



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

MCPB #
MCPB 05/21/2009

MEMORANDUM

DATE: May 8, 2009
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief *RK*
 Robert A. Kronenberg, Supervisor *RAK*
FROM: Molline Smith, Senior Planner *(MCS)*
 Development Review Division
 (301) 495-4573
Molline.Smith@montgomeryplanning.org



REVIEW TYPE: **Limited Site Plan Amendment in response to a site plan violation**
CASE #: 82003021C
PROJECT NAME: Middlebrook Industrial Park – Lot 1 & 2

REVIEW BASIS: Div. 59-D-2.6 of Montgomery County Zoning Ordinance for Minor Plan Amendments

ZONE: I-1
LOCATION: Located north of Amaranth Drive to the southwest of Interstate 270 – Middlebrook Road.
MASTER PLAN: Germantown Master Plan 1989
APPLICANT: Kensington Realty, Inc.
FILING DATE: April 14, 2009
HEARING DATE: May 21, 2009

EXECUTIVE SUMMARY: This amendment reflects the “as-built” conditions of improvements done under site plan 82003021B, and is the result of a violation and citation issued by Maryland National Park and Planning Commission (MNCPPC). The requested changes include 1) modifications to the building restriction line; 2) modifications to the entry; 3) revisions to the landscape plans; and 4) the installation of two (20-foot tall) solar panels.

BACKGROUND

Preliminary Plan

The Preliminary Plan for Middlebrook Industrial Park Lots 1 and 2 (11981122) was approved June 9, 1983 for two lots on 2.93 acres of land.

Site Plan

The Site Plan (820030210) for Middlebrook Industrial Park was approved May 1, 2003 (opinion dated May 23, 2003). The site plan was approved for an 1,890 square foot trailer for auto sales and storage for phase I; an 18,232 square foot building for auto sales and service and office for phase II; and 55,936 square feet of commercial office in phase III.

The Consent Amendment (82003021A) was presented to the Planning Board on January 4, 2007 (opinion dated March 13, 2007) for the approval of a new auto sales, service and office building (7,645 square feet); revisions to the driveways, entrances and lead walk locations; revisions to the outdoor display areas; and revisions to the landscape plans.

The Administrative Amendment (82003021B) was approved on January 8, 2009 (Memorandum dated December 18, 2008) for minor revisions to the proposed grading; parking and driveways; the dumpster enclosure; the vehicular display area; the electrical transformer; and the lighting.

PUBLIC NOTICE AND COMMENT

A notice regarding the subject site plan amendment was sent to all parties of record by the applicant on April 15, 2009. Staff has not received any comments from the parties of record for the proposed application.

STAFF RECOMMENDATION FOR SITE PLAN AMENDMENT:

Staff recommends **Approval** of the Site Plan Amendment (82003021C). The terms and conditions of all applicable prior regulatory approvals and agreements, including the approved Site Plan No. 820030210, remain in full force and effect, except with regard to the modifications listed below.

- 1) Modify the building restriction line;
- 2) Install two (20 feet tall) solar panels;
- 3) Revise the landscape plans; and
- 4) Modify the entry

Analysis of the Limited Amendment to the Site Plan

The amendment proposes to reduce the building setback line from 21-feet to 20-feet along Amaranth Drive, as a result of a site plan violation. The Applicant and DPS informed MNCPPC Staff of the discrepancy with the setback the same day the wall check was submitted to DPS, which indicated an encroachment of less than 1-foot. The underlying zone only requires a 10-foot setback; however during the site plan review 21-feet was specified and later approved by the board. The proposed building fronts onto both Middlebrook Road and the interior parking facility. A vehicle display area (111-foot concrete pad) also fronts onto Middlebrook Road. The western portion of the site along Amaranth Drive is screened with street trees, ornamental grasses and shrubs. An existing 10' PUE (within the property boundary) and 4-foot sidewalk (outside of the property boundary) are also located along on this side of the proposed building.

This modification does not affect the current conditions of the site plan on the western side of the proposed building.

In addition the Applicant has also proposed minor modifications to the front entry, the new installation of two solar panels, and revisions to the proposed landscape plan. The solar panels will enhance the environmental features of this LEED Gold certified project. The solar panels are 23-feet tall by 10-feet wide. It is the Applicant's intent to permanently place these panels in a safe and efficient location on-site. The minor setback modification does not affect the Planning Board's original findings.

Other than the revisions to the side setback, the proposed amendment is consistent with the provisions of Section 59-D-2.6 of the Montgomery County Zoning Ordinance for Minor Plan Amendments. The amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board for the originally approved site plan.

ATTACHMENTS

- A. Letter from the Applicant dated March 13, 2009
- B. Site Vicinity and Description

ATTACHMENT A

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

DEVELOPMENT REVIEW DIVISION

March 11, 2009

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Robert Kronenberg, Site Plan Supervisor
Development Review Division
The Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Proposed Plan of Compliance - Site Plan No. 8- 2003021B Middlebrook Industrial Park – Citation DR0000413

Dear Mr. Kronenberg:

As you are aware, we represent JJF Management Services, Inc and Fitzgerald Auto Malls (“Fitzgerald”) in connection with the above referenced matter. We understand that the Development Review Division of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) is in receipt of our clients’ payment of the five Hundred Dollars (\$500.00) penalty imposed by the above referenced citation.

Please be advised that our clients hereby waive their right to a hearing before the Planning Board in connection with the citation and pursuant to Article 59-D-3 of the Montgomery County Zoning Ordinance, submit the following Compliance Program to permit Fitzgerald to modify the Certified Site Plan.

Background

The structure under construction is for an automobile sales use that requires site plan approval in the applicable I-1 zone. The Certified Site Plan depicts a twenty-one (21) foot building setback from Amaranth Drive. The wall-check verified setback of the building wall that faces Amaranth Drive is twenty and two tenths feet. The setback discrepancy, while minor, results in the building being out of compliance with the Certified Site Plan.

Amaranth Drive is an industrial roadway within an eighty (80) foot right of way. The minimum setback required in the I-1 zone for a building adjacent to a roadway with an eighty (80) foot right of way is ten (10) feet.

Compliance Proposal

Fitzgerald proposes to submit an application for a minor plan amendment (Development Manual §8.F.(a)) to the Certified Site Plan for Planning Board consideration. The minor plan amendment will propose the establishment of a twenty (20) foot minimum building setback from Amaranth Drive. The minor plan amendment application will be submitted to the Intake Section of the Development Review Division within seven days following approval of the proposed compliance program. The amended Certified Site Plan will ratify all prior conditions of Site Plan approval except for the Amaranth Drive setback for which a revision will be proposed.

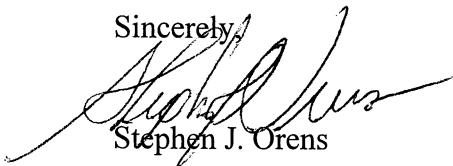
Based upon our review of both the Development Review Division's staff report and the minutes of the Development Review Committee meeting at which this Site Plan was originally considered, we submit that the establishment of a twenty-one foot setback at this location was not a matter that was fundamental to the Planning Board's determination to approve the Site Plan. Based on our observations of the as-built condition, the surrounding land uses and the industrial character of adjacent properties, we submit that the proposed minor plan amendment reducing the Site Plan required setback from twenty-one feet to twenty feet will not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in the initial Site Plan review proceeding.

Accordingly, we request that our proposed Compliance Program be approved without a hearing and that permission be granted to proceed with the submission of the minor plan amendment.

Addition of Solar Panels

In addition to implementing the proposed Compliance Program, the Minor Plan Amendment application will request approval of the location of two solar panels adjacent to Amaranth Drive, to further enhance the environmental features of this LEED Gold certified project that will be powered entirely by wind and solar generated power sources. As with the proposed setback adjustment, the proposed location of the two solar panels will not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in the initial Site Plan review proceeding.

Sincerely,



Stephen J. Orens

cc: Rose Krasnow, Chief Development Review Division, M-NCPPC
Christina Sorrento, Esquire, M-NCPPC
Rob Smith, JJF Management Services, Inc
Brian Donnelly, Macris Hendricks & Glasscock
Rebecca D. Walker, Esquire

ATTACHMENT B

Site Description and Vicinity

The site (2.93 acres, in the I-1 zone) is located at the intersection of Amaranth Drive and Middlebrook Road, approximately ½ mile west of the Interstate 270-Middlebrook overpass in Germantown MD. The Gunner’s Lake Village (to the south of Middlebrook Road) includes the residential neighborhoods of Middlebrook Commons and Gunner’s View. Germantown Square Shopping Center is located west of Gunner’s Lake. The area immediately across Amaranth Drive (to the north) is designated as the Middlebrook Tech Park. The property to the northwest of the Tech Park (Middlebrook Business Park) is controlled by the Department of Energy. The adjacent property to the east of the site is currently under construction to expand the existing Honda Dealership Showroom and parking facility (820020130). Their main access is directly onto Amaranth Drive.

The site slopes approximately 18-feet from the northwest corner of Amaranth Drive towards Middlebrook Road. With one (right-in, right-out) access point from Middlebrook Road; the nearest intersection is at Warning Station Road. The existing building is currently setback of Middlebrook Road approximately 104-feet (to the northeast), and 35-feet from Amaranth Drive (to the east). An SHA Dedication easement, a 10-foot building restriction line, and a 75-foot future transit easement prohibit any future construction (within these areas) along Middlebrook Road. This future transit easement continues in to Tech Park (Middlebrook Business Park, lot 3); however the total width is increased. Existing bike paths and sidewalks (along Middlebrook Road and Amaranth Drive) assist in providing a safe and efficient pedestrian connection to the adjacent properties.

