

LAW OFFICES OF

KNOPF & BROWN

401 EAST JEFFERSON STREET
SUITE 206
ROCKVILLE, MARYLAND 20850
(301) 545-6100

Attachment C

FAX: (301) 545-6103

E-MAIL KNOPF@KNOPF-BROWN.COM

WRITER'S DIRECT DIAL

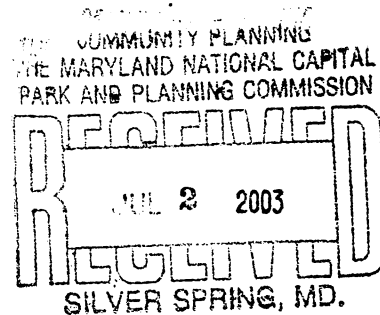
(301) 545-6104

NORMAN G. KNOPF

July 2, 2003

VIA FACSIMILE AND MAIL

Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910



Re: Special Exception Modification S-2351 (Mid Atlantic Petroleum)

Dear *Derick* Chairman Berlage:

This letter is submitted on behalf of Brooke Venture, LLC ("Brooke") in opposition to the proposed special exception modification. Brooke owns the office building adjacent to the newly constructed office building of petitioner. Petitioner has requested a modification to the special exception for his gas station/car wash/convenience store in order to provide parking for petitioner's office building which is not located on the special exception site. Brooke opposes the proposed modification on the ground that the distance of the proposed parking from petitioner's office building and the unsafe access from the parking spaces to the building will, as a practical matter, result in employees and visitors of petitioner's building not using the parking spaces. Rather, they will use the parking spaces on Brooke's property which provide closer parking and safer pedestrian access.

As set forth in the attached comments of Planner Malcolm Rivkin, the parking lot that petitioner proposes to locate on the special exception site to serve petitioner's office building is greater than a football field in length from the office building. It is situated on the opposite side of the gas station/car wash/convenience store from the office building. It therefore requires parkers to walk a great distance from the parking lot, through the gas station containing 6 gas pump islands, across the ingress and egress for the car wash, as well across the ingress and egress for the loading dock for the office building.

In order for a special exception modification to be granted, there must be a finding that the modification "will not adversely affect the ... safety ... of ... visitors or workers in the area at the subject site" (Section 59-G-1.2(h); and that the "use ... will not create a traffic hazard or traffic nuisance because of its ... location in relation to other

Derick Berlage, Chairman

July 2, 2003

Page 2

buildings ... on or near the site and the traffic patterns from such buildings" (Section 59-G-2.206)

For the reasons set forth in the attached comments of Malcolm Rivkin, as will be supplemented by Mr. Rivkin and others at the hearing before the Planning Board, we believe it is obvious that the required findings of safety cannot be made. We therefore urge the Planning Board to recommend **denial**.

We also note that petitioner's construction of a new office building without adequate parking is a self-created condition. It results from petitioner's developing its property in a manner contrary to the representations it made to the Board of Appeals when it first obtained its special exception in 1998. As exhibit 21 to the original special exception proceedings reflects (a copy of the relevant portion is attached), the petitioner represented to the Board of Appeals that in the area adjacent to the proposed special exception, it would construct a "cleaning establishment" having "10 employees" and containing "cleaning establishment 6,500 S.F. 1200 S.F. retail". Parking, purportedly adequate for this small use, was shown on the exhibit to be located in the front of the building (facing Middlebrook Road).

The building that petitioner actually constructed is a two story office building approximately 2 ½ times the square footage originally represented, about 18,145 square feet. Much of the area that was originally represented as the parking area is now occupied by the larger building. (See a copy of the relevant portion of the special exception modification plan attached to this letter).

Petitioner apparently intended that the parking required by the Zoning Code for its larger building would be met by the employees and visitors using the parking spaces located on the adjacent Brooke property. Thus, the petitioner designed the building without an underground garage and very limited surface parking on petitioner's own property.

Brooke objected to petitioner's seeking to use Brooke's property to provide the parking spaces required by the Zoning Code and timely filed appeals with the Board of Appeals prior to construction of the building. (Building Permit and Use & Occupancy Certificate Appeals are pending before the Board of Appeals). Rather than stopping construction pending resolution of the issues on appeal, petitioner chose to continue construction. It is well settled law that petitioner proceeded at its own risk. The fact that the building has now been completed does not entitle the petitioner to any favorable equitable consideration. City of Hagerstown v. Long Meadow Shopping Center, 264 Md. 481, 287 A.2d 242, 250 (1972) (Building permit holder took "calculated risk" in building while appeal pending.) In response to Brooke's appeals, petitioner has filed this special

Derick Berlage, Chairman
July 2, 2003
Page 3

exception modification, again taking the calculated risk that the special exception modification will be approved.

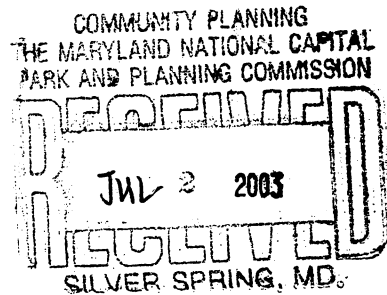
Because of the unsafe conditions, we urge the Planning Board to recommend **denial** of the special exception modification.

Respectfully submitted,

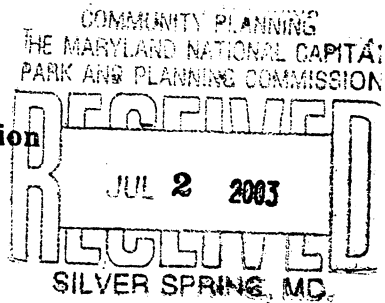


Norman G. Knopf
Attorney for Brooke Venture, LLC

/attachments (3)



Comments of Malcolm D. Rivkin, PhD, AICP in Opposition
to Special Exception Modification
(No. S-2351)
12301 Middlebrook Road, Germantown, Maryland
June 26, 2003



Background for Opinion. I have been a practicing urban and regional planner for more than 35 years and have been certified for expert witness testimony by courts and/or regulatory bodies in Maryland, Virginia, and Delaware. In Montgomery County, I have undertaken numerous assignments for County agencies as well as private developers and non-profit groups. I have also contributed to the literature of the field and have served on three National Academy of Sciences' review committees dealing with planning matters.

Based on that experience, close review of the proposed Modification to the Special Exception, and detailed field investigation of the site and its surroundings, I have concluded as follows: This proposal would afford severe dangers --- on a continuing basis --- to occupants of the on-site office building forced to park on a deck on top of the stormwater management pond and walk across the full length of the service station and car wash between their parking spaces and the office building. This would be a safety hazard not countenanced by the Zoning Regulations of Montgomery County.

Violations of Zoning Ordinance. This proposal would violate two provisions of the Ordinance.

Section 59-G-1.2 (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."

Section 59-G-2-2.06 (Automobile filling stations) "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 the public or private school, park, playground or hospital, or other public use or place of public assembly."

The Hazards. This proposal places 36 of 54 required spaces east of the service station. The easternmost boundary of this parking area would be more than 420 feet from the entrance to the office. The length of a football field is 300 feet. Over this distance, parkers will be forced to walk across six pump islands (accommodating up to 12 vehicle movements at capacity), the entrance and parking area for the convenience store, and the entrance and exit for the car wash (a blacktop area of approximately 220 feet in addition to the parking lot itself) and the loading dock of the office building.

Even if the operator placed a chain link or other fence between the parking area and the station to force parkers to walk to the sidewalk on Middlebrook Road, no barrier could stop those pedestrians to take the shortest walk to and from the office, directly across the pump island driveways and the car wash exit. This proposal is a disaster waiting to happen.

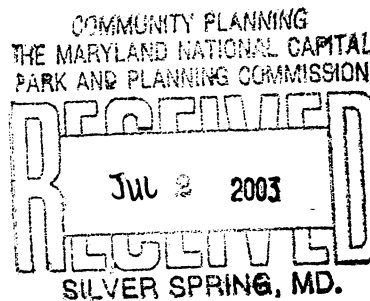
An additional eight spaces for the office building parking requirements are proposed perpendicular to the pump islands by the Middlebrook Road sidewalk. Those parkers would face even more dangerous conditions to access the office building.

According to a communication from the Washington-Maryland-Delaware Service Station and Automotive Repair Association to this writer, a six-pump-island service station is very large and is itself two-three times the scale of most service stations.

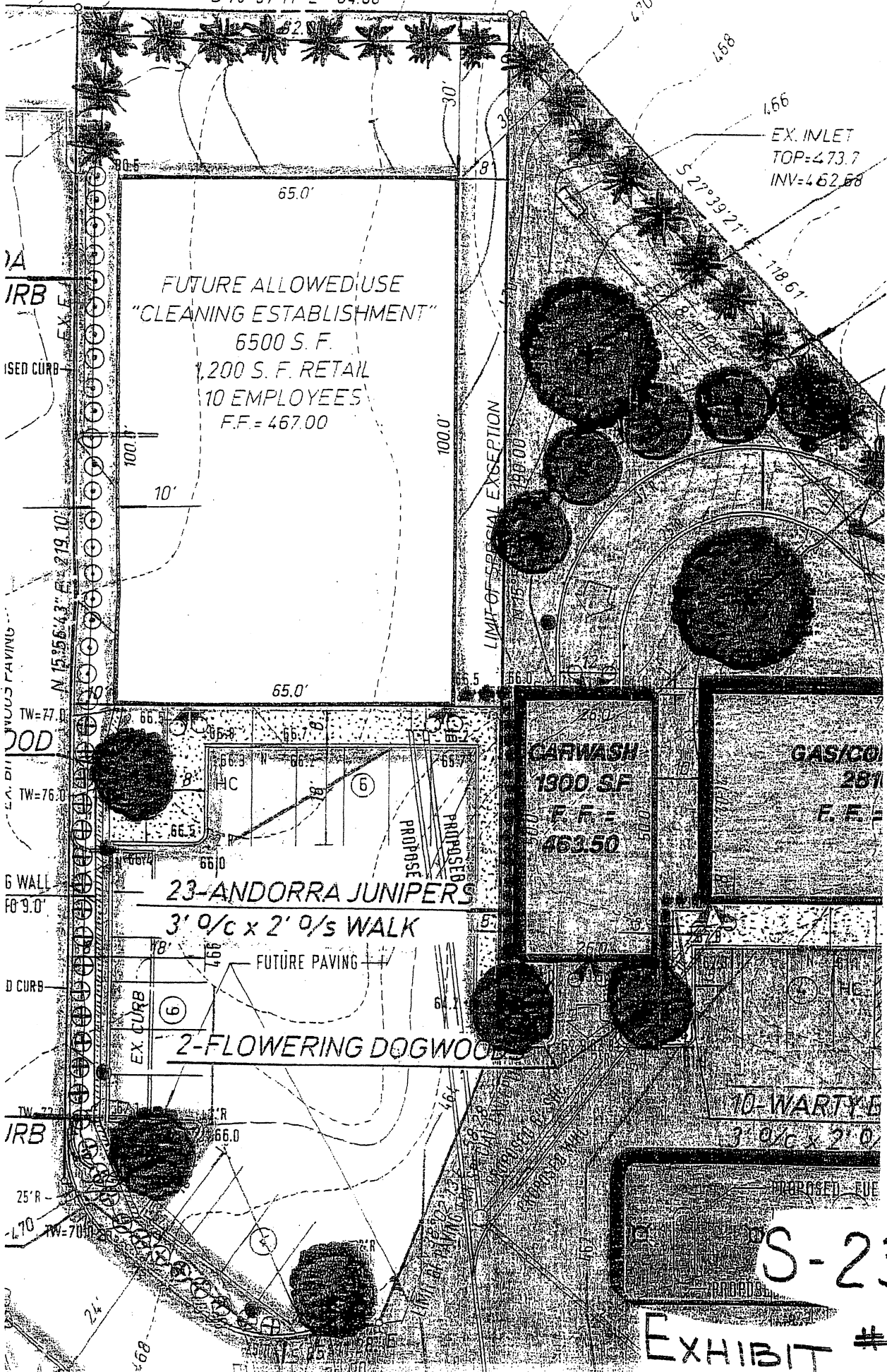
Scale of Hazardous Movements. When the original Special Exception was granted in 1998, Planning Staff made an analysis of potential vehicle movements for the service station in comparison with an office building at that site, permitted by the I-1 zoning. The comparison was dramatic. The staff report estimated Peak Hour AM trips generated would be 208 versus 45 for an office, while Peak Hour PM trips would be 377 versus 74 as an office. That would mean 3-6 movements per minute, representing serious obstacles to any pedestrian movement on site. Since no such pedestrian activity was contemplated, the Board of Appeals granted the Special Exception, citing no possibility of pedestrian hazards.

Additional Parking Shortfall

In his petition to the Board for major modification to the Special Exception, attorney Abrams (April 8, 2003) requested approval of the handsome, existing stone patio and fountain at the right of the building (Item 4, p. 2). This was to permit the owner to place "benches and/or tables and chairs on the patio for the use of patrons and/or employees." The only purpose for such placement would be for consumption, in equitable weather, of food or drink purchased within the convenience store. Indeed, the large sign for the Town Center on the property features, in addition to the Car Wash, the Café operated within the building including Quartermaine Coffee and Espresso Bar. No seating for consumption of food is provided within the building. If the patio were to be used for the Café, Montgomery County Zoning Ordinance (Article 59-E) would require 15 parking spaces/1,000 square feet. The patio is approximately 1,000 square feet in size, but absolutely no parking for such activity is provided in the present petition for modification.



S 73°37'11" E - 84.60'



EX. INLET
TOP=473.7
INV=462.68

FUTURE ALLOWED USE
"CLEANING ESTABLISHMENT"
6500 S. F.
1,200 S. F. RETAIL
10 EMPLOYEES
F.F. = 467.00

CARWASH
1900 SF
F.F. =
463.50

GAS/CO
287
F.F. =

23-ANDORRA JUNIPERS

3' 0"/c x 2' 0"/s WALK

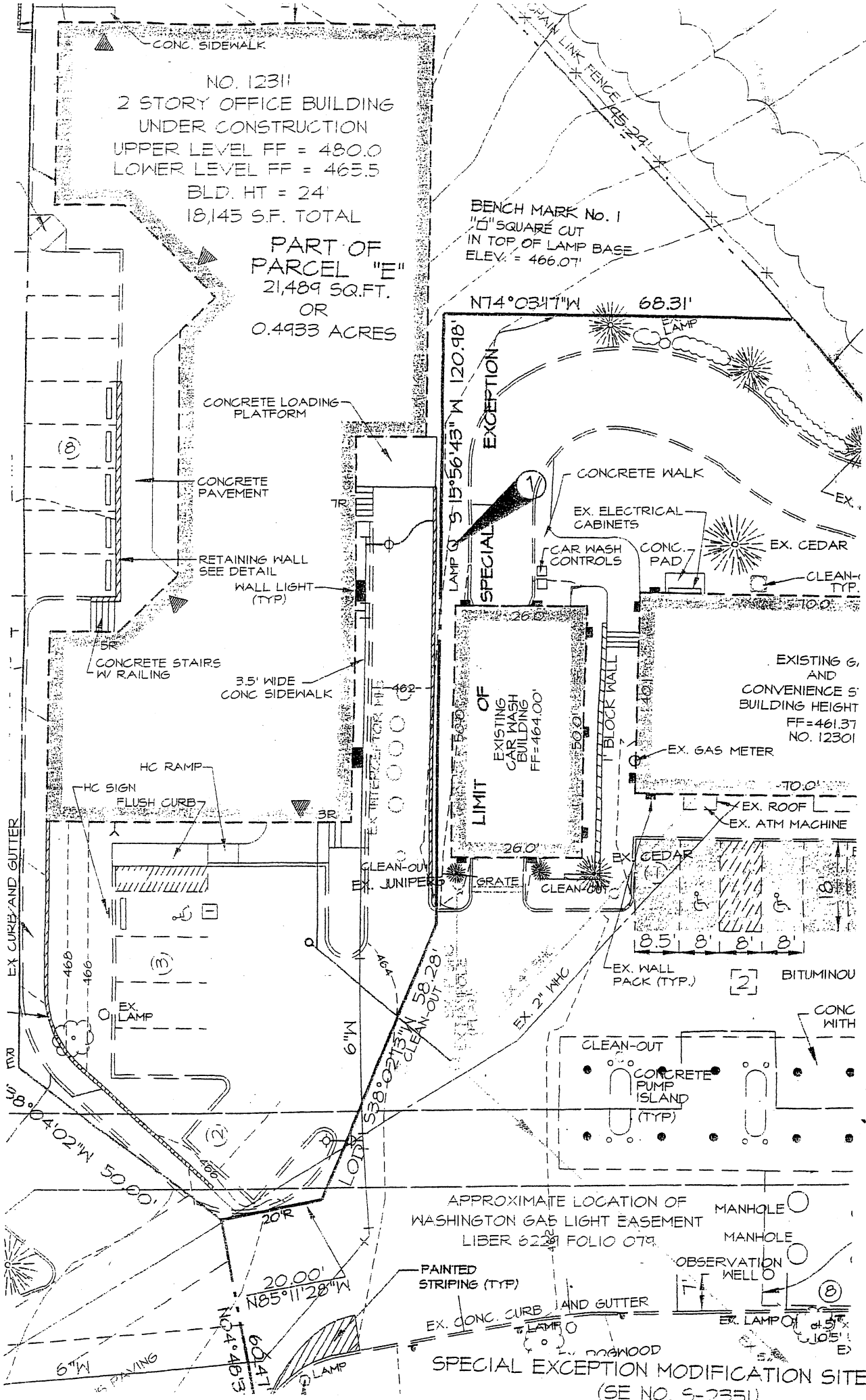
FUTURE PAVING

2-FLOWERING DOGWOOD

10-WARTY
3' 0"/c x 2' 0"/s

S-2351

EXHIBIT # 21



NO. 12311
 2 STORY OFFICE BUILDING
 UNDER CONSTRUCTION
 UPPER LEVEL FF = 480.0
 LOWER LEVEL FF = 465.5
 BLD. HT = 24'
 18,145 S.F. TOTAL

PART OF
 PARCEL "E"
 21,489 SQ.FT.
 OR
 0.4933 ACRES

BENCH MARK No. 1
 "O" SQUARE CUT
 IN TOP OF LAMP BASE
 ELEV. = 466.07'

N74°03'47"W 68.31'

LAMP "O" 5'15"56'43" W 120.98'
 SPECIAL EXCEPTION

LIMIT OF
 EXISTING
 CAR WASH
 BUILDING
 FF=464.00'

EXISTING 6,
 AND
 CONVENIENCE 5'
 BUILDING HEIGHT
 FF=461.37
 NO. 12301

EX. WALL PACK (TYP.) 2 BITUMINOUS

APPROXIMATE LOCATION OF
 WASHINGTON GAS LIGHT EASEMENT
 LIBER 622 FOLIO 079

PAINTED STRIPING (TYP)
 EX. CONC. CURB AND GUTTER

SPECIAL EXCEPTION MODIFICATION SITE PLAN
 (SE NO. S-2351)



MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES
255 Rockville Pike, 2nd 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:
EXTERIOR 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~~ 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
BUILDING'S RIGHT SIDE. REMOVE ALL EXTERIOR WALL MOUNT FIXTURES, INSTALLING ONLY DOUBLE MOUNTED DIRECTIONAL
100 WATT FIXTURES IN AREA'S DELINEATED ON M-NCCPC 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

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

Date

JAN 29 2003

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



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

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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 59-6-1.3(a)(1) REVEALED THE FOLLOWING:
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Printed Name

[Signature]
Signature

1/24/03
Date

Phone No. 301-370-3656

RECEIVED BY: _____
Printed Name

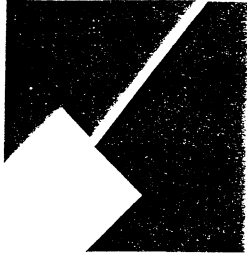
Signature

Date

JAN 29 2003

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

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

July 3, 2003

MEMORANDUM:

TO: Sue Edwards, I-270 Team Leader
Community-Based Planning Division

VIA: Daniel K. Hardy, Supervisor *DKH*
Transportation Planning

FROM: Ki H. Kim, Planner *KKK*
Transportation Planning

SUBJECT: Special Exception Application No. S-2351A
Minor Modification to Automobile Filling Station
Germantown West Policy Area

This memorandum is Transportation Planning staff's Adequate Public Facilities (APF) review of the subject special exception petition.

RECOMMENDATION

Staff recommends the following condition to support approval of the subject special exception application.

1. Revise the existing APF agreement associated with the previously approved preliminary plan per the Board of Appeal's condition #3 in the November 2, 1998, opinion for the special exception S-2351 approval.

DISCUSSION

The proposed minor modifications to the previously approved special exception, including the proposed change to the parking allocation, do not change the approved development density and uses and will not increase the number of weekday peak period trips generated by the site. Therefore, no Local Area Transportation Review (LATR) for the automobile filling station is required. The site is located in the Germantown West Policy Area where there is sufficient employment staging ceiling capacity available (1,984 jobs as

of May 31, 2003 under the FY03 Annual Growth Policy). Staff finds that the proposed modifications to the existing automobile filling station and the proposed change to the parking allocation under the subject special exception application will have no adverse effect on area roadway conditions.

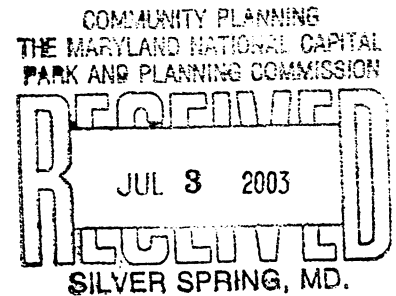
It is noted that the revision to the existing APF agreement associated with the previously approved preliminary plan for this property (33,000 square feet of office development), which is a part of conditions required by the Board of Appeals related to approval of the subject special exception, has not been met. Due to inconsistencies in the amount and type of the development on the subject parcel, staff finds that a revised LATR study will be required as a part of the APF agreement revision.

KHK:ct

mno to edwards re filling station.doc



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



TO: Sue Edwards, Community Based Planning Division
VIA: Mary Dolan, Environmental Planning *MD*
FROM: Michael Zamore, Environmental Planning *MZ*
DATE: July 2, 2003
SUBJECT: Special Exception S-2351- A
 Automobile Filling Station and Permitted Accessory Uses

Recommendations

Special Exception Recommendation

Environmental Planning staff has reviewed the Special Exception request referenced above. Staff recommends **approval** of this request with respect to the Environmental Guidelines with the following conditions:

- The Applicant must first meet landscaping and other requirements as per the Landscape/Lighting Plan approved as part of Special Exception S-2351 in August 1999.
- The Applicant must obtain Montgomery County Department of Permitting Services (DPS) approval for the underground detention and treatment facility.

Preliminary Forest Conservation Plan Recommendation

A revision to the previously approved Forest Conservation Plan for this site has been submitted. Staff recommends approval of this revised Preliminary Forest Conservation Plan. A Final Forest Conservation Plan must be submitted prior to issuance of a sediment and erosion control permit, and must include the on-site landscaping requirements from the previous special exception approval with replacement of non-native species as indicated below.

Background

Forest Conservation

This special exception is subject to a previously approved Final Forest Conservation Plan (FCP) that included a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD), and a Landscape and Lighting Plan. The FCP covers the filling station, convenience store and car wash accessory uses. The FCP requirements included off-site reforestation and the above-mentioned landscape planting. The Applicant complied with off-site reforestation requirements but failed to fully comply with on-site landscape and lighting requirements. A revised Final Forest Conservation Plan is required as part of this modification request. It should indicate reforestation

already provided as per the previous Plan and proposed landscaping credit. Additionally, Barberry (*Berberis thunbergii*) is a non-native invasive plant species that must be replaced on the landscape plan with suitable native species in order to be credited.

The issues raised by Community Based Planning Staff regarding the acceptability of the proposed special exception use on this site do not affect the Forest Conservation Plan.

Environmental Guidelines

This site is not located within a Special Protection Area or inside a 100-year floodplain boundary. There are no streams or stream valley buffers within the property. Staff is not opposed to the proposed modification but requires the applicant to comply with the landscaping requirements previously approved by the Planning Board, before approval is granted.

Watershed Protection

The property is in the Gunner's Branch subwatershed of the Middle Great Seneca Creek watershed. Gunner's Branch has fair stream and habitat conditions and has been designated a Watershed Restoration Area by the *Countywide Stream Protection Strategy*. An on-site stormwater management (dry) pond currently provides quantity and quality controls for the site's wastewater and storm runoff. This special exception modification requests a revision of the on-site stormwater management to an underground facility, to facilitate the creation of additional parking. The Montgomery County Department of Environmental Protection (DEP) has already approved the concept plan and given the project its first full review. DEP currently has the capacity to accommodate underground treatment of storm runoff and wastewater from the Germantown Industrial Center facility and believes that the proposed facility will continue to meet full quality based on today's standards. Underground detention and treatment facilities are common for industrial uses.

Air Quality

Potential sources of air pollution on the property (including stationary sources such as gasoline storage tanks and fuel pumps in the automobile filling station) are regulated and must receive the required permits of approval from county and state authorities. State regulations (COMAR 26.11.24 and COMAR 26.11.13.04C) require the use of both Stage I and Stage II systems. Stage I vapor recovery systems trap gasoline vapors emitted during refilling of storage tanks by a tank truck, while Stage II vapor recovery systems capture gasoline vapors emitted during vehicle refueling. Using Stage I with Stage II recovery creates a closed system that recovers all gasoline vapors and returns them to the gasoline storage tank for eventual return to the fuel processing plant. Fuel storage tank and fuel pump installation and use on the site, are required to comply with the control guidelines and air quality permitting requirements of the Maryland Department of the Environment (MDE). In particular, the applicant was required to properly install, maintain and use Stage I and Stage II Vapor Recovery systems and a Vapor balance line, and obtain applicable air quality permits.

Noise

The property is located on the north side of Middlebrook Road, west of the relocated Waring Station Road. To the west of the property are two low-rise office buildings and attendant parking areas. A Department of Energy facility covers an extensive area of land north of the property. There are few residential uses in the immediate vicinity. Tank trucks refilling gasoline storage tanks are the primary source of noise disturbance from activities on the property.

Dust

Dust is not expected to be problematic since most of the site is paved or landscaped.