2020  
Page 4 of 5

its permanent right to use the adjacent property for its parking, pursuant to the original approvals and the zoning ordinance under which those approvals were granted.

The Applicant relies on a "shared parking analysis" that it prepared as the sole justification to eliminate over 1,550 parking spaces that Belcrest has a right to use. The only purported justification that this parking can be replaced is the Applicant's unsubstantiated claim that "the spaces currently being leased to Metro III will be relocated into an existing parking garage located on the south side of Toledo Road." Justification Statement at pg. 8. The Applicant also concedes, however, that a shared parking analysis is not relevant to the Planning Board's review and that the Planning Board does not construe private agreements. More importantly, the Applicant does not offer any details of its "relocation" proposal or whether it gives Belcrest the permanent parking rights that Metro Center III currently enjoys, nor does the Applicant demonstrate any proof that Belcrest has agreed to any of this. In reality, Belcrest has not agreed and has not received any offer that it can seriously consider. The Applicant's proposal is apparently to strip Belcrest of a permanent and perpetual easement right and replace it with some vague and indeterminate private lease agreement, which expires after a term of years.

Metro Center III remains zoned M-X-T. If Metro Center III were being redeveloped, it would be required to go through the DSP process and the Planning Board would be tasked with analyzing the site and the owner's redevelopment plans. However, the decision to offer a proposed DSP to the Planning Board can only be the decision of a private property owner. No such DSP exists. The parking analysis and relocation plan are merely further attempts to curtail Belcrest's established legal rights.

For the same reasons, Staff's proposed finding under Section 27-546.19(c)(4) would be in error because the Applicant's proposed use is incompatible with existing and approved developments on adjacent properties. Staff Report at pg. 11. Accordingly, it would also be error to make a finding that "Each structure and use, in the manner proposed, is compatible with other structures and uses in the Transit District, and with existing and proposed adjacent development ..." as required by Section 27-548.08(c)(2)(E) *See* Staff Report at 14. Plainly, a legally existing and conforming commercial office building, directly adjacent to the Applicant's parcel, continues to rely on the existence of valid approvals for parking on the Applicant's Property, and the Applicant's proposal is to remove all such parking without permission or agreement.<sup>2</sup>

In the alternative, in the event that the Board still believes that this DSP should be approved conditionally, as recommended by Staff, then Belcrest requests that the Planning Board impose an additional condition of approval, requiring that the Applicant to provide Belcrest with permanent, dedicated parking of no less than 1,550 parking spaces situated on the Dewey property. A draft is provided herewith:

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<sup>2</sup> It is noted also that Staff fails to recognize Metro III as an adjacent use on Staff Report Page 5, Section 4, and instead, confusingly identifies the Dewey property as being bounded to the South only by Toledo Road.

Madam Chair and Members of the  
Planning Board for Prince George's County,  
Maryland-National Capital Park  
and Planning Commission  
April 8, 2020  
Page 5 of 5

“Revise DSP-19050 to dedicate to 6525 Belcrest Road, LLC, and its successors and assigns, a permanent, exclusive right to vehicle parking spaces in excess of 1,550 vehicle parking spaces situated on the Dewey property.”

For the above stated reasons, the reasons in Belcrest's earlier memorandum, and as supported by the facts, testimony, and evidence included in the record before this Board, including its public hearing, 6525 Belcrest Road, LLC, respectfully requests that this Board deny the Detailed Site Plan Application sought by the Applicant, or in the alternative, impose a condition of approval requiring the Applicant to dedicate permanent, exclusive parking to Metro Center III as described above.

Respectfully submitted,  
McMillan Metro, P.C.

A handwritten signature in blue ink, appearing to read 'Peter E. Ciferri', is written over a light blue horizontal line.

Peter E. Ciferri, Esq.

PEC/mb

CC: 6525 Belcrest Road, LLC  
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