



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

MCPB

Item #10

Date: July 9, 2009

**DATE:** June 29, 2009

**TO:** Montgomery County Board of Appeals  
**VIA:** Robert Kronenberg, Acting Chief, Development Review Division *RAK*  
Ralph Wilson, Zoning Supervisor, Development Review Division *RW*  
**FROM:** Elsabett Tesfaye, Planner Coordinator (301) 495-1301 *ET*  
**SUBJECT:** Special Exception S-2351-A Mid-Atlantic Petroleum Properties, LLC-Request for modification to approved special exception for a Gas Station in the I-1 Zone

**FILING DATE:** April 8, 2003

**PLANNING BOARD HEARING:** July 9, 2009

**PUBLIC HEARING:** July 20, 2009

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**Staff Recommendations: APPROVAL with conditions.**

The current application proposes modifications to the approved special exception S-2351-A and validation of changes to site elements that resulted in violations. Special Exception A-2351-A was first approved by the Board of Appeals on November 2, 1998 for operation of a gasoline service station with six pump islands, each with two fueling positions, a canopy, a convenience food and beverage store, and a small accessory carwash. In 2003 the Applicant was cited for violating terms of the special exception grant. Some of the violations were subsequently corrected. The proposed modification is intended to correct the remaining violations by modifying the special exception to show the as-built conditions.

The Code provides that the review of a special exception modification must be limited to discussions of those aspects of the special exception that are directly related to the proposed modification. The Board may require the underlying special exception to be brought into compliance with Code requirements only if: (1) the proposed modification expands the total floor area of all structures or buildings by more than 25 percent or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantially adverse effects on the surrounding neighborhood could reasonable be excepted. As discussed later in the report, the proposed modifications would not change the nature or character of the underlying special exception and are not extensive as to create substantial adverse effects on the surrounding neighborhood.

The subject gas station has been operating on the property for ten years. The property is well maintained, and clean. With the recommended conditions, the proposed modification would upgrade the service station by bringing it into compliance with the zoning code and the Germantown Streetscape Concept Plan. The modification will also substantially minimize potential glare impact of the existing canopy

lighting on the adjacent properties and Middlebrook Road.

Staff recommends approval of Special Exception Modification S-2351-A with the following conditions:

1. All terms and conditions of the previously approved special exception remain in full force and effect, except as modified by approval of this modification.
2. The gasoline station may remain open 24 hours per day, 7 days a week, and the convenience store will operate with the same hours, but only be open for public access to the interior between 6:00 a.m. and midnight. The carwash hours shall be 8:00 a.m. to 8:00 p.m. daily, 7 days a week.
3. The landscape plan must be revised to incorporate the following improvements to the landscape strip adjacent to the public right-of-way for review and comment by Planning Board staff and transmitted for approval by the Board of Appeals:
  - a. Install 2 new little Leaf Lindens, 2<sup>1/2</sup>– 3” caliper to match the existing tree species within the public right-of-way, where horizontal spaces permit, approximately 45 feet on center to either side of the existing bike path.
  - b. Supplement the existing Juniper hedge with 2-foot-high, evergreen shrubs—install at 3’ or they should be able to grow to 3’.
  - c. Provide 2 additional 2<sup>1/2</sup>– 3” caliper Zelkova shade trees, increasing the proposed 3 Zelkovas to 5 Zelkovas.
4. The gate for the dumpster enclosure must be repaired and painted with green to blend with the evergreen trees around it.
5. The height of the canopy over the pump islands must not exceed 17 feet 10 inches on the west end and 21 feet and 8 inches on the east end as shown on the plan.
6. The canopy lighting must be modified by reducing the number of bulbs, installing deflectors, or reducing the wattage to achieve an average of less than 20 foot candles to ensure compatibility with adjacent uses and lower direct glare as seen from Middlebrook Road. All lamps must be recessed within the ceiling of the canopy.



# S-2351-A



SITE

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Key Map



Research & Technology Center



1 inch = 175 feet  
1 : 2100

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### ATTACHMENTS:

- i. Plans**
- ii. Referral Comments**
  - 1. Site Plan Review**
  - 2. Community Base Planning**
  - 3. Design Division**
  - 4. Transportation Planning**
  - 5. Environmental Planning**
  - 6. Historic Preservation**



## I. APPLICATION SUMMARY

<b>Applicant</b>	<b>Montgomery General Hospital</b>
<b>Location</b>	North side of Middlebrook Road approximately west of relocated Warning Station Road in Germantown
<b>Site Size:</b>	
• <b>Total site area</b>	1.94 ac
• <b>Special Exception Site</b>	1.45
<b>Current Zone</b>	I-1
<b>Master Plan</b>	1989 Germantown Master Plan
<b>Proposed project and Use</b>	Modification of approved plan for a Gasoline Station
<b>Floor Area</b>	Convenience store 2,773 sq. ft Car wash 1,301 Sq ft
<b>Onsite parking spaces (special exception use)</b>	15 spaces
<b>Office/retail building (by right use)</b>	35 Spaces

## II. CASE HISTORY

The Montgomery County Board of Appeals granted Special Exception S-2351 on November 2, 1998 to allow a gasoline station with six pump islands, each with two fueling positions, a canopy, a convenience food and beverage store, and a small accessory carwash.

In January of 2003, the Montgomery County Department of Permitting Services (DPS) identified a number of violations and directed that the Applicant to correct the violations.

In April of 2003 the Applicant filed a modification application to address some of the violations and to validate certain alterations made to the original approved plan. The 2003 modification plan included a parking area located on the service station grounds to accommodate parking for the adjacent office building. On September 18, 2003, the Planning Board recommended denial based upon the staff recommendation and oral and written testimony. The Planning Board emphasized pedestrian safety and parking issues as the principal justification for the denial recommendation.

The case was later postponed indefinitely by the Hearing Examiner until legal disputes between Brook Venture, LLC and Mid Atlantic Petroleum Properties, LLC are resolved by the Courts. The Court case involved the issue of whether Mid-Atlantic Petroleum Properties, LLC could park vehicles using its property on the adjacent property of Brook Venture, LLC in order to satisfy Montgomery County Code parking requirements. On January 9, 2008, the Court of Special Appeals determined that Mid Atlantic Properties did not have the right to use Brook Venture's property to satisfy Montgomery County Parking requirements. All parking areas not directly related to the service station have been deleted from the current plan.

## III. STATEMENT OF THE CASE

The Applicant proposes to correct the violations cited by the Department of Permitting services in January of 2003 by modifying the 1998 approved plan to show:

- a. The addition of an ATM machine and small canopy on the west side of the front wall of the convenience store building;
- b. The addition of a concrete paver patio, fountain, and exit door;
- c. An expansion in the size of the trash enclosure from 10'x 15' to 9.9' x 19.2' enlargement of the loading area;
- d. Different landscaping features;
- e. An increase in the canopy height from the approved 16' 6" feet to 17'10"- 21' ft 8", and
- f. interior layout modifications for the convenience store.

Before filing the modification request, the Applicant took corrective actions to return the interior floor layout to the approved layout, restriped the parking area to show 15 spaces rather than 13 spaces, and removed the tables and seating from the paved patio area. The Applicant is not proposing to change the hours of operation. The station will continue to operate 24 hours a day, 7 days a week, and the convenience store will be open for public access to the interior only between 6:00 a.m. and midnight. The carwash hours will continue to operate from 8:00 a.m. to 8:00 p.m. daily, 7 days a week. Employees will work in three shifts. Two employees plus a manager will work during each of the two shifts between 7:00 a.m. and 11:00 p.m.; one employee will work the late shift, from 11:00 p.m. to 7:00 a.m.

The revised special exception plan shows a minor adjustment to the northwestern special exception boundary line. A small vacant triangular area that was within the special exception boundaries at the time of the initial special exception approval is now shown on the revised plan as being outside of the special exception boundaries. This measure was taken to establish consistency with the approved acreage/square footage shown on the approved plan. Station operations are not affected by the change in the special exception boundary.

#### IV. PROPERTY DESCRIPTION



The property is located on the north side of Middlebrook Road, west of relocated Warning Station Road in Germantown. The special exception site consists of 1.45 acres of land and is part of a 1.94 acre property. The remainder of the property, which consists of 0.49 acres of land is developed with a two-story 8,603 square-foot office building constructed in 2002. The special exception site is improved as a gasoline station with six pump islands, each with two fueling positions, a canopy, convenience store, and accessory carwash. The property is accessed from Middlebrook Road via two driveways, one of

which is a shared driveway access with the adjoining property to the west. The subject special exception site and the portion of the larger property that is not part of the special exception use is zoned I-1.

#### V. NEIGHBORHOOD DESCRIPTION

The surrounding neighborhood is generally defined by the following boundaries:



North:	Germantown Road
East and Southeast:	Interstate 270 and Warring Station Road
South:/Southwest:	Stony Bottom Road and Cross Ridge Drive
West/Northwest	Crystal Road Drive and Germantown Road



The neighborhood is characterized by a mixture of residential, industrial and institutional uses. The adjacent Middlebrook Industrial Park is zoned I-1 and located along the north side of Middlebrook Road west of I-270 and is developed with several light industrial and office uses. The northern most portion of the neighborhood consists of approximately 97 acres of R-200 zoned property owned by the U.S. Department of Energy (DOE). Adjoining the subject site to the south is a small office building, two mid-rise buildings with paved parking lots and a storage facility, in the I-1 zone. Farther west are townhouses in the PD zone. The area south of Middlebrook Road is developed with apartment and townhouses in the R-30 and R-60 zones, respectively.

## VI. PLANNING AND ZONING HISTORY

The property was placed in the R-R zone sometime before 1974. The 1974 Sectional Map Amendment for Germantown (F-939) rezoned the property from R-R to the I-1 zone. The 1984 Sectional Amendment (G-404) and the 1990 Germantown Sectional Map Amendment (G-652) retained the property in the I-1 zone.

## VII. MASTER PLAN

The subject site is located within the Employment Corridor 5 of the 1989 Germantown Master Plan. A draft revision to the 1989 Germantown Master Plan is now under review by the County Council. The draft plan identifies the area as a gateway to Germantown and contains land use, design, and environmental recommendations to improve the quality of development in the section of Germantown where the service station is located. The new proposals are not yet in any master plan adopted by the Commission and not applicable for review of this case.

The Community Based Planning, based on its assessment of the 1989 Master Plan, adjacent residential area, 1998 approved special exception, and violations cited in 2003, recommends that the application be modified to: (1) increase landscaping, (2) decrease lighting through the property, and (3) remove the landscape outdoor seating area and lighted ATM machine. The Community Based Planning believes that modification of the application is necessary to ensure consistency with the master plan and compatibility with the confronting residential use. Development Review Division is recommending conditions of approval that address both

landscaping and lighting issues, however, does not recommend removal of the outdoor seating area ATM machine or wall mounted fixtures. The proposed replacement of the existing light with recessed fixtures, addresses, to some extent, the landscape and lighting concerns of the Community Based Planning. The existing brick patio is a site amenity and does not necessarily alter the intent of the underlying special exception. The Community Based Planning's full analysis of the application is attached.

### VIII. COMMUNITY CONCERNS

At the time of this writing, staff has not received any comments from the community either in support or opposition to the subject proposal.

### IX. TRANSPORTATION

The proposal satisfies the transportation related requirements of the Local Area Transportation Review Test (LATR) and Policy Area Mobility Review (PAMR) Test. The Transportation Planning staff offers the following comments:

Transportation Planning staff has reviewed the proposed amendment, which includes minor modifications to landscaping, patio, installation of an ATM, and parking lot. The proposed modification under the subject special exception application would not have an adverse effect on the nearby road system. The existing vehicular access points and pedestrian circulation would not be affected by the proposed modification and the site would not generate any new vehicular trips by granting the amendment to the subject special exception application. Therefore, the subject special exception application is not subject to the Local Area Transportation Review (LATR) or the Policy Area Mobility Review (PAMR).

### X. ENVIRONMENT

There are no environmental related issues associated with the proposed modifications. The Environmental Planning staff has found that the proposed modification to the approved special exception plan has no environmental impact and substantially conforms to Chapter 22A of the County Code under the approved forest conservation plan.

### XI. GENERAL DEVELOPMENT STANDARDS (§ 59-G-1.23)

- a. **Development Standards-59-G-1.23 (a): Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.**

The following table summarizes the relevant development standards for the I-1 Zone that are applicable to the proposed special exception request:

Development Standard (I-1 Zone)	Required (current)	Proposed
Net lot area		
Special exception area	1.45acres (63,218 SF)	1.45 acres
Remainder of Parcel	0.49 (21,488 SF)	0.49
Maximum Building Height: 59-C-5.31	42 ft (3 stories)	16.3ft (convenient fo



		and beverage store)
<b>Coverage Limitations (Percent of gross tract area): 59-C-5.32</b>		
<ul style="list-style-type: none"> <li>• <b>Minimum Green area:</b> <ul style="list-style-type: none"> <li>○ special exception</li> <li>○ remainder of parcel</li> <li>○ Total of entire tract</li> </ul> </li> <li>• <b>Maximum off-street Parking</b></li> </ul>	10%	53.5% (33,802 sf) 32.8% (7,077 sf) 48.2% (40,880 sf)
<b>Minimum Building Setback: 59-C-5.33</b>		
<ul style="list-style-type: none"> <li>• <b>From Street</b></li> <li>• <b>From abutting residential zone</b> <ul style="list-style-type: none"> <li>• <b>Rear</b></li> <li>• <b>side</b></li> </ul> </li> </ul>	10 ft 10 ft 10 ft	119ft 30 ft 213

- b. **Parking Requirements—59-G-1.23 (b): Special exceptions are subject to all relevant requirements of Article 59-E. Moreover, Section 59-G-2.31 (4) specifies the following:**

**Section 59-E-3.7—Parking requirements**

**Automobile filling station:** Two parking spaces for each car wash bay, grease bay or similar service area, and one parking space for each employee

**General Retail 5 parking space:** for each 1,000 gross leasable square feet.

The site plan provides a total of 15 parking spaces, including two van accessible handicap spaces for the exclusive use of for the subject special exception use. The existing office building that is located outside of the special exception boundaries is served by a total of 35 parking spaces including 19 interior spaces located in the lower level of the building.

The Applicant site plan provides the following parking schedule:

<u>Parking Requirements</u>	<u>Required</u>	<u>Proposed</u>
Special Exception Use		
Sales: 1,703 sf X 5 sp/ 1,000 sf	9 sp	
Car wash 2 sp/1	<u>2 sp</u>	
Total spaces	11	15
Office Building not included in the special exception area:		
Pizza Cary out: 1,080.46 sf X 5 sp/ 1,000 sf	6	
Unrented area (1 floor office space)		
1, 68789 sf X 3sp/1000 sf	6	
Map office: 4,516.66 sf X 3.0/1,000 sf	14	
<b>Unrented area (2<sup>nd</sup> floor):</b>		
<b>2,747.97 sf X 3.0 sp/1000 s.f</b>	<u>9</u>	
Total spaces	35	35

The proposal satisfies the parking requirements.

- **Landscape strip area adjacent to a street right-of-way (§59-E-2.71)**

**Parking facilities located adjacent to a street right-of-way shall provide a landscaping strip at least 10 feet in width. This area shall be planted with either shade or ornamental trees. A minimum of one tree for every 40 feet of lot frontage shall be provided as well as an evergreen hedge (at least 3 feet in height), a wall or fence, or other methods to reduce the visual impact of the parking facility.**

Upon reviewing the revised landscape plan the Design Division staff (See attached Memorandum from Karen Kumm, dated June 24, 2009) has indicated that the proposed modification does not satisfy the zoning requirement because it relies on low ground covers instead of providing a 3 foot evergreen hedge. The proposed hedge is lower than the required 3 foot hedge and will not screen, now or in the future, the views from the road. The 3 proposed along Middlebrook Drive will help reduce the visual impact of the gas station, but do not meet the minimum requirements for a tree every 40 feet. Staff recommends 2 additional trees along with the 3 foot hedge to satisfy the planting requirements

The Design Division staff has further indicated that the 1994 approved Germantown streetscape plan that calls for a single row of deciduous shade trees, 2 ½ “ in caliper to be planted 45’ on center along the curb. The proposed plans show only two existing street trees along the curbside. There are additional ornamental cherries planted behind the existing bike-path. The Design Division staff recommends that the Applicant should plant a minimum of 2 additional street trees. The trees should match the existing planted species, *tilia cordata* “greenspire”.

The Design Division staff recommends the following conditions for the landscape strip adjacent to the public right-of-way:

1. Provide 2 new deciduous shade trees behind the street curb matching the existing species, Little Leaf Lindens to be planted in the right-of-way where horizontal spaces permits, approximately 45 feet on center to either side of the existing bike path. The street tree planting will conform to the 1994 Germantown Streetscape Plan.
2. Eliminate the proposed low growing ‘Greg Owl’ juniper that does not meet the 3 foot landscape hedge requirement and provide a 3 foot high evergreen hedge.
3. Provide 2 additional Zelkova shade trees, increasing the proposed 3 Zelkovas to 5 Zelkovas to meet the landscape requirements for on tree for every 40 feet of frontage.

Staff generally agrees with the conditions recommended by the Design Division However, the elimination of the existing plant that existed on the property for several years does not appear to be practical and recommends supplemental plant material to be installed without necessitating the removal of the existing vegetation. However, if the Applicant wishes to remove the existing plant materials, staff has no objections.



- c. **Forest Conservation-59-G-23 (d):** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

The Environmental Planning staff determined that the amendment to the approved special exception has no environmental impact and substantially conforms to the approved forest conservation plan and Chapter 22A of the County Code.

- d. **Signs—59-G-23(f):** The display of a sign must comply with Article 59-F.

No new signs are proposed with this application except the identification sign over the ATM machine's canopy, which is one of the violations identified by DPS. All signs placed on the property must meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area and Section 59-F-4.1 (e) regarding illumination.

- e. **Lighting in residential zones —59-G-23(h):** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

- (1) **Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.**
- (2) **Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.**



The Applicant proposes to modify the approved lighting for the canopy by increasing the number of light fixtures from 7 to 36. Photometric studies were submitted with the application to show that the proposed modification satisfies the requirement for lighting in industrial zones. As indicated in the Site Plan Review staff comments of June 9, 2009, the number of lights may seem excessive in comparison to what was approved in 1998, but the type of fixtures and the wattage proposed allow the area to be safely lit with a focus for illumination on

the ground plane below the canopy and reduced off-site spill-over. The proposed recessed fixture also ensures that the lighting will be directed only towards the ground plane. Site Plan Review staff has recommended that the canopy lighting be further modified by reducing the number of bulbs, and installing deflectors, or reducing the wattage to achieve an average of less than 20 foot candles to ensure compatibility with adjacent uses and lower direct glare as seen from Middlebrook Road. All lamps should be recessed under the canopy.





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ad are also a significant concern given the direct views down on the gas station. The Design Division staff has recommended that the foot candles under the canopy be lowered to condition regarding the foot candles for the canopy light fixtures "to achieve IESNA standards of 5 to 10 foot candles in order to be compatible with adjacent residences and lower direct glare as seen from Middlebrook Road. Staff has added condition of approval that deals in part with this concern.

The Design Division staff (see memorandum dated June 24, 2009) voiced concerns regarding the lighting levels of the proposed canopy lights fixtures. Design Division staff stated that the lighting levels are critical due to the direct view that a driver has of the canopy lighting from Middlebrook Road as the result of the lower street grades. Views from adjacent residential community across from Middlebrook



Both the Design Division staff and the Site Plan staff analysis of the proposed lighting plan brings out the importance of maintaining the canopy light at reasonable levels so that the glaring impact on the immediate area would be kept at a minimal while adequate lighting is being provided for customers of the gas station, the convenience store, and the carwash. Given the types of light fixtures proposed and looking into other approved lighting plans for gasoline station canopy lighting, average footcandles below 20 footcandles would be both compatible with the

residential area and will provide adequate and safe lighting for the customers of the establishment. It should be noted that the closest residential dwellings are located across a six-lane divided highway, Middlebrook Road, with their rear side towards the road and sitting at the top of approximately 25 foot-high escarpment. The rear yard of these dwellings also contain flood lights.

The Design Division staff has pointed out inconsistencies with the two pages (A3.0, and A3.1) of the photometric studies for the proposed lighting. Staff has asked the Applicant to provide clarification on the inconsistencies between the two plans. Staff's review of the photometric studies is based on the information provided in Sheet A3.1 which is a more comprehensive of the two since it covers the entire special exception site and also provides more information.

## **XII. STANDARD FOR EVALUATION (§59-G-1.2.1)**

**A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.**

Seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, lighting, noise, traffic, and the environment. In this case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an automobile filling station use.

As established in previous cases, the inherent characteristics of an automobile filling station include the following:

- Fuel pumps
- A structure providing storage and shelter for employees;
- Traffic generated by customers, employees, and fuel delivery trucks
- Potential for queuing vehicles on site
- Noise associated with the use;
- Signs advertising gas product and prices;
- a significant amount of external lighting needed for safety; and
- longer hours of operation than the average business establishment
- environmental impacts that may include fumes from idling vehicles and potential spillage of automobile fluids; and
- underground fuel storage tanks

Based on the definition of “Automobile Filing Station” in the Zoning Ordinance (Section 59A-A-2.1) and determination of the hearing examiner in previous cases, staff considers both the convenient store and the car wash associated with the subject gas station to be non-inherent characteristics of a gas station. A convenient food and beverage store have become familiar features of a modern day gas station, as have ATM machines. But, the definition of Automobile filing station contained in the current Zoning Ordinance does not include convenient food and beverage stores as typical of a gas station. Relative to the subject application, the convenient store has been operating on the subject site for the past 10 years with no negative impact on the adjoining properties and surrounding neighborhood and ATM machines have become typical accessories to modern gasoline stations and provide customers convenient access to their banks. The proposed modifications do not change the character of the underlying special exception and do not adversely affect the surrounding area.



The lighting plan adequately and efficiently covers the main vehicular access to the site, as well as the parking and the driveway access to the carwash, in order to create a safe vehicular and pedestrian environment. The Applicant is proposing to replace the current canopy light fixtures. The proposed modified canopy lighting will allow safe lighting with lower wattage bulbs that focus illumination on the ground plane below the canopy more accurately and with less spill-over. To further minimize the glaring effects, staff recommends that the canopy lighting of an average of less than 20 foot candles

The property is also well landscaped. The proposed modification to the landscaping plan is aesthetically appealing and functional. Planting consisting of shade trees, shrub, and ornamental trees has been provided along the street frontage, around the patio, along the asphalt paved



driveway to the carwash and the rear portion of the property. Staff recommends additional planting along the properties frontage on Middlebrook Road to meet the landscape requirements of § 59-E-2.71 and the 1994 Germantown Streetscape Concept Plan. Staff also recommends that the gate to the dumpster enclosure be repaired and painted with green paint so it would blend with the landscaping around it.



Given the prevailing characteristics of the development and uses surrounding the site, it is not anticipated that the use would cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity over and above that is

typical of the gasoline station use. Adequate parking spaces are provided to meet the special exception use. The proposed modification would not generate new vehicular trips and therefore is



not subject to the Local Area Transportation Review (LATR) or the Policy Area Mobility Review (PAMR). With the recommended conditions of approval of the special exception, the inherent and non-inherent impacts associated with this application are not sufficient to warrant a denial of the special exception petition.

### **XIII. GENERAL CONDITIONS (§59-G-1.21)**

**(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:**

**(1) Is a permissible special exception in the Zone.**

The site of the proposed project is located in the I-1 zone, which permits the proposed special exception.

**(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.**

The proposal is in compliance with the special exception requirements of Section 59-G-2.06 and Section 59-G-1-21(a) (2) of the Zoning Ordinance.

**(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.**

The subject site is located within the Employment Corridor 5 of the 1989 Germantown Master Plan. A draft revision to the 1989 Germantown Master Plan is now under review by the County Council. The new proposals are not yet in any master plan adopted by the Commission and not applicable for review of this case.



As noted, the Community Based Planning Division recommends that the application be modified to :(1) increase landscaping, (2) decrease lighting through the property, and (3) remove the landscape outdoor seating area and lighted ATM machine. The Community Based Planning Division believes that modification of the application is necessary to ensure consistency with the master plan and compatibility with the confronting residential use. Development Review Division is requiring conditions of approval that address both landscaping and lighting issues, when coupled with the proposed replacement of the existing light with recessed fixtures, would address, to some extent, the landscape and lighting concerns of the Community Based Planning Division. The existing brick patio is a site amenity and requiring its removal is questionable.

- (4) **Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.**

With the recommended conditions, the proposed modification will be in harmony with the general character of the neighborhood and not adversely affect surrounding properties or the general neighborhood. The gas station, along with most of the requested modifications has been at the same location for ten years. Although the modifications were implemented in a manner that is inconsistent with the approved plans and the Applicant has been cited for violation of the terms of the previously approved plans, there was no notable negative impact on the immediate neighborhood resulted from the operation of the gasoline station with in the past decade.

- (5) **Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**

With the recommended conditions, the use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. Adequate access, circulation, and parking is sufficiently provided. The surrounding properties are all developed and the nearest residential uses are safely distanced from the subject use. With the exception of the addition of an ATM machine that is built into the front wall of the building and an exit door leading to the patio on the east side of the building, no external modification or expansion is proposed for the existing convenient food and beverage building. Other modifications to the building are limited to its interior. Upon reviewing the Applicant's revised and amended special exception, landscaping and lighting plans for design compatibility Site Plan Review staff has offered the following comments:

The ceiling height (from grade to the underside of the structure) of the canopy over the gas pumps was originally approved at 16 feet, 6 inches.



The as-built height ranges from 17 feet, 10 inches at the west end to 21 feet, 8 inches at the east end. This range is due to the 2½ percent slope across the site, which is close to the minimum necessary to adequately drain rain water to the stormwater facility on the east side of the site. Obviously, if the required ceiling height had been kept to a maximum of 16 feet, 6 inches, the slope would have created a situation where the minimum ceiling height was 12 feet, 6 inches, which is below the typical average special exception gas station ceiling height of 15 feet, 6 inches. Ideally, the minimum height on the west end of the canopy should have been set at 16 feet, 6 inches, allowing for greater heights to accommodate the slope for drainage towards the east end. But, given the environmental impacts of tearing down the existing structure to lower the height by 1 foot, 4 inches, we do not recommend making such a change unless there are stronger aggravating factors such as adverse impacts on neighbors.

Most important to our analysis is the context and impact that the canopy has on any residential areas or streets. The closest residences are across the 150-foot Middlebrook Road right-of-way; and the floor elevation of these units is at least 25 feet higher than the average driveway elevation under the canopy. From this distance and elevation, the higher canopy height is visually in-discernable. Because this site is approved for 24/7 use, however, it is important to look at the impact of lighting.

The Applicant is requesting to modify their lighting plan from the approved seven fixtures to 36 fixtures. At first, this may sound like an extreme addition of lighting, but the type of fixtures and the wattage allows the area to be safely lit with lower wattage bulbs that focus illumination on the ground plane below the canopy more accurately and with less spill-over. Larger, brighter bulbs tend to have less directed illumination. The proposed recessed fixture also ensures that the lighting will not shine upwards, but be directed only towards the ground plane. We would only recommend ensuring that the canopy lighting be modified by reducing the number of bulbs, installing deflectors, or reducing the wattage to achieve an average of less than 20 foot candles to ensure compatibility with adjacent uses and lower direct glare as seen from Middlebrook Road. All lamps should be recessed in the canopy.

Based on the photometric plan provided, the proposed lighting plan provides safe and efficient lighting directed on or around the pump areas with minimal impacts towards the edges of the property. The only areas with a footcandle level above 0.1 past the property line are near the driveway entrances and along the back of the site, which is adjacent to the Department of Energy property. This spill-over is caused by the previously approved pole lighting, however, not the proposed canopy lights.

The proposed landscaping does not create a qualitative change from the original approval. Adequate shade trees, shrubs, and ornamental plantings have been provided along the street and plantings have been provided around a small patio area for use by patrons. We recommend that this patio area also provide site amenities such as waste baskets, recycling containers,

and seating arrangements for customers. Other site amenities, such as the ATM, will have little impact and may only minimize the need for one more stop at the bank.

Staff is in agreement with the above stated analysis of the Site Plan staff.

- (6) **Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**



The subject gasoline station is located on I-1 (light Industrial) Zoned property. It is surrounded by office buildings a heavily screened 97-acre property that belongs to department of energy. The gasoline station fronts Middlebrook Road 150-foot right-of-way, 6-lane, divided highway. The canopy is set back 25 feet from the property line. The nearest residential properties are located across Middlebrook Road with apartment and townhouses sitting above approximately 25-foot high steep embankment with their rear portion towards the road. No automobile repair is proposed as part of the modification. The proposed modifications would not change the board's finding of compliance with this requirement in the original Special exception.

- (7) **Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.**

The proposed modifications will not increase the number, intensity, and scope of approved special exceptions in the area to affect the area adversely or alter its predominantly mixed light industrial/residential nature. It should be noted that the subject use has been at its current location for ten years and no intensification of the use and its operation is proposed.

- (8) **Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.**

The proposed modification will not adversely affect the health, safety, security, morals or welfare of residents, visitors or workers in the area.

- (9) **Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.**

- (A) **If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.**

Approval of a preliminary plan of subdivision will not be required as a condition of approval of the proposed modification to the special exception plan.

- (B) **If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.**

As determined at the time of the initial special exception, S-2351, the subject use is served by adequate facilities. With the proposed modification the subject property will continue to be served by adequate facilities.

- (C) **With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic**

There is no evidence that the proposed modification will reduce the safety of vehicular or pedestrian traffic. The proposed modifications are not likely to result in an increase with traffic. No change is proposed with regard to the two driveway accesses, internal circulation patterns and maneuvering spaces.

- (b) **Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department, which approves or licenses the project.**

No finding is required.

- (c) **The Applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this**



**Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.**

The Applicant has met the burden of proof under **Sections 59-G-2.06: Automobile filling stations (specific requirements) and 59-G-21(a): General Conditions.**

#### **XIV. STANDARD AND REQUIREMENTS § 59-G-2**

##### **SPECIFIC SPECIAL EXCEPTION REQUIREMENTS:**

##### **Section 59-G-2.06. Automobile filling stations.**

**(a) An automobile filling station may be permitted, upon a finding, in addition to findings required in division 59-G-1, that:**

**(1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.**

With the proposed modifications, the use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed. As noted, the subject gas station existed on the property for a decade without creating nuisance.

**(2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings, or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital, or other public use or place of public assembly.**

The use, with the proposed modification, would not create hazardous traffic conditions. No changes are proposed that would impact the existing on and near site circulation pattern. The site provides adequate stacking or queuing space for the car wash that does not conflict with the gas station and the store's traffic. The two access driveways will continue to function well with the proposed modification. No increase in traffic is anticipated from the proposed modifications.

**(3) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering service required, population, character, density and number of similar uses.**

The proposed modification will not adversely affect nor retard the logical development of the general neighborhood or of the industrial zone in which the subject station is located. The gasoline station was established at this location upon a finding of compliance with this requirement. The proposed modification that includes addition of an ATM machine, an exit door, a patio with fountain as well as revised landscaping and lighting, would not be inconsistent with the character of with the mixed light industrial, residential and institutional (government) character of the general neighborhood.

(b). In addition, the following requirements must be complied with:

- (1) When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, sightly, solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Location, maintenance, vehicle sight distance provisions and advertising pertaining to screening shall be as provided for in article 59-E. Screening shall not be required on street frontage.
- (2) Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways are prohibited.

No product displays, parked vehicles and other obstructions are proposed as part of this application that will adversely affect visibility at intersections or to station driveways.

- (3) Lighting is not to reflect or cause glare into any residential zone.



Staff's review of Applicant's photometric plan reveals that safe and efficient lighting directed on or around the pump areas with minimal impacts towards the edges of the property. The only areas with a footcandle level above 0.1 past the property line are near the driveway entrances and along the back of the site, which is adjacent to the Department of Energy property. The pole lights along the rear of the rear portion the gas station (adjacent the

DEO property) are intended to illuminate the asphalt driveway access to the carwash. The shields pole lighting was approved as part of the original special exception. The Department of Energy property, which is zoned R-200 is an office/employment use with its buildings and large public lots substantially distanced from the property lines of the subject property. Moreover, the Department has screened its property with rows of evergreen trees and wire fences.

- (4) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in section 59-A-2.1, and such driveways shall not exceed 30 feet in width; provided, that in areas where no master plan of highways has been adopted, the street line shall be considered to be at least 40 feet from the center line of any abutting street or highway

The site does not occupy a corner lot. Neither of the existing two driveways exceeds 30 feet in width (West driveway 25 ft, East driveway 24 ft).

- (5) **Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line; and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall be at least 20 feet between driveways on each street, and all driveways shall be perpendicular to the curb or street line.**

The modification request does not propose any new changes to the gasoline pumps. The gasoline pumps are located at least 10 feet behind the building line and all service storage is located inside the convenience food and beverage building. The two driveways are separated from each other by approximately 200 feet.

- (6) **Light automobile repair work may be done at an automobile filling station; provided, that no major repairs, spray paint operation or body or fender repair is permitted.**

No repair work is proposed.

- (7) **Vehicles shall not be parked so as to overhang the public right-of-way.**

Adequate parking and queuing areas are provided to avoid overhang of vehicles onto the public right-of-way.

- (8) **In a C-1 zone, an automobile, light truck and light trailer rental, as defined in section 59-G-2.07, and in a C-2 zone, an automobile, truck and trailer rental lot, as defined in section 59-G-2.09, may be permitted as a part of the special exception, subject to the provisions set forth for such uses in this section. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.**

The subject property is located in the I-1 Zone. Currently, there is no automobile, light truck and light trailer rental on the property and the proposed modification does not include such use. The original approval for a gasoline station use on the property includes a one-bay accessory car-wash. The requested modification does not propose any changes to the car wash.

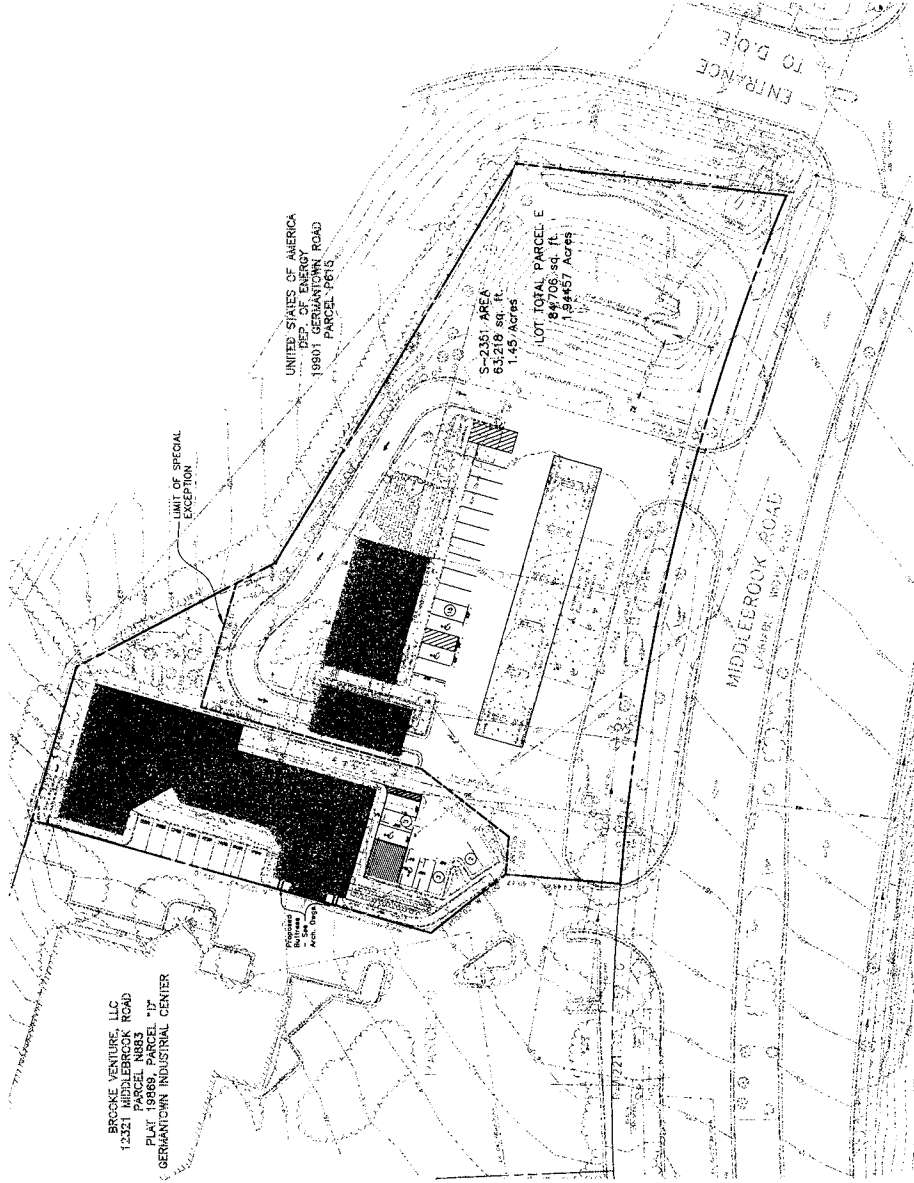
## **XV. CONCLUSION**

Based on the forgoing analysis staff recommends approval of modification for the Special Exception Application S-2351-A, subject to the conditions found at the beginning of the this staff report.



# ATTACHMENTS



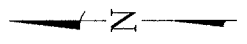
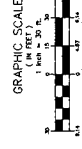


BROCKE VENTURE, LLC  
 12311 MIDDLEBROOK ROAD  
 PARCEL 18883  
 PLAT 19869, PARCEL '17'  
 GERMANTOWN INDUSTRIAL CENTER

UNITED STATES OF AMERICA  
 DEP. OF ENERGY  
 19901 GERMANTOWN ROAD  
 PARCEL 16615

S-2351 AREA  
 63,218 sq. ft.  
 1.45 Acres

LOT TOTAL PARCEL E  
 89,706 sq. ft.  
 2.04457 Acres



PROPOSED OFFICE PARKING LOT RECONFIGURATION & SPECIAL EXCEPTION AREA RE-STRIPING

TAX MAP E1842 WISC 227N112

**SITE PLAN**  
 AMENDMENT TO SPECIAL EXCEPTION (S-2351) MODIFICATION  
**GERMANTOWN INDUSTRIAL CENTER**  
 PARCEL "E", N940, PLAT 19869  
 9TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

**MHG** Mackie, Henshicks & Glasscock, P.A.  
 Engineers & Planners  
 Landscape Architects & Surveyors  
 Phone: 301-877-0900  
 8220 Wegman Road, Suite 120  
 Gaithersburg, Maryland  
 20878-1279  
 www.mhg.com

Designer	Proj. Ngr.
TSW	SAW
Scale	Date
1"=20'	1-1-20
1"=20'	1-1-20
1"=20'	08.18.13
1"=20'	2-2-13

NO.	DATE	DESCRIPTION

PREPARED FOR  
 MID-ATLANTIC PETROLEUM PROPERTIES, LLC  
 12311 MIDDLEBROOK ROAD  
 GERMANTOWN, MD 20874  
 PH (301) 972-4116

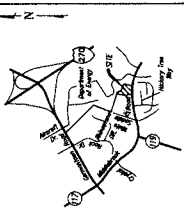
**Professional Certification:**  
 I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Professional Engineer under the laws of the State of Maryland, License No. 19665. Expiration Date: 10-30-20  
*James W. Henshicks*  
 James W. Henshicks



Call "Miss Utility" at 1-800-257-7777.  
 48 hours prior to the start of work,  
 The excavator mark utility as public utility companies who underground  
 facilities located by the utility companies prior to commencing  
 excavations or digging work of the Montgomery Society Code.







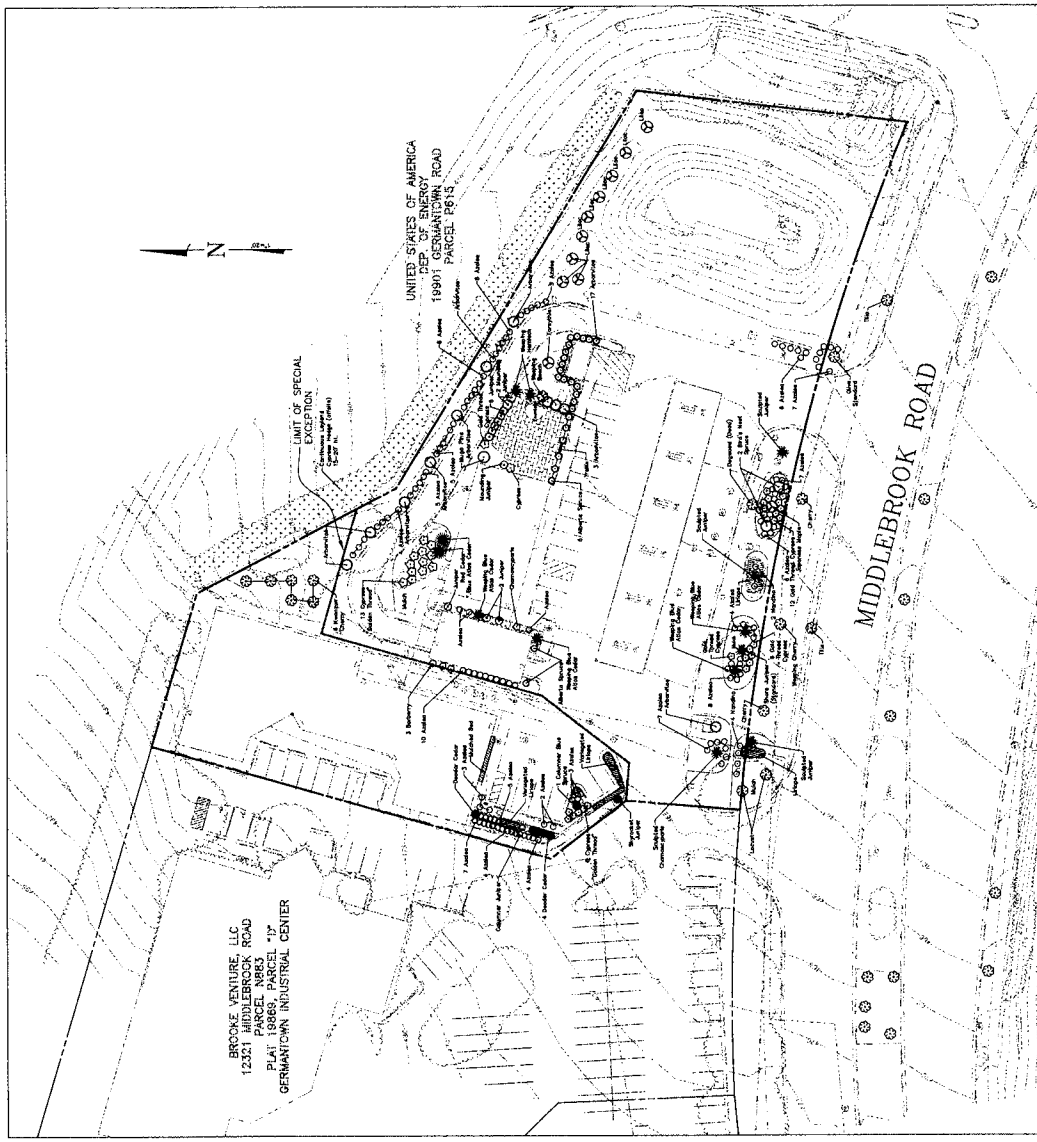
VICINITY MAP  
SCALE 1" = 2,000'

EXISTING PLANT LIST:

QTY	BOTANICAL NAME	COMMON NAME	CAL.	HGT.	SPRD.
<b>SHADE TREES</b>					
1	Fagus sylvatica 'Pendula'	Herring Beech		5-6'	
2	Robinia spp.	Locust	2 - 12'		
2	Tilia cordata	Little Leaf Linden	7'		
<b>EVERGREEN TREES</b>					
28	Arbutus spp.	Arbutus		5-10'	
1	Blue Atlas Cedar	Blue Atlas Cedar		3'	
4	Quercus alba 'Gussone'	Herring Blue Atlas Cedar		5-6'	
5	Quercus alba	Decid. Cedar		5-10'	
1	Chamaecyparis spp.	Cypress		3-4'	
4	Chamaecyparis nudi-pendula 'Pendula'	Herring Chamaecyparis		3-4'	
1	Juniperus spp.	Columnar Juniper		5-6'	
1	Juniperus horizontalis 'Spartea'	Spreading Juniper		3-5'	
1	Juniperus horizontalis	Red Cedar		3-5'	
1	Pinus strobus	Common Blue Spruce		5-6'	
2	Thuja occidentalis 'Pendula'	Herring Hemlock		4-5'	
<b>DECIDUOUS SHRUBS</b>					
1	Acer pennsylvanicum	Japanese Maple		4-9'	
1	Cornus florida	Flowering Dogwood		4-9'	
2	Prunus spp.	Cherry		4-8'	
4	Prunus americana	Eastern Cherry		4-8'	
<b>EVERGREEN SHRUBS</b>					
1	Evonymus spp.	Onyx		4-9'	
1	Euonymus spp.	Flamingo		4-9'	
4	Syringa spp.	Lilac		4-8'	
<b>GROUND COVERS</b>					
100	Asiatic	Asiatic		8-30'	
3	Berberis spp.	Berberis		8-30'	
2	Chamaecyparis (one solid)	Chamaecyparis (one solid)		3-5'	
34	Chamaecyparis filiformis 'Filiformis'	Gold Thread Cypress		3-5'	
9	Juniperus spp.	Juniper		2-4'	
3	Juniperus spp.	Wandering Juniper		2-40'	
3	Juniperus spp.	Scotch Juniper		4-4'	
1	Juniperus canadensis	Shore Juniper (standard)		2-3'	
6	Nandina domestica	Nandina		3-4'	
2	Prunella 'Yellow'	Burn's Nettle Spruce		3-4'	
8	Podocarpus nana	Almond Spruce		4-5'	
1	Prunella rugosa	Flap Pine		2-3'	
<b>GROUND COVERS</b>					
	Large miscel	Large miscel			

**LEGEND**  
Existing Plants

- Evergreen Trees
- Deciduous Tree
- Special Form Evergreen
- Evergreen Shrub
- Deciduous Shrub
- Groundcover
- Evergreen Tree Screen
- Conifer Edge



GRAPHIC SCALE  
1" = 20' (in feet)  
1" = 240' (in meters)

PREPARED FOR  
BROOKS PETROLEUM PROPERTIES, LLC  
12321 MIDDLEBROOK ROAD  
GERMANTOWN, MD 20874  
PH (301) 972-4116

Call "Miss Utility" at 1-800-257-7777, 48 hours prior to the start of work. The contractor shall be responsible for locating and marking all underground utilities in the area of proposed excavation and have those utilities properly protected. The contractor is responsible for compliance with the requirements of Chapter 36B of the Montgomery County Code.

LANDSCAPE PLAN  
AMENDMENT TO SPECIAL EXCEPTION (S-2351) MODIFICATION  
**GERMANTOWN INDUSTRIAL CENTER**  
PARCEL "E", N940, PLAT 19869  
9TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

TAK MAP 0082  
WESC 22/19/12

**MHG**  
Macris, Hendricks & Glascock, P.A.  
Landscape Architects & Surveyors  
8200 Wiggins Road, Suite 120  
South Laurel, MD 20686-1795  
www.mhgpa.com

Proj. No. TSW  
Date 11-24-08  
Project No. 1-20  
Sheet 4 of 5

NO.	DATE	DESCRIPTION	BY









MONTGOMERY COUNTY  
DEPARTMENT OF PERMITTING SERVICES  
255 Rockville Pike, 2<sup>nd</sup> Floor  
Rockville, Maryland 20850-4166

# NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer, being duly authorized, states that:

On, JANUARY 24, 2003 the recipient of this NOTICE, STANLEY D. ABRAMS, ESQUIRE  
Date Recipient's Name

who represents the permittee/defendant, MID-ATLANTIC PETROLEUM PROPERTIES  
Permittee's Name

is notified that a violation of Montgomery County Code: SECTION 59-61.3(a)(1) REVEALED THE FOLLOWING:  
INTERIOR CHANGES MADE TO THE BUILDING WHEN COMPARED TO EXHIBIT NOS 13(a) AND 13(b) WITH-  
OUT COUNTY BOARD OF APPEALS APPROVAL. THERE IS NO BOARD APPROVAL FOR EXTERIOR CHANGES  
WHEN COMPARED TO EXHIBIT NOS 8(b), 21 AND 30(a). THE SUBJECT PROPERTY LISTS  
12311 MIDDLEBROOK ROAD RATHER THAN THE ACTUAL ADDRESS LISTED BELOW.

exists at: 12301 MIDDLEBROOK ROAD GERMANTOWN, MARYLAND. SPECIAL EXCEPTION CASE NO. S-2551  
Location Case #

The following corrective action(s) must be performed immediately as directed, RETURN THE INTERIOR FLOOR LAYOUT  
AS APPROVED IN THE RECORD. REMOVE THE STONE PATIO AND FOUNTAIN ALONG WITH THE EXIT DOOR ON THE  
BUILDINGS RIGHT SIDE. REMOVE ALL EXTERIOR WALL MOUNT FIXTURES, INSTALLING ONLY DOUBLE MOUNTED DIRECTIONAL  
100 WATT FIXTURES IN AREAS DELINEATED ON M-NCPIC 8-18-99 PLAN. INSTALL ALL PLANTINGS PER SAID PLAN.  
REMOVE THE AWN AND ITS ILLUMINATED ROOF STRUCTURE. PROVIDE TO THE DEPARTMENT, ACTUAL HEIGHT OF  
THE CANOPY, REMOVING ALL CANOPY FIXTURES, TO BE REPLACED WITH 7 RECESSED FIXTURES AS PER PLAN.  
REDUCE THE SIZE OF THE TRASH ENCLOSURE TO 10'X15'. REMOVE EXISTING PARKING LOT STRIPING AND MARK  
LOT AS APPROVED. See attached inspection Report(s) for additional violations and/or required corrective actions.

An inspection fee of \$ \_\_\_\_\_ is required in addition to any application fee(s).

Re-inspection Date(s): \_\_\_\_\_ Permit Number: \_\_\_\_\_ Code/Edition: MONT. CO. CODE

Failure to comply with this notice will result in the issuance of one or more \$500.00 civil citations.

A STOP WORK ORDER is also issued this date at the above referenced project. All construction activities on these premises must cease immediately. Only those activities required to correct violations may continue. Permission is required to resume construction.

ISSUED BY: STANLEY N GARBER  
Printed Name

[Signature]  
Signature

1/24/03  
Date

Phone No. 301-370-3656

RECEIVED BY: \_\_\_\_\_  
Printed Name

Signature

JAN 29 2003  
Date


Phone No. \_\_\_\_\_ Sent by Registered Mail/Return Receipt On: 1/24/03

RECIPIENT'S SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE OF VIOLATION



INTEROFFICE MEMORANDUM

**To:** Elsabet Tefaye  
Coordinator  
Development Review Division

**From:** Joshua Sloan   
Coordinator  
Development Review Division

**Subject:** S-2351 Mid-Atlantic Petroleum

**Date:** 6/8/2009

**RECOMMENDATION OF SITE PLAN SECTION STAFF**

Because the proposed special exception amendment includes modifications to several design elements, site plan review staff has been asked to assess the adequacy of these elements. The Applicant proposes changing the approved gas pump canopy elevation, the canopy lighting, landscaping, and site elements. This memo only discusses the pertinent external design elements, each of which is evaluated below.

The ceiling height (from grade to the underside of the structure) of the canopy over the gas pumps was originally approved at 16 feet, 6 inches. The as-built height ranges from 17 feet, 10 inches at the west end to 21 feet, 8 inches at the east end. This range is due to the 2½ percent slope across the site, which is close to the minimum necessary to adequately drain rain water to the stormwater facility on the east side of the site. Obviously, if the required ceiling height had been kept to a maximum of 16 feet, 6 inches, the slope would have created a situation where the minimum ceiling height was 12 feet, 6 inches, which is below the typical average special exception gas station ceiling height of 15 feet, 6 inches. Ideally, the minimum height on the west end of the canopy should have been set at 16 feet, 6 inches, allowing for greater heights to accommodate the slope for drainage towards the east end. But, given the environmental impacts of tearing down the existing structure to lower the height by 1 foot, 4 inches, we do not recommend making such a change unless there are stronger aggravating factors such as adverse impacts on neighbors.

Most important to our analysis is the context and impact that the canopy has on any residential areas or streets. The closest residences are across the 150-foot Middlebrook Road right-of-way; and the floor elevation of these units is at least 25 feet higher than the average driveway elevation under the canopy. From this distance and elevation, the higher canopy height is visually indiscernable. Because this site is approved for 24/7 use, however, it is important to look at the impact of lighting.

The Applicant is requesting to modify their lighting plan from the approved seven fixtures to 36 fixtures. At first, this may sound like an extreme addition of lighting, but the type of fixtures and the wattage allows the area to be safely lit with lower wattage bulbs that focus illumination on the



ground plane below the canopy more accurately and with less spill-over. Larger, brighter bulbs tend to have less directed illumination. The proposed recessed fixture also ensures that the lighting will not shine upwards, but be directed only towards the ground plane. We would only recommend ensuring that the canopy lighting be modified by reducing the number of bulbs, installing deflectors, or reducing the wattage to achieve an average of less than 20 foot candles to ensure compatibility with adjacent uses and lower direct glare as seen from Middlebrook Road. All lamps should be housed above the ceiling of the canopy.

Based on the photometric plan provided, the proposed lighting plan outside of the canopy area provides safe and efficient lighting directed on or around the property with minimal impacts towards the edges of the property. The only areas with a footcandle level above 0.1 past the property line are near the driveway entrances and along the back of the site, which is adjacent to the Department of Energy property. This spill-over is caused by the previously approved pole lighting, however, not the proposed canopy lights.

The proposed landscaping does not create a qualitative change from the original approval. Adequate shade trees, shrubs, and ornamental plantings have been provided along the street and plantings have been provided around a small patio area for use by patrons. We recommend that this patio area also provide site amenities such as waste baskets, recycling containers, and seating arrangements for customers. Other site amenities, such as the ATM, will have little impact and may only minimize the need for one more stop at the bank.

JCS



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

June 29, 2009

**MEMORANDUM**

**TO:** Ralph Wilson, Zoning Supervisor  
Build Division

**VIA:** Glenn Kreger, Acting Chief *GK*  
Vision Division

**FROM:** Leslie Saville Planner, North Central Transit Corridor *LS*  
Vision Division (301-495-2194)

Sue Edwards, Team Leader, North Central Transit Corridor *SE*  
Vision Division

**SUBJECT: S-2351-A Mid-Atlantic Petroleum, Special Exception Modification**

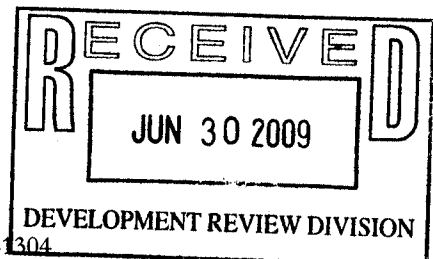
**RECOMMENDATION:** Modify the applicant's Special Exception Modification submission to: (1) increase landscaping; (2) decrease lighting throughout the property; and (3) remove the hardscape outdoor seating area and lighted ATM canopy.

Vision Division staff reviewed the submitted documents of this Special Exception Modification, conducted several field visits including night time photography, and inspected the file of the original approval and the 2003 denial of a requested modification.

Vision Division Staff reviewed this Special Exception Modification from the standpoint of:

- Conformance to the 1989 Germantown Master Plan;
- Compatibility with adjacent residentially zoned property;
- Conformance with the original Special Exception approved in 1997; and
- Response to the Notice of Violation issued in January 2003.

Modifications to the application are necessary to ensure consistency with the Master Plan and compatibility with the confronting residential use.



## **ANALYSIS**

### **Master Plan Conformance**

The submittals in 1998, 2003 and 2009 must be consistent with the 1989 Germantown Master Plan (section 59-G-1.21 (a)(3)). This property is located in the EC-5 (Employment Corridor-5) analysis area and retained the I-1 zone recommended by the 1974 Germantown Master Plan for five recorded lots and an approved preliminary plan of approval. The 1989 master plan recommends “a total of 700,000 s.f. of building area (2,800 employees) at an overall floor area of 0.4 FAR” (p.48).

The 1989 Master Plan also recommends “significant landscaping along Middlebrook Road at this important gateway location” (p.48). The absence of appropriate landscaping, in accordance with the approved special exception, does not conform with this master plan recommendation. Further analysis of this issue is contained on pages 8-10 concerning violation #4.

In February 2009, the Montgomery County Planning Board recommended a revision to portions of the 1989 Master Plan which covers the Germantown Employment Area Sector Plan. The County Council is currently conducting worksessions on this Planning Board Draft Plan. The draft plan identifies this area as an important gateway to Germantown and contains a number of land use, design and environmental recommendations to improve the quality of development in this section of Germantown.

### **Compatibility with Adjacent Residentially Zoned Properties**

The subject property shares a common boundary to the northeast with the Federal Department of Energy's daycare facility, which is zoned R-200. Across Middlebrook Road is a residential area with a condominium and a townhouse community, built in 1982 and 1984 respectively. These residential units are approximately 260 feet from the gas station's front property line and are about 20 to 25 feet higher in elevation than the gas station property.

Photo #3 depicts the view of the gas station from the ground floor level of the condominiums. The height of the canopy, lighting, minimal landscaping and signage all contribute to an incompatible relationship with the residential neighbors.

Lighting levels throughout the gas station property, including wall mounted fixtures which are not counted in the photometric analysis, create glare and intrude into the use and enjoyment of the residential units. This issue is discussed on pages 5-7 concerning Violation #3. The canopy height and lighting is discussed on pages 11-14 concerning violation #6.



## Conformance with the original Special Exception Conditions

The 1998 approval conformed more closely to the 1989 Master Plan by providing numerous shade trees along Middlebrook Road and throughout the site, by having less impervious material, and by having less visual clutter. That approval also offered greater community compatibility due to the much lower light levels and the extensive screening provided by the trees and hedge along Middlebrook Road and the hedge of white pines adjacent to the Department of Energy.

## VIOLATIONS

The January 24, 2003 Notice of Violation indicated that corrective action of the following items must be corrected immediately. The status column indicates what action had been taken as of June 26, 2009, according to the applicant, his attorney and his design team.

No.	Violation description	Status
1	Return interior floor layout to approved layout.	Some changes made
2	Remove stone patio, fountain, and exit door (right side).	No change
3	Remove all exterior wall mount fixtures; place approved fixtures in approved locations (M-NCPPC plan 8-18-99).	No change
4	Install all plants per 8-18-99 plan.	No change
5	Remove ATM and its illuminated roof structure.	No change
6	Provide actual height of canopy.	Provided (16.5' approved, 17.9' to 21.6' built)
7	Remove all canopy fixtures; replaces with seven recessed fixtures as approved.	No change
8	Reduce the size of the trash enclosure to 10'x 15'.	No change
9	Remove existing parking lot striping and mark lot as approved.	Corrected

The applicant requests a modification of the existing special exception such that the special exception would reflect the existing conditions.

- **Violation #1:** Return the interior floor layout as approved in the record.

### Master Plan Consistency and Community Compatibility

The 1989 Germantown Master Plan does not include guidance on interior floor layouts. However, staff notes that the increase of the sales and food prep area from 1,250 square feet to 1,703 square feet increases the parking requirement by two spaces. Of this, the Plan says; "Develop parking areas that...keep parking to a minimum, reduce on-site runoff, and provide on-site detention ponds as amenities" (p. 16). Trees are recommended in several parts of the plan. One example reads, "increase the amount of vegetation in general, and trees in particular, along the edges of streets" (p. 25). The Environmental Concerns chapter of the Plan directs us to maintain and enhance the environmental qualities of Great Seneca Creek, and specifically to maintain the qualities of the

headwaters to prevent increases of water pollution, flooding downstream and stream erosion (p. 87), indicating that “every parcel of land proposed for development must be analyzed carefully.”

If this proposal were presented as new Special Exception today, rather than as a modification, staff would recommend the option with the least amount of parking.

**Past Decisions (Staff, Planning Board, Board of Appeals)**

Approve 1,250 sf of sales and food prep area.

**Discussion**

The Master Plan directs that parking areas should be minimized and it recognizes the critical nature of headwaters to Great Seneca Creek. Since the 1989 Master Plan, staff has become more aware of the extent of embedded emissions in such elements as this parking area as part of greenhouse gas emissions testing for the Planning Board Draft Plan. In addition, the parking is required by a permitted use that has been added to the site outside the Special Exception area.

The 1989 Master Plan recommends that on-site detention ponds be provided as amenities. For this facility to be considered as an amenity, additional planting would be needed to “soften” the engineered grades of the detention facility.

**Staff Recommendation**

Staff recommends planting and maintenance of four shade trees (*Tilia cordata* ‘Grennspire’), with a minimum 3-inch caliper at planting, 40 feet apart, between the stormwater management pond and the hiker-biker trail along Middlebrook Road.

- **Violation #2:** Remove the stone patio and fountain along with the exit door on the building’s right side.

**Master Plan Consistency and Community Compatibility**

A concrete patio with a brick veneer, approximately 32’ x 36’, with a rock-edged fountain has been constructed where the approved site plan called for three shade trees and 67 barberries.

The Plan is silent on the patio and fountain, but they could be viewed as amenities. However, as noted previously, both the 1989 and 2009 Plans recommend substantially increasing the tree canopy throughout Germantown. Also noted above, the Great Seneca and Muddy Branch Watershed Study recommends a priority restoration project for the stream reach in this subwatershed.

**Past Decisions (Staff, Planning Board, Board of Appeals)**

Shade trees and plantings were recommended by the Planning Board and approved by the Board of Appeals.

## **Discussion**

As an amenity, with tables and chairs perhaps, patrons and travelers might enjoy using the patio while stopping for food and fuel. However, such a use then presents the question of whether there is an additional parking requirement for this area, as would be required for other outdoor eating spaces.

Currently, this plan shows a 53.5 percent green area for the Special Exception area; the I-1 zone requires only 10 percent. This 53.5 percent includes the stormwater management facility, but it should be noted that that facility serves the Special Exception use as well as the adjacent office building on the property, plus two additional properties to the west. The concrete patio and fountain under discussion are allowed to be included in that 53.5 percent green area by definition (§59-A-2.1). Nevertheless, there is an environmental cost. As noted above, due primarily to the high levels of impervious surfaces in this area, the stream reach in this subwatershed is recommended as a priority restoration project.

Staff finds that this area without an impervious surface and with trees and plantings, as initially approved, is consistent with the Master Plan and provides more long-term benefits to the overall community than does the patio as an amenity.

## **Staff Recommendation**

Remove the patio and fountain along with the exit door on the building's right side. Replace these items with plantings as approved.

- **Violation #3:** Remove all exterior wall mounted fixtures, installing only double mounted directional 100 watt fixtures in areas delineated on the M-NCPPC 8-18-99 plan.

## **Master Plan Consistency and Community Compatibility**

The lighting of this 24-hour Special Exception operation is a great concern for community compatibility; considerations include impact and glare into the adjoining residential areas, glare that impacts drivers on Middlebrook Road, and adaptations problems encountered by gas station patrons leaving the property. Staff considers only the wall mounted fixtures; a more complete discussion of lighting is included under Violation #6.

As approved, there should be four double mounted directional fixtures on this Special Exception. On June 6, 2009, staff counted 17 exterior wall mounted fixtures, one double mounted directional fixture, five soffit lights and a lighted ATM canopy on the gas station and car wash buildings. (This is in addition to the 13 pole lights and 24 canopy lights. Also on the property but outside the Special Exception area, staff noted 12 more wall mounted fixtures, ten soffit lights and five pole lights.)

In considering community compatibility, staff reviewed lighting level standards from the Illuminating Engineering Society of North America (IESNA), which recommends light levels between two and three footcandles around gas station building facades and service

areas. However, the photometric plans (A3.0 and A3.1) show no light being cast by any of these fixtures, so no comparison to the standards is possible.

The applicant has supplied elevations showing the locations of these building mounted lights; they are not shown separately on a lighting plan.



PHOTO 1: This June 19, 2009 photo shows seven of the 17 wall mounted fixtures, the five soffit lights and the lighted ATM canopy as installed.

#### **Past Decisions (Staff, Planning Board, Board of Appeals)**

Four double mounted directional fixtures were approved. The Board of Appeals wrote, "All lighting on site will be directed downward, and also will not cause glare into any adjacent areas" (November 2, 1998, p. 2).

#### **Discussion**

The applicant requests approval of the lights as they currently exist. These lights are not directed downward and due to the fixture design, number and wattage, the existing lighting causes considerable glare to be reflected off the walls of the building. The excessive brightness may also be an adaptation hazard for customers leaving the station and re-entering Middlebrook Road, which is much darker.

In 2003, the Department of Energy planted a double row of evergreens along the shared property line to screen themselves from this property, and the townhouses across Middlebrook Road had planted a single row of evergreens. Because of the steep slope created by the widening of Middlebrook Road, the condominium community has a limited planting area, but added a solid fence which screens the bottom units from glare.





PHOTO 2: One double mounted directional fixture and three wall mounted fixtures can be seen here on the front corner of the car wash.



PHOTO 3: This is the view of the gas station lights as seen from the ground floor level of the condominiums across Middlebrook Road. The four wall mounted fixtures on the south walls can be seen here, but two are behind the canopy. The light from the ATM canopy can also be seen.

#### **Staff Recommendation**

The applicant should remove all exterior wall mounted fixtures that are not directed downward. To reduce glare, no exterior wall mounted fixtures should be placed on any wall other than the wall facing Middlebrook Road or on walls between the convenience store and the car wash. Supply a plan showing the location of all remaining (and/or alternatively proposed) fixtures. Supply a photometric plan showing all fixtures. Light

levels around the building facades should be less than three footcandles based on ISNEA guidance.

- **Violation #4:** Install all plantings per said plan.

#### **Master Plan Consistency and Community Compatibility**

Currently, the site is landscaped with a variety of low-growing conifers, including many specimen plants, and a few small flowering trees and shrubs. The applicant proposes to add three shade trees and two more flowering trees along Middlebrook Road, and to add four shade trees near the back property line. The landscaping, as installed does not provide complete screening of pavement areas and does not provide the amount of shade as the plant materials originally approved.

The Urban Design Division has also submitted comments concerning landscaping.

The 1989 Master Plan strongly recommends the addition of new street trees, landscaping, landscape buffering, berms, walls and setbacks, and the inclusion of street trees:

“Recommends implementing specific guidelines for landscaping Germantown’s roadways, including street trees and landscaped medians along major and arterial roads... (p. 1-2).

“One significant objective of this Master Plan is to improve the appearance of Germantown, which includes...the lack of landscaping and other visual amenities” (Planning Framework, p. 8).

“Provide landscape buffers to soften the public view of parking.

“Use earth berms, walls, and setbacks to provide visual and noise separation (Guidelines, pp. 15-16).

Install significant landscaping along Middlebrook Road at this important gateway location (p. 48).

The 2009 Draft Plan more specifically recommends increasing the tree canopy from the 2008 level of 20 percent to 30-40 percent by 2038 (p. 33).

#### **Past Decisions (Staff, Planning Board, Board of Appeals)**

In 1998, staff noted that “forest conservation requirements can be met by shade trees on a landscape plan approved by the technical staff” (September 25, 1998 staff report, p. 6).

No such shade trees have been planted. Environmental planning staff should confirm that forest conservation requirements are being met.

With support of the Planning Board and the Board of Appeals, the number of shade trees on the landscape plan was increased from 13 on the site to 19. In addition, a hedge was to



screen the parking area and pumps from Middlebrook Road, a row of white pines was to provide screening for the DOE daycare facility to the rear and a variety of ornamental plantings were approved.



PHOTO 4: The current plantings include specimens such as these two Weeping Blue Atlas Cedars (left and right) and the Gold Thread False Cypresses (foreground).

### **Discussion**

To date, there have been no shade trees, no screening and no screening hedge planted. The ornamental plantings do not conform to the approved plan, and in many instances, they take the place of the approved shade trees and hedges without providing the needed screening and environmental benefits.

The applicant has indicated that the plantings that have been provided are better than what was approved. Staff interprets this to indicate an esthetic preference; staff is addressing master plan, compatibility and environmental functions, and is not questioning the esthetic judgment or good intentions of the applicant.

Shade trees modify the urban heat island effect, improve air quality, sequester carbon, reduce stormwater runoff and remove nutrients from that runoff, provide habitat, extend the life of concrete and asphalt by shading it, and provide esthetic and human health benefits. Large shade trees will also provide a buffer between the street and the neighboring uses, and would especially provide screening for the residential properties across Middlebrook Road. The approved hedge also provides screening from the road.

As noted above, by 2003, DOE had planted a double row of evergreens to provide the screening that was not installed by the applicant.



The 1998 Landscape Plan complies with both the Master and Sector Plan, it provides buffering to improve community compatibility and it improves local environmental conditions. The existing plantings and proposed landscape plans provide few of these benefits.

### **Staff Recommendation**

Two options to correct the landscaping are offered:

1. Install all plantings according to the approved plan; or
  2. Amend the approved plan as follows, then install:
    - o Substitute native trees and shrubs (except where matching existing trees).
    - o To provide immediate visual relief, install a four-foot wall in place of a hedge.
- **Violation #5:** Remove the ATM and its illuminated roof structure.



PHOTO 5: The canopy of the ATM machine is separate from the ATM dispensing machine. The ATM area is lit by the canopy and by adjacent two-directional wall fixtures.

### **Master Plan Consistency and Community Compatibility**

The 1989 Master Plan makes no recommendation about this use, but the plan recommends reducing “visual clutter,” (p. 25) which is being created by these items. The 1994 Streetscape Plan, the Sector Plan and the current draft Design Guidelines reinforce this recommendation.

If these items were currently being proposed, staff has been advised by DPS colleagues that no permit could be issued for the canopy because the canopy and dispenser are not one unit and the ATM canopy sign would exceed the number of signs allowed.

### **Past Decisions (Staff, Planning Board, Board of Appeals)**

There have been no past reviews of these elements. The ATM and roof structure were installed without being proposed, analyzed or approved.



### **Discussion**

It should be confirmed that use does not impose additional parking or APF requirements.

### **Staff Recommendation**

If this use has no parking or APF implications, staff recommends two options:

- Move this use inside the convenience store; or
- Remove either the ATM canopy sign or the gas station sign over the door.
- **Violation #6:** Provide to the department actual height of the canopy, removing all canopy fixtures, to be replaced with 7 recessed fixtures as per plan. [Upon provision of the actual height, the canopy was found to be in violation of the approval.]



PHOTO 6: Under current conditions, the canopy is lit by hanging fixtures.

### **Master Plan Consistency and Community Compatibility**

The applicant proposes that the as-built height of the canopy be approved (25.1' maximum per the site plan dated November 2008), that the 24 existing lights be retained with lower-wattage bulbs, and that an additional 12 focus lights be installed.

The height of the gas pump canopy and the lights in the canopy are not referenced in the Master Plan. In considering community compatibility, staff considered the neighboring properties, passing motorists and the standards to which other nearby gas stations have been built.

When this station was built, all but one of the adjacent properties had been developed (a storage facility was added in 2001), so compatibility and screening was critical. As indicated previously, because of the planting violations noted earlier, the neighbors to the



north and south needed to provide screening on their own properties. Staff considers this a clear indication of negative impacts.

In reviewing the impact on passing motorists, staff visited the site after dark. Photo #6 shows that the lights hang below the canopy and cause glare to drivers. Because of the excessive canopy height, the lights are clearly visible when approaching from both downhill (east) and uphill (west—see photo below).



PHOTO 7: Canopy lights are visible to cars even from the west, uphill from the site.

Staff visited two nearby gas stations to assess examples in the community for gas stations. An older station on Middlebrook Road has the same style of canopy light and the same proportionate number of lights per island as now exists at the special exception location. This canopy is much lower (12'-3") and has a shield around the underside to assure no light glare.

A newer station on Germantown Road also has the same number of lights per island as exists, but these are flush-mounted very energy efficient LED lamps, on a lower (15'-6") canopy.

#### **Past Decisions (Staff, Planning Board, Board of Appeals)**

A lower canopy with seven flush-mounted lights was approved. As noted above, the Board of Appeals wrote, "All lighting on site will be directed downward, and also will not cause glare into any adjacent areas" (November 2, 1998, p. 2).

#### **Discussion**

The existing lights cause glare into the adjacent roadway and into the adjacent properties. This is partially due to the canopy height and the partially due to the type and number of lights that have been installed on the property. The lights and canopy are not to any community standard for gas stations in Germantown. Adding 12 additional lamps will not make the lighting more compatible.

The Special Exception modification submission contains two photometric plans that have conflicting light levels for the canopy lights, and do not show light levels for all of the other fixtures on the site.

The Illuminating Engineering Society of North America provides standards of light levels, as shown in the table below. The pump island areas are shown with a recommended maximum of five to ten footcandles; the submission shows either 28.1 or 48.8 footcandles as the maximum, depending upon the drawing.

Service Station of Gas Pump Area Average Illuminance Levels		
(in footcandles)		
Approach	1.5	2
Driveway	1.5	2
Pump island area	5	10
Building facades	2	3
Service areas	2	3
Landscape highlights	1	2

**Staff Recommendation**

A new lighting plan should be prepared; the maximum light levels should be those shown on the table above for each specific area. All canopy lamps should be recessed to a depth that prevents all glare to adjacent properties and roadways. The new lighting plan should show light levels from all fixtures. All fixtures should be shielded and point downward.

The canopy height cannot be corrected without a significant impact to the carbon footprint that has been discussed above. With correction of the lighting, below, and the planting of trees to provide screening as recommended in Violations #1 and 4, staff recommends approval of the canopy height as built.

- **Violation #7:** Reduce the size of the trash enclosure to 10' x 15'.

**Master Plan Consistency and Community Compatibility**

The result of this violation is an increase in impervious area.

**Past Recommendations (Staff, Planning Board, Board of Appeals)**

Approval of a 10' x 15' trash enclosure.

**Discussion**

The applicant has indicated that the enlarged trash enclosure was required to accommodate recycling requirements. Upon inspection, the current enclosure was found to be larger than is needed for the containers within, but not excessively so.



**Staff Recommendation**

Approve the size of the trash enclosure as built, 9.9' X 19.2'. Needed repairs are noted below.



PHOTO 8: Broken and missing boards to the trash enclosure do not fully screen this use.

- **Violation #8:** Remove existing parking lot striping and mark lot as approved

**Master Plan Consistency and Community Compatibility**

The Master Plan is silent on parking lot striping.

**Past Recommendations (Staff, Planning Board, Board of Appeals)**

As per violation.

**Discussion**

The applicant indicated (meeting, May 28, 2009) that the parking lot striping has been corrected. During a subsequent site visit, staff noted that both the correct and incorrect stripes are currently equally visible. The applicant has agreed to restripe the parking lot to correct this violation.

**Staff Recommendation**

Accept the modification to restripe the parking lot.



## **OTHER OBSERVATIONS**

Analysis of submitted materials and field inspection by Vision Division staff has noted the following inconsistencies:

1. An unapproved monumental sign has been constructed partially within the right-of-way of Middlebrook Road near the western driveway entrance; staff does not recommend approval of this plan.
2. In the approved plan, pole lights were to be placed on concrete piers three inches above grade; the approved yardlight footcandle pattern (Landscape and Lighting Details, Sheet 2 of 2) is based upon that grade. As built, the concrete piers are at various elevations above grade, but all appear to be in excess of the approved height. If the applicant is not correcting the piers, the drawings should be corrected. Photometric drawings should reflect the actual heights and patterns.
3. The gates screening the trash enclosure are missing at least two boards, reducing the screening effect. Staff does not recommend approval of only partial screening of the dumpsters.

M:Saville.S2351A.final staff report.062609

June 23, 2009

Memorandum

To: Elsabett Tesfaye, Zoning Analyst  
Development Review Division

From: Karen Kumm Morris, Urban Designer  
Design Division

Subject: SE 2351 –A Automobile Filling Station, Germantown

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**Staff Recommendation:**

1. **Revise SE Site Plan to conform to the 1994 Germantown Streetscape Plan**
2. **Meet Sec. 59-E-2.71 landscape requirements by providing the landscaping and lighting treatment approved in the original Special Exception**
3. **Meet Illuminating Engineering Standards for North America (IESNA)**

**Conditions of Approval**

1. Provide 2 new deciduous shade trees behind the street curb matching the existing species, Little Leaf Lindens to be planted in the right-of-way where horizontal spaces permits, approximately 45 feet on center to either side of the existing bike path. The street tree planting will conform to the 1994 Germantown Streetscape Plan.
2. Eliminate the proposed low growing 'Greg Owl' juniper that does not meet the 3 foot landscape hedge requirement and provide a 3 foot high evergreen hedge. The original proposal showing a continuous Japanese Barberry hedge satisfies this requirement.
3. Provide 2 additional Zelkova shade trees, increasing the proposed 3 Zelkovas to 5 Zelkovas to meet the landscape requirements for on tree for every 40 feet of frontage.
4. Lower the foot candles under the canopy by taking out a sufficient number of bulbs in the existing fixtures to achieve IESNA standards of 5 to 10 foot candles in order to be compatible with adjacent residences and lower direct glare as seen from Middlebrook Road.

**Not Consistent with 1994 Approved Germantown Streetscape Plan**

The proposed modifications to SE 2351 do not conform to the approved Germantown Streetscape Plan that call for a single row of deciduous shade trees, 2 ½ " in caliper to be planted 45 ' on center along the curb. The plans show only two existing street trees along the curbside. There are additional ornamental cherries planted behind the existing bikepath. To be consistent with the 1994 Approved Germantown Streetscape Plan, plant a minimum of 2 additional street trees. Match the existing planted species, Tilia Cordata "Greenspire".

This street is also addressed in the Draft Germantown Urban Design Guidelines. The guidelines are intended to clarify expectations for design excellence and improve the public realm along streets and roadways. The guidelines view Middlebrook Road as a gateway to the Town Center and call for a double row of street trees along the curb straddling the existing bike path. It should be noted that the proposed modifications to SE 2351 do not meet the intent of the Draft Germantown Urban Design

Guidelines because the proposed landscaping relies upon low ground covers and ornamental plantings not shade trees that would create a boulevard effect.

**Meet landscape requirements of Sec 59-E-2.71, Landscape strip area adjacent to street ROW**

The originally approved SE landscaping and lighting plan provided a level of landscape treatment that satisfied the zoning requirement for one tree every 40 feet of lot frontage and an evergreen hedge, at least 3 feet high to reduce the visual impact of the parking areas. The proposed modification does not satisfy the zoning requirement because it relies on low ground covers instead of providing a 3 foot evergreen hedge. The proposed juniper hedge is a low growing cultivar that could ultimately achieve between 2 to 3 feet in height and typically is lower. See attached plant information. The proposed hedge is lower than the required 3 foot hedge and will not screen views of the pavement. The 3 proposed Zelkova shade trees are helpful in reducing the visual impact of the gas station, but need an additional 2 Zelkovas to meet the minimum requirements for on tree every 40 feet.

Revise the proposed landscape plan to provide a continuous 3 foot evergreen hedge as per the original approval SE. and provide an additional 2 Zelkova shade trees.

**Adjust the lighting levels on the canopy and perimeter to the original approved SE Lighting Plan.**

The original lighting Plan indicated lighting foot candles to be approximately 7 foot candles directly under a recessed light under the pump canopy. The proposed foot candles are shown differently on two different sheets but both plans show foot candles exceeding the IESNA standards for gas stations. The IESNA standards range from 5 to 10 foot candles depending on the light levels of the surrounding areas. The two proposed lighting plans show different lighting levels. Lighting on one plan ranges from 25 to 40 foot candles with an average around 22 foot candles. On the second lighting plan, the lighting levels range from 13 to 18 foot candles with an average shown as 17 foot candles. Both lighting plans exceed the IESNA standards of 5 to 10 foot candles.

The lighting levels are critical due to the direct view a driver has of the canopy lighting from Middlebrook Road as the result of the lower street grades. Views from adjacent residential community across from Middlebrook Road are also a significant concern given the direct views down on the gas station. See attached photograph from adjacent residences' rear yards.

The lighting plans should be lowered to be compatible with adjacent community and be in conformance with industry standards. This can be easily achieved by taking out the number of bulbs from the excessive number of lighting fixtures until the photometrics reach the lighting levels of the original approved SE, 7 foot candles.

**Table 7: Illuminance Levels and Uniformities for Car Dealerships General Lighting**

Area	Maximum Illuminance on Pavement (lux/footcandles)	Maximum to Minimum Ratio
<b>Main Business Districts</b> (highly competitive)		
• Adjacent to roadway	100-200/10-20	5:1
• Other rows	50-100/5-10	10:1
• Entrances	50-100/5-10	5:1
• Driveways	20-30/2-3	10:1
<b>Secondary Business Districts</b> (or small towns)		
• Adjacent to roadway	50-100/5-10	5:1
• Other rows	25-50/2.5-5	10:1
• Entrances	25-50/2.5-5	5:1
• Driveways	10-20/1-2	10:1

*Note: For lighting feature displays, see the latest version of RP-2 Recommended Practice for Lighting Merchandising Areas.*

of the negatives associated with very bright light. It is recommended that flat lenses (rather than dropped lenses or refractors) be used. This will reduce the direct glare from any luminaires within the driver's field of view.

Service stations lighted to high illuminance levels may pose adaptation problems for customers leaving the station and re-entering the much darker street or roadway nearby. Glare must be minimized to help avoid such adaptation problems.

**Table 8** lists recommended illuminance levels for automobile service stations. This lighting should be provided with low glare luminaires that do not

cause light pollution or deliver nuisance glare to adjacent properties. This table is based on the consensus opinion of the IESNA Outdoor Environmental Lighting Committee.

## 19.0 OUTDOOR HOSPITALITY LIGHTING

The exterior regions around hotels, motels, and restaurants are considered outdoor hospitality areas. The primary focus of these areas is either for pedestrian walkways or for sit-down enjoyment. A combination of the techniques described in **Sections 11.0, 12.0, and 14.0** for softscape/landscape, hardscape,

**Table 8: Service Station or Gas Pump Area Average Illuminance Levels**

Area Description	Average Illuminance on Described Area (lux/footcandles)
Approach with Dark Surroundings	15/1.5
Driveway with Dark Surroundings	15/1.5
Pump Island Area with Dark Surroundings	50/5
Building Facades with Dark Surroundings	20/2
Service Areas with Dark Surroundings	20/2
Landscape Highlights with Dark Surroundings	10/1
Approach with Light Surroundings	20/2
Driveway with Light Surroundings	20/2
Pump Island Area with Light Surroundings	100/10
Building Facades with Light Surroundings	30/3
Service Areas with Light Surroundings	30/3
Landscape Highlights with Light Surroundings	20/2





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## *Juniperus virginiana* 'Grey Owl'

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**Kemper Code: D650**

**Common Name:** red cedar

**Zone:** 2 to 9

**Plant Type:** Needled evergreen

**Family:** Cupressaceae

**Missouri Native:** No

**Native Range:** None

**Height:** 2 to 3 feet

**Spread:** 4 to 6 feet

**Bloom Time:** Non-flowering

**Bloom Color:** Non-flowering

**Sun:** Full sun

**Water:** Medium

**Maintenance:** Low

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### Uses:

- Hedge  Suitable as annual  
 Shade tree  Culinary herb  
 Street tree  Vegetable  
 Flowering tree  Water garden plant  
 Gr. cover (<1')  Will naturalize

### Wildlife:

- Attracts birds  
 Attracts hummingbirds  
 Attracts butterflies

### Flowers:

- Has showy flowers  
 Has fragrant flowers  
 Flowers not showy  
 Good cut flower  
 Good dried flower

### Leaves:

- Leaves colorful  
 Leaves fragrant  
 Good fall color  
 Evergreen

### Fruit:

- Has showy fruit  
 Fruit edible

### Other:

- Winter interest  
 Thorns or spines

### General Culture:

Easily grown in average, medium, well-drained soil in full sun. Tolerant of a wide variety of soils. Also tolerant of wind and of many city air pollutants.

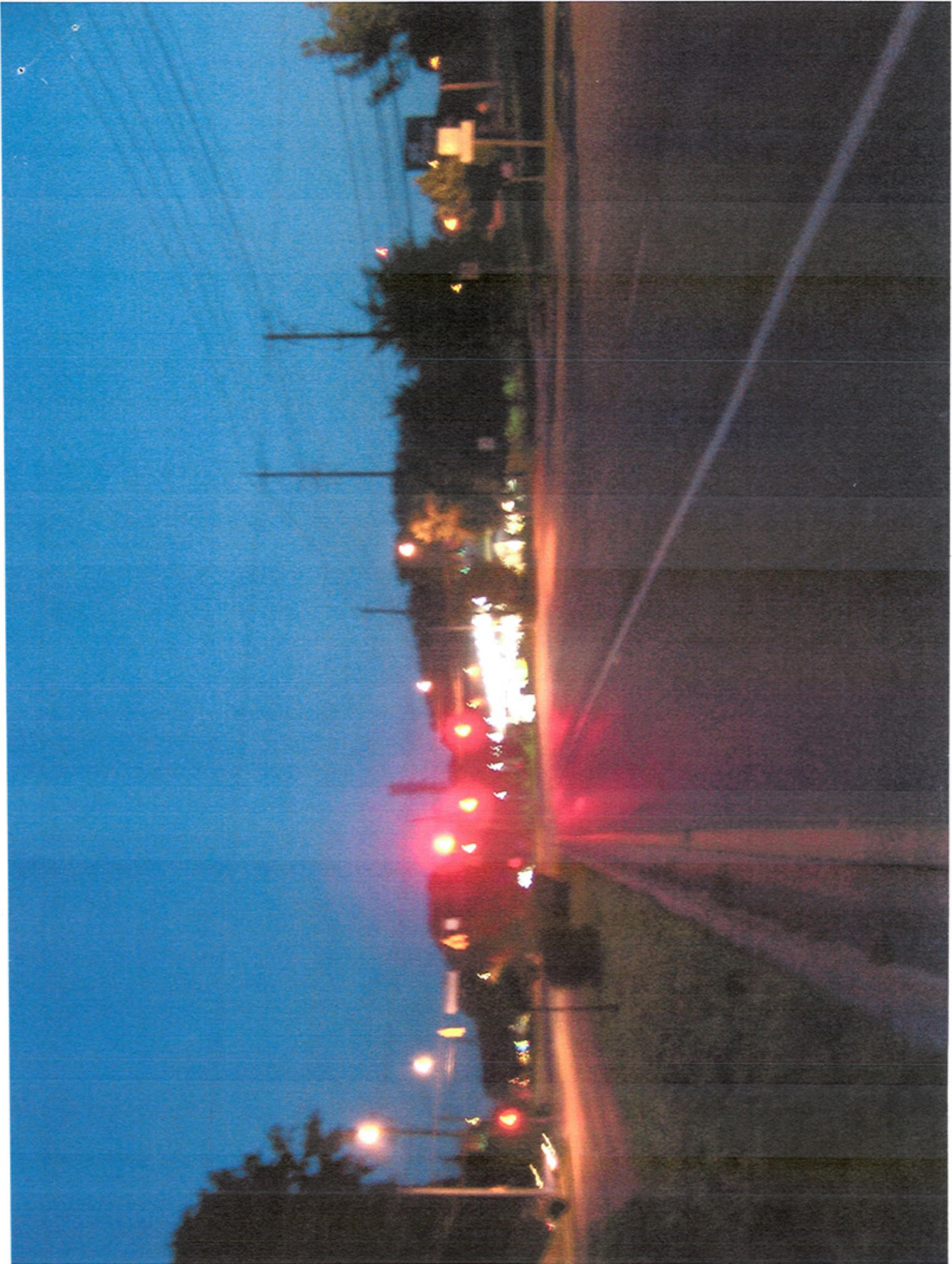
### Noteworthy Characteristics:

This eastern red cedar cultivar is a broad, slow-growing, evergreen shrub with a compact, wide-spreading habit which typically grows up to 3' tall (infrequently larger) and to 6' wide. Features scale-like, silver gray foliage. A female form which produces profuse, glaucous, berry-like cones which are attractive to birds. This plant may be a hybrid, but it is











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

June 19, 2009

**MEMORANDUM**

TO: Elsabett Tesfaye, Planner-Coordinator  
Development Review Division

FROM: Ki H. Kim, Planner-Coordinator *KKH*  
Transportation Planning Division

SUBJECT: Minor Modification to Automobile Filling Station, Germantown  
Special Exception Case Number: S-2351A

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This memorandum represents Transportation Planning staff's review and recommendations on the subject special exception application of the gas station located on the north side of Middlebrook Road, east of Germantown Road (MD 118) in the Germantown area.

Transportation Planning staff has reviewed the proposed amendment which includes minor modification to landscaping, patio, installation of ATM, and parking lot, and finds that the proposed modification under the subject special exception application would not have an adverse effect on the nearby road system. The existing vehicular access points and pedestrian circulation would not be affected by the proposed modification and the site would not generate any new vehicular trip with granting the subject special exception application. Therefore, the subject special exception application is not subject to the Local Area Transportation Review (LATR) or the Policy Area Mobility Review (PAMR).

KK:tc



**Tesfaye, Elsabet**

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**From:** Johnsen, Douglas  
**Sent:** Wednesday, March 18, 2009 3:32 PM  
**To:** Tesfaye, Elsabet  
**Subject:** Special Exception S-2351-A; 12301 Middlebrook Road

Elsabet,

After review of pertinent information for this site it is determined that this special exception has no environmental impact and substantially conforms to Chapter 22A of the County Code under the approved forest conservation plan 119940750.

*Mahalo,*  
Doug Johnsen, RLA  
Environmental Planning Dept.  
M-NCPPC  
8787 Georgia Ave.  
Silver Spring, MD 20910  
301-495-4712 (off)  
301-495-1303 (fax)  
<http://www.mncppc-mc.org>

**Tesfaye, Elsabet**

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**From:** Whipple, Scott  
**Sent:** Monday, March 16, 2009 9:06 AM  
**To:** Tesfaye, Elsabet  
**Cc:** Fothergill, Anne  
**Subject:** Board of Appeals Petition No. S-2351-A

The above referenced petition, at 12301 Middlebrook Rd in Germantown, has no impact on historic resources listed on the Master Plan for Historic Preservation or the Locational Atlas. The Historic Preservation section has no comments.

**Scott Whipple**, Supervisor  
Historic Preservation Section  
Montgomery County Planning Department | M-NCPPC  
301-563-3404 | [scott.whipple@mncppc-mc.org](mailto:scott.whipple@mncppc-mc.org) | <http://www.montgomeryplanning.org/historic/>