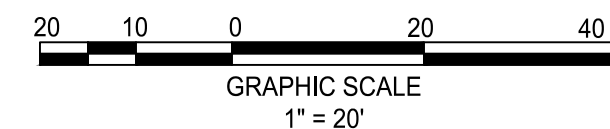
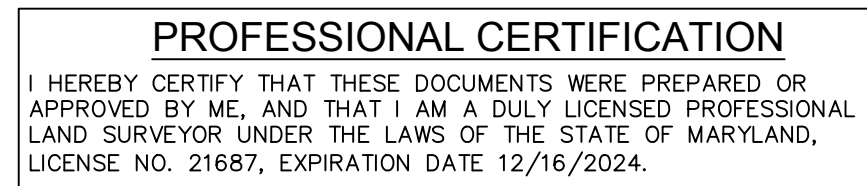


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SCALE: AS SHOWN
DESIGN: MK
DRAWN: MK
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PRELIMINARY PLAN

PP-03



**AutoZone Hyattsville
Preliminary Plan of Subdivision 4-23033
8516, 8520, and 8524 Central Avenue, Hyattsville, Maryland 20785**

STATEMENTS OF JUSTIFICATION IN SUPPORT OF
ELECTION TO DEVELOP PURSUANT TO THE PROVISIONS OF
THE PRIOR SUBDIVISION REGULATIONS

AND

PETITION FOR A VARIATION TO SECTION 24-121(a)(3) OF
THE PRIOR SUBDIVISION REGULATIONS

The Applicant is submitting the following Statements of Justification as part of the application for Preliminary Plan of Subdivision 4-23033, AutoZone Hyattsville. AZ Hyattsville LLC (the “Applicant”) is applying for approval of a preliminary plan of subdivision in an effort to consolidate three existing parcels and develop a “vehicle parts store or tire store without installation facilities.” The three parcels that will be consolidated as part of the subdivision approval have the addresses 8516, 8520, and 8524 Central Avenue, Hyattsville, Maryland 20785 (the “Property”). The Applicant is planning to develop the project under the prior subdivision regulations and is requesting a variation from those regulations to allow a second access to the site directly on Route 214, an arterial road.

I. STATEMENT OF JUSTIFICATION EXPLAINING WHY THE APPLICANT HAS ELECTED NOT TO DEVELOP THE SUBJECT PROPERTY PURSUANT TO THE PROVISIONS OF THE SUBDIVISION REGULATIONS.

Section 24-1904 of the Subdivision Regulations requires the “applicant to provide a statement of justification which shall explain why the applicant has elected not to develop a

specific property pursuant to the provisions of the Subdivision Regulations.” The following statement satisfies this requirement.

The Applicant has elected to develop under the prior subdivision regulations for several reasons. If the project were developed under the current subdivision regulations and zoning ordinance, a special exception would be required for the proposed vehicle parts store. Although a special exception use is presumed to be valid and in conformance with the applicable zoning, the Applicant believes the detailed site plan process would result in a better project, under these circumstances, because developing under the prior subdivision regulations, along with the prior zoning ordinance, would result in a more urban development. Furthermore, developing the proposed project as a special exception use could deprive the Planning Board the opportunity to evaluate the site plan at a public hearing.

II. PETITION FOR AND STATEMENT OF JUSTIFICATION IN SUPPORT OF A VARIATION TO SECTION 24-121(A)(3) OF THE PRIOR SUBDIVISION REGULATIONS.

Section 24-113(b) of the Prior Subdivision Regulations requires a “petition for a variation to be submitted in writing by the subdivider prior to the meeting of the Subdivision Review Committee and at least 30 calendar days prior to the hearing by the Planning Board.” Also, according to that provision, the “petition shall state fully the grounds for the application and all the facts relied upon by the petitioner.” Each of the criteria required by the Planning Board to approve a variation will be addressed in turn.

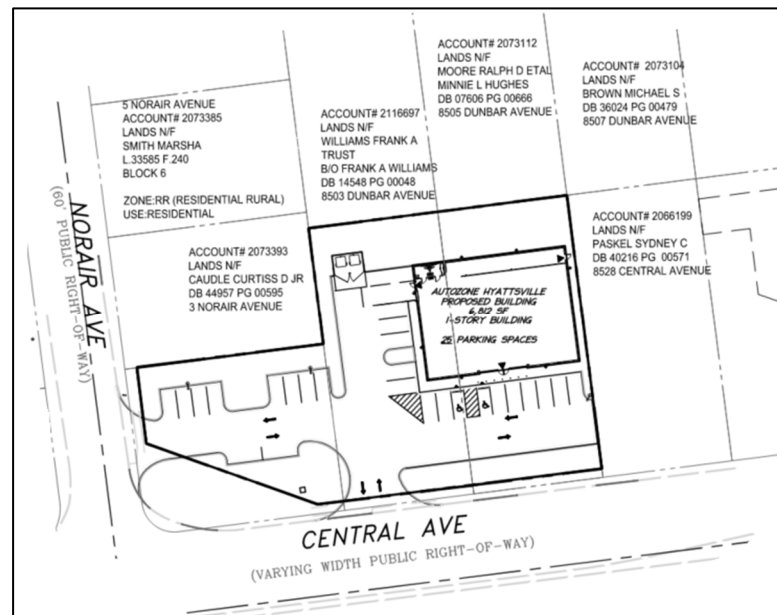
A. Variation Requested from Section 24-121(a)(3) to Allow Direct Access on Route 214.

The Applicant is requesting a variation from the requirements of Section 24-121(a)(3), which, in relevant part, provides:

- (3) When lots are proposed on land adjacent to an existing or planned roadway of arterial or higher classification, they shall be designed to front on either an interior street or a service road. . . .

The Property has frontage on Norair Avenue and on Route 214 (Central Avenue). Route 214 is an arterial road; therefore, without the variation, the proposed project cannot include a direct access onto Route 214, which is necessary for reasonable circulation on the site for deliveries and customers. Furthermore, without access to Route 214, all commercial traffic would be required to use Norair Avenue, the sole entrance to the adjoining residential community.

For the purposes of this variation request, the following conceptual diagram shows a potential location for the access on Route 214. It demonstrates how customers' vehicles and delivery vehicles would be able to safely enter and leave the property as a result of the two access points.



Section 24-113 of the prior subdivision regulations provides the criteria that must be satisfied for the Planning Board to grant a variation. Section 24-113(a) provides certain standards that must be satisfied, in addition to the five criteria that follow.

Section 24-113(a) reads:

- (a) **Where the Planning Board finds that extraordinary hardship or practical difficulties may result from strict compliance with this Subtitle and/or that the purposes of this Subtitle may be served to a greater extent by an alternative proposal, it may approve variations from these Subdivision Regulations so that substantial justice may be done and the public interest secured, provided that such variation shall not have the effect of nullifying the intent and purpose of this Subtitle and Section 9-206 of the Environment Article; and further provided that the Planning Board shall not approve variations unless it shall make findings based upon the evidence presented to it in each specific case that:**

(emphasis added).

Reorganizing Section 24-113(a), the Planning Board may approve a variation from the prior subdivision regulations so that substantial justice may be done and the public interest secured, if it finds:

- (i) that extraordinary hardship may result from strict compliance of the prior subdivision regulations; or
- (ii) that practical difficulties may result from strict compliance of the prior subdivision regulations; or
- (iii) that the purposes of the prior subdivision regulations may be served to the greater extent by an alternative proposal; and
- (iv) that approval of the variation request would not nullify the intent and purpose of the prior subdivision regulations;¹ and
- (v) the variation request satisfies the additional five criteria that follow in paragraphs (a)(1)–(a)(5).

¹ The variation request in this case would not nullify the intent and purpose Section 9-206 of the Environment Article of the Maryland Code, which is inapplicable to this application, as it governs on-site sewage disposal systems for residential subdivisions. This project is neither a residential subdivision, nor does it include an on-site sewage disposal system; the proposed building will be connected to public and water sewer facilities.

The Appellate Court of Maryland² has pointed out the disjunctive structure of Section 24-113(a) of the prior subdivision regulations and emphasized that a *variation* from the subdivision regulations does not have the same presumption of non-conformity that is associated with a *variance* from the zoning ordinance:

By conflating variances and variations, the appellant's argument is analytically flawed from the outset. He cites no law (and we know of none) that holds that what the law says of variances should also apply to variations: "[T]here is a presumption against variances;" "Very few cases have upheld the grant of a variance;" "Variances are granted sparingly only in rare cases."

Variations, however, do not suffer under such an anathema. Subdivision law is not so unforgiving. Isolated and limited departures from strict compliance are contemplated and expected, not simply because of "extraordinary hardship" but even because of "practical difficulties." The "particular hardship to the owner" is balanced against the possible harm done.

Colao v. Maryland-Nat'l Cap. Park & Plan. Comm'n, 167 Md. App. 194, 218 (2005).

1. Practical difficulties would result without the variation

In this case, practical difficulties would result if the Planning Board were to require the Applicant to strictly comply with Section 24-121(a)(3), prohibiting access onto Route 214, an arterial road. In the zoning context, the Supreme Court of Maryland³ explained that in determining whether "practical difficulties" exist, a court will evaluate three factors:

- (1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- (2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser

² At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of Maryland's second highest court from the Court of Special Appeals of Maryland to the Appellate Court of Maryland.

³ At the November 8, 2022, general election the voters of Maryland ratified a constitutional amendment changing the name of Maryland's highest court from the Court of Appeals of Maryland to the Supreme Court of Maryland.

relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

(3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Trinity Assembly of God of Baltimore City, Inc. v. People's Couns. for Baltimore Cnty., 407 Md. 53, 83–84 (2008) (citing *McLean v. Soley*, 270 Md. 208, 214–15 (1973)).

Although the subdivision phase in the entitlement process does not involve evaluating setbacks, frontage, height, bulk, or density, and the standard for subdivision variations are more forgiving than zoning variances, these factors nevertheless could be useful for the purposes of this analysis, to the extent they could be modified to the circumstances of this application. For example, the restriction preventing access to an arterial road would unreasonably prevent the applicant from using the property for a “vehicle parts or tire store without installation facilities,” which is a permitted use in the MUI zone and DDOZ, according to the use table contained in the *Approved 2010 Subregion 4 Master Plan*. Without the variation, the Applicant’s delivery trucks could not adequately enter and leave the site, resulting in what might require trucks to idle on Norair, near the existing homes, and require truck drivers to travel an unreasonable distance for deliveries from the idling trucks to the store. In addition, without access onto Route 214, all traffic coming to and from the site would access the property from Norair Avenue, which would increase volume on the sole access to the Randolph Village neighborhood. Thus, requiring strict compliance with Section 24-121(a)(3), which prohibits a second access to the site from Route 214, would place a restriction on the Applicant that is unnecessarily burdensome to its operation of a permitted use under the prior zoning ordinance.

For the same reasons, allowing the Applicant to have direct access to the subject property from Route 214 would do substantial justice to the Applicant, as well as to other property owners

in the district, particularly with respect to the adjoining properties along Central Avenue, which have similar transit-oriented and commercial zoning (or similar mixed-use zoning under the prior ordinance). Under circumstances similar to those presented in this application, it is likely these properties would be granted a variation for access onto Route 214. For example, the Planning Board granted a variation, in application number 4-22042, to allow two accesses onto Route 214 for a similar use across Norair Avenue from the subject property for an Advance Auto Parts store.

Finally, granting the variation to allow direct access onto Route 214 would allow the Planning Board to observe the spirit of the prior subdivision regulations, which were designed to guide development according to the applicable master plans and to protect public health. *See* Prior Subdivision Regulations, § 24-104. The *Subregion 4 Master Plan*, along with the General Plan, contemplate the properties extending along Route 214 as a mix of uses (when the Countywide Map Amendment was implemented, they were given transit-oriented and commercial zoning); if this area along Route 214 is going to continue to be developed with commercial and light industrial uses—uses that dominate this corridor—then the Planning Board would need to continue to approve direct access on Route 214 for many of these properties, should no alternative be available. Allowing access to the subject property from Route 214 provides a more direct access for patrons and drivers of delivery trucks, and would reduce the amount of commercial traffic that would otherwise be forced to use Norair Avenue, a residential road that is fronted on by single-family homes. Retail access from Route 214 to the subject property would operate in a similar fashion to the existing properties and uses located in the vicinity of the site on both sides of Route 214. In addition, with the implementation of the proposed truck access management plan, safe and adequate ingress and egress will be provided. Therefore, the Planning Board should grant the

variation because practical difficulties would result from requiring strict compliance of the prior subdivision regulations.

2. *The purposes of the prior subdivision regulations may be served to the greater extent by an alternative proposal.*

The purposes of the prior subdivision regulations would be served to the greater extent by an alternative proposal that would both allow access to the subject property on Norair Avenue and Route 214. Specifically, the purposes of the prior subdivision regulations are set forth in Section 24-104(a). Each will be addressed in turn.

(1) To protect and provide for the public health, safety, and general welfare.

As previously stated, allowing access to the subject property from Route 214 provides a more direct access for patrons and drivers of delivery trucks, and would reduce the amount of commercial traffic that would otherwise be forced to use Norair Avenue, a residential road that is fronted on by single-family homes. Retail access from Route 214 to the subject property would operate in a similar fashion to the existing properties and uses located in the vicinity of the site on both sides of Route 214.

(2) To guide development according to the General Plan, area master plans, and their amendments.

The subject property is located within the area governed by the *2010 Subregion 4 Master Plan*, along with the County's General Plan, *Plan Prince George's 2035*. Both envision the corridor along Route 214 as mixed-use, including commercial uses. Without a variation to allow direct access onto Route 214, many of the properties along that arterial road could not be developed with those uses, as demonstrated by the Planning Board's approval of an identical variation to allow direct access onto Route 214 for the Advance Auto Parts located on the property directly to the west.

(3) To facilitate public and private actions in order to provide adequate and efficient transportation, water and sewerage facilities, schools, parks, playgrounds, recreation, police facilities, fire and rescue facilities, and other public facilities.

As previously stated, allowing direct access onto Route 214 would provide adequate and efficient transportation, particularly with respect to connectivity and circulation of the site.

(4) To provide the most beneficial relationship between the subdivision of land and the circulation of traffic, having particular regard for the avoidance of congestion on the streets and highways and the pedestrian movements appropriate to the various uses of land and buildings, and to provide for the efficient and appropriate locations and widths of streets.

Allowing an additional access, which would be directly to Route 214, would prevent congestion on Norair Avenue and would reduce the number of delivery trucks using that primarily residential street. The access point will ensure adequate and safer circulation on the site, both for vehicles entering and leaving the property. In addition, the Applicant is including as part of this application a truck access management plan that would restrict the size of the AutoZone delivery trucks. The proposed improvements will also simplify the pedestrian movements along the frontage of Route 214, as they include the removal of one of the two existing driveway aprons and replace it with one reconfigured access into the site.

(5) To insure proper legal descriptions and monumenting of subdivided land and to help County officials in securing adequate records of land title.

This “purpose” is inapplicable to this variation request.

(6) To establish reasonable standards of design and to establish procedures for subdivision and resubdivision.

This “purpose” is inapplicable to this variation request. Nonetheless, granting the variation would allow the Applicant to implement a reasonable design of the site, ensuring all vehicles are able to safely circulate internally on the site.

(7) To ensure that public facilities will be available and will have sufficient capacity to serve the proposed subdivision.

Granting the variation would ensure adequate road access would be available to the subject property. Allowing the additional access would ensure reasonable circulation on the site and prevent congestion on Norair Avenue.

(8) To prevent the pollution of the environment; to provide for conceptual review by other agencies, when appropriate, of drainage, stormwater management, site stabilization, and sediment control; and to encourage the wise use and management of natural resources throughout the Regional District in order to preserve the integrity, stability, and beauty of the County, and the value of the land.

This “purpose” is inapplicable to the variation request. Granting a variation to allow access onto Route 214 would not increase pollution or have any meaningful impact to the environmental concerns mentioned in this “purpose” of the prior subdivision regulations.

(9) To provide for open space through the efficient design and layout of land, including the use of cluster development, while preserving the residential densities established in the Zoning Ordinance.

Granting a variation to allow direct access onto the arterial Route 214 would have no impact on any open space that the Applicant would provide as part of this application.

(10) To encourage creative residential subdivision design that accomplishes these purposes in a more efficient, attractive, and environmentally sensitive manner than would be otherwise accomplished, through the provisions of the optional residential design approach.

This project is not a residential subdivision; therefore, this “purpose” is inapplicable to this variation request.

(11) To protect historic resources listed on the Inventory of Historic Resources of the adopted and approved Historic Sites and Districts Plan.

The subject property does not contain any historic resources listed on the Inventory of Historic Resources. The historic Ridgeley Rosenwald School owned by M-NCPPC and located

across Route 214 would not be affected in any meaningful way by the additional access point, which would be installed on the other side of a median. The minimal traffic associated with the AutoZone would have no material impact on the programs held at the school.

(12) To protect archeological sites that are significant to understanding of the history of human settlement in Prince George's County.

There is no information available to the Applicant suggesting that granting a variation to allow access onto Route 214 would affect any archeological site.

B. Five Variation Criteria Set Forth in Section 24-113(a)(1)–(a)(5).

In addition to finding compliance with Section 24-113(a), the Planning Board cannot grant a variation request unless it finds that the additional five criteria that follow in paragraphs (a)(1)–(a)(5) are satisfied. Those criteria, which this variation request satisfies, are addressed in turn.

(1) The granting of the variation will not be detrimental to the public safety, health, or welfare, or injurious to other property.

As stated in similar criteria already addressed, allowing access to the subject property from Route 214 provides a more direct access for patrons and drivers of delivery trucks, and would reduce the amount of commercial traffic that would otherwise be forced to use Norair Avenue, a residential road that is fronted on by single-family homes. Retail access from Route 214 to the subject property would operate in a similar fashion to the existing properties and uses located in the vicinity of the site on both sides of Route 214. As a result of the limited frontage along Norair Avenue, accessing the site from westbound Route 214 by way of Norair Avenue would be very difficult, and would force unsafe U-turn movements and trucks into both lanes on Norair Avenue.

(2) The conditions on which the variation is based are unique to the property for which the variation is sought and are not applicable generally to other properties.

The subject property comprises three parcels totaling 35,828 square feet, approximately 0.822 acres, significantly smaller than the property across the street where an Advance Auto Parts store is planned for development that is approximately 1.14 acres in total land area. Unlike, that site, however, the Applicant is proposing an access on Norair Avenue, which should reduce the number of cars using the direct access, and the Applicant is only proposing one direct access to Route 214 instead of two, as was proposed as part of the Advanced Auto Parts subdivision. As a result of the configuration of the property, and to provide adequate circulation within the site, the two entrances are necessary. For example, the Advance Auto Parts' larger and more rectangular property allows circulation around the rear of the building. The existing utilities that run along the frontage of the subject site restrict improvements within that area and also truncate the property at the intersection of Route 214 and Norair. The L-shaped site also makes it difficult for the Applicant to provide required buffer setbacks and meet standards for parking, entrances, and other necessary improvements. Larger trucks existing the site via Norair would block a portion of the northbound lane on Norair Avenue, but providing the access on Route 214 would eliminate this conflict.

(3) The variation does not constitute a violation of any other applicable law, ordinance, or regulation.

The variation does not constitute a violation of any other applicable law, ordinance, or regulation. Were the Planning Board to grant the variation to the prior subdivision regulations, the State Highway Administration would also evaluate the access point and may provide additional requirements to ensure access to and from the site on Route 214 is safe and adequate. With the

implementation of the truck access management plan, safe and adequate ingress and egress will be provided.

- (4) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out.**

Because of the particular physical surroundings and shape of the property, denying a single direct access to Route 214 would result in a hardship to the Applicant. The three parcels that would be combined as part of this subdivision total less than an acre, providing limited ability for safe circulation with or without two access points. Furthermore, the SHA's right-of-way along Route 214, Norair Avenue, and at the intersection of those two streets significantly restricts the developable area on the corner of those two streets. The utility easements that run along the frontage of the subject property also restrict the Applicant's ability to utilize the property at the intersection of Route 214 and Norair. These existing easements limit the location of the building, stormwater facilities, and other improvements.

- (5) In the R-30, R-30C, R-18, R-18C, R-10A, R-10, and R-H Zones, where multifamily dwellings are proposed, the Planning Board may approve a variation if the applicant proposes and demonstrates that, in addition to the criteria in Section 24-113(a), above, the percentage of dwelling units accessible to the physically handicapped and aged will be increased above the minimum number of units required by Subtitle 4 of the Prince George's County Code.**

This criterion is inapplicable. The Property is not zoned R-30, R-30C, R-18, R-18C, R-10A, R-10, and R-H. Under the prior zoning ordinance, the subject property was zoned Mixed-Use Infill (M-U-I), and was in a Development District Overlay Zone (DDOZ) and the Military Installation Overlay (MIO).

III. CONCLUSION

For the foregoing reasons, the Planning Board should grant a variation from the requirements of Section 24-121(a)(3) to allow direct access to and from the site onto Route 214, an arterial road.

LERCH EARLY & BREWER

A handwritten signature in blue ink, appearing to read "Peter Z. Goldsmith", with a stylized, cursive script.

Peter Z. Goldsmith