

**GUNNER'S LAKE, SECTION 10
SITE PLAN AMENDMENT NO. 81987068B**

Description

Request to remove a tenancy condition and the site plan enforcement agreement, and update the required parking standards for an existing shopping center (Germantown Square).

No. 81987068B
Completed: 10-11-2024

MCPB
Item No. 10
10-24-2024

Montgomery County
Planning Board
2425 Reedie Drive, Floor 14
Wheaton, MD 20902

Planning Staff



Phillip Estes, AICP, Planner III, Upcounty, Phillip.Estes@montgomeryplanning.org, 301-495-2176



Sandra Pereira, RLA, Supervisor, Upcounty, Sandra.Pereira@montgomeryplanning.org, 301-495-2186



Patrick Butler, AICP, Chief, Upcounty Planning, Patrick.Butler@montgomeryplanning.org, 301-495-4561

LOCATION/ADDRESS

12651 Wisteria Drive, Germantown

MASTER PLAN

1989 *Germantown Master Plan*

ZONE

PD-9 (Planned Development 9)

PROPERTY SIZE

11.1 acres

APPLICANT

GS Limited Partnership

ACCEPTANCE DATE

June 26, 2024

REVIEW BASIS

Chapters 22A and 59

Summary:

- Staff recommends approval of the Site Plan Amendment with conditions.
- Pursuant to Sec. 59.7.7.B.3 (Exemptions), Applicant proposes to utilize the 2004 Zoning Ordinance for development standards.
- Pursuant to Sec. 7.7.1.B.3.b (Amendment of Approved Plan before October 30, 2014), Applicant proposes to update the required parking standards under the 2014 Zoning Ordinance parking standards.
- The Amendment will rescind and replace the Site Plan Enforcement Agreement (SPEA) with the Amendment conditions of approval.
- To date, no community comments have been received.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
SECTION 1: RECOMMENDATIONS AND CONDITIONS	4
SITE PLAN AMENDMENT 81987068B.....	4
SECTION 2: SITE DESCRIPTION.....	6
VICINITY AND PROPERTY DESCRIPTION	6
SECTION 3: PROJECT DESCRIPTION.....	9
PREVIOUS APPROVALS.....	9
PROPOSAL.....	9
SECTION 4: COMMUNITY OUTREACH	10
SECTION 5: SITE PLAN AMENDMENT 81987068B FINDINGS AND ANALYSIS.....	11
SECTION 6: CONCLUSION	14
ATTACHMENTS	14

EXECUTIVE SUMMARY

As a precursor to filing a separate site plan amendment for a coffee shop/restaurant, the prospective tenant has requested that the Applicant preemptively remove current restrictions on “fast-food” tenants, which includes rescinding the Site Plan Enforcement Agreement (SPEA). This will alleviate potential conflicts with the proposed coffee shop/restaurant, as well as with current and future tenants. The Applicant also requests to update parking standards to reflect the current mix of tenants.

Historically, an SPEA was completed after the site plan application was approved. An SPEA was important in providing timing and milestones with respect to a development program. Items that were normally in the SPEA included permit milestones, transition of the common areas to homeowner’s associations, and when agreements would be submitted. The SPEA was always a condition of the site plan approval and enforced in perpetuity. However, since 2008, site plan enforcement has been administered by the Department of Permitting Services through the conditions of approval and an SPEA is no longer necessary to enforce an approved site plan.

Approved in 1988, the subject SPEA primarily regulates allowable uses at Germantown Square. These include a specific list of preferred “supermarket-related uses,” uses that “compliment the suggested supermarket,” and other “service office oriented” tenants. Additionally, the SPEA requires of the Applicant to “not lease space to fast food establishments. This restriction does not, however, include deli-type restaurants or pizzeria-style restaurants which may provide carry out service.” The site plan conditions of approval also prohibit a “fast-food” tenant.

The SPEA and conditions of approval are problematic because many of the uses listed in the SPEA are not defined terms or regulated uses in the Zoning Ordinance (e.g. haberdashery, dinner house restaurant, showroom retail, etc.). Furthermore, a “fast food” land use is not defined nor regulated by the Zoning Ordinance. These terms and uses are outdated, subjective, and generally unenforceable. This has caused uncertainty and ambiguity for the Applicant, and current and prospective tenants.

SECTION 1: RECOMMENDATIONS AND CONDITIONS

SITE PLAN AMENDMENT 81987068B

Staff recommends approval of Site Plan No. 81987068B, to remove a tenancy condition and the Site Plan Enforcement Agreement, and update the parking standards. The development must comply with the conditions of approval for Development Plan Amendment No. 85-1 (Resolution No. 10-1612, Preliminary Plan No. 119811700 and Site Plan No. 819870680 (MCPB Resolution dated February 1, 1988), as amended.

All site development elements shown on the latest electronic version of the Site Plan Amendment, as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions. The following conditions revise and restate all prior conditions.¹

CONDITIONS

- ~~1. Submit Site Plan Enforcement Agreement and Development Program, including a monitoring program for the type and space usage of retail and office uses within the center, specifically referencing type and space usage of tenants as described in the December 1, 1987, letter from the applicant.~~
- ~~2.~~ 1. Add vegetation, berms, and a minimum three-foot masonry fence along the property line shared with Section 3 residential units.
- ~~3.~~ 2. Limits of grading and tree protection areas along the stream valley are to be marked in the field and inspected by staff prior to grading.
- ~~4.~~ 3. Submit detailed erosion and sediment control plans to assess removal of additional trees as per new state criteria.
- ~~5.~~ 4. Vegetation along the stream valley ~~to~~ must be native vegetation.
- ~~5.~~ Tenancy is not to include fast food.
- ~~7.~~ 5. Landscape plan is ~~to~~ must show cut-off lighting fixtures, subject to staff review.
6. Before approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:
 - a. Include the Site Plan Amendment resolution on the approval or cover sheet(s).

¹ For the purposes of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor (s) in interest to the terms of this approval.

b. Modify data table to reflect development standards approved by the Planning Board.

c. Show and provide at least ten (10) short-term and three (3) long-term bicycle parking spaces.

SECTION 2: SITE DESCRIPTION

VICINITY AND PROPERTY DESCRIPTION

The Subject Property is located at 12651 Wisteria Drive, which is at the southeast quadrant of Great Seneca Highway (MD 119) and Wisteria Drive in Germantown, and it is improved with a multi-tenant commercial center of approximately 107,369 square feet with surface parking lots on 11.10 acres of land (“Subject Property”). Commonly known as Germantown Square, various commercial tenants operate on the Subject Property including retail, restaurants, and professional offices and services. Lancaster County Dutch Market is one of the major tenants.

The Subject Property is zoned PD-9 (Planned Development-9) and is subject to the 1989 *Germantown Master Plan* (“Master Plan”).

Properties to the north, east and south of the Subject Property are zoned PD and developed with townhomes and Gunner’s Lake Local Park. Properties to the west are zoned Residential-200 (R-200) and Commercial Residential (CR) and developed with townhomes and Seneca Valley High School. See Figure 1 and Figure 2.



Figure 1 - Vicinity Map

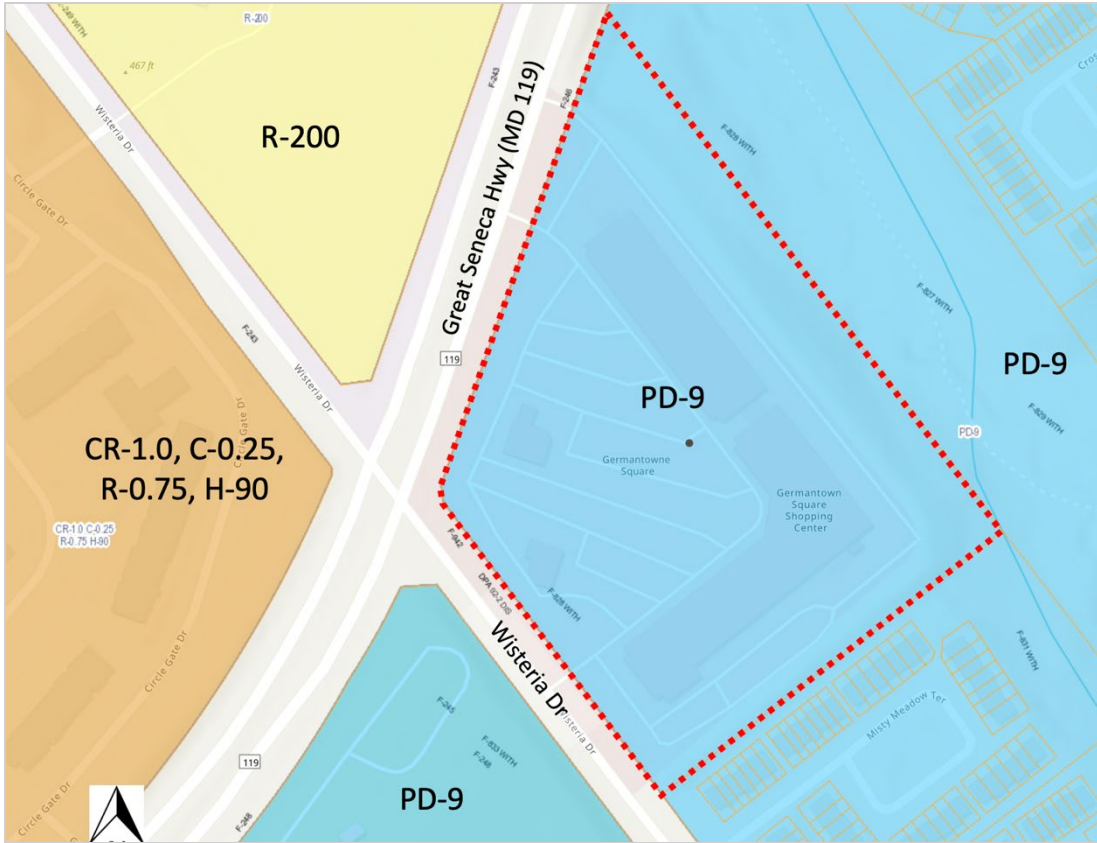


Figure 2 - Zoning Map



Figure 3 - Subject Property

SECTION 3: PROJECT DESCRIPTION

PREVIOUS APPROVALS

On June , 1988, the Planning Board approved Preliminary Plan Amendment 1-81170 (119811700) for 2,617 units, 235 lots on Crawford Farm, dedicate streets, relocate an elementary school, dedicate parkland, and public improvement agreement.

On November 27, 1985, the County Council approved Development Plan Amendment No. 85-1 (Resolution No. 10-1612) to modify the number and mix of dwelling units, extend Forest Brook Drive, and confirmed the Subject Property commercial density of 115,000 square feet maximum.

On January 7, 1988, the Planning Board approved Site Plan No. 819870680 (MCPB mailing date February 1, 1988) to allow a multi-tenant commercial center with retail, restaurants, and offices.

Site Plan Amendment No. 81987068A was withdrawn.

There are no other know regulatory applications or approvals.

PROPOSAL

The Amendment proposes the following modifications to Site Plan No. 819870680:

- Rescind the SPEA (and replace with conditions of approval) because the uses allowed in the SPEA create uncertainty and ambiguity with Applicant and tenants;
- Delete the condition that prohibits “fast food” because this term is not defined nor regulated in the Zoning Ordinance, and;
- Update parking standards to reflect the current mix of tenant uses and install ten (10) short-term and three (3) long-term bicycle parking spaces.

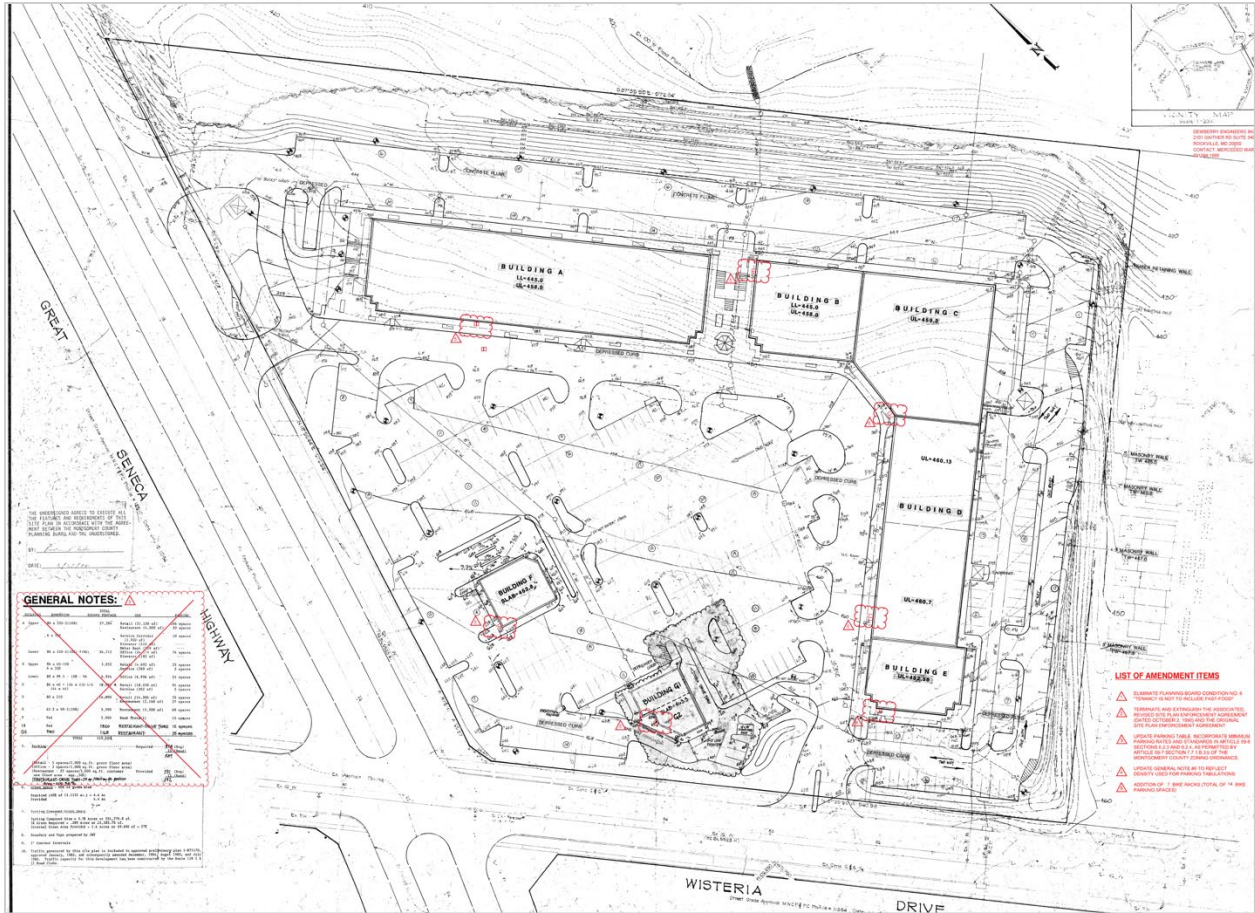


Figure 4 - Proposed site plan amendment with approximate location of new bicycle parking shown

SECTION 4: COMMUNITY OUTREACH

The Applicant has complied with all noticing requirements including the mailing of a notice of application letter and posting a notice sign on the Subject Property. A pre-submittal meeting is not required for a site plan amendment application.

To date, no community comments have been received.

SECTION 5: SITE PLAN AMENDMENT 81987068B FINDINGS AND ANALYSIS

Pursuant to the exemption provision of Section 59.7.7.1.B.3 of the Zoning Ordinance, this Amendment was reviewed under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014. The proposed Amendment does not alter the intent of the previous findings except as modified below.

- 1. The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan;***

The Amendment conforms to the binding elements of Development Plan Amendment No. 85-1 (Attachment A). Binding elements include land area devoted to commercial uses, commercial and residential density, and green area. The Amendment does not affect any elements of the approved development plan because the Amendment proposes no increase in density, changes to any green area, construction of buildings or infrastructure.

- 2. The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56;***

The Amendment complies with the PD-9 zone development standards and parking standards, as applicable. The Amendment does not propose any construction to increase density or square footage. The Subject Property is not located within an urban renewal area.

Pursuant to Section 59-8.3.2.B.2 (Planned Development, Commercial Uses) commercial uses may be allowed if the use is proposed by the master plan and located within the area covered by the PD zone, and the use is designed and located to achieve the purposes of the PD zone and are compatible with other uses within and adjacent to the development.

The Amendment continues to meet the purpose of the PD zone to “maximize the safety, convenience, and amenities for both the residents of the development and the residents of neighboring areas while remaining compatible with existing and proposed surrounding land uses” because the neighborhood-serving commercial uses operating on the Subject Property will continue to provide convenience, amenities, retail shops, restaurants, and professional services for the surrounding community within a compatible development.

Additionally, pursuant to Sec. 59-C-7.132 (Commercial use in PD zone), land uses are governed by the Master Plan. The Master Plan explicitly states for the Subject Property: “Since [Site Plan No. 819870680] ... has been approved for this Analysis Area, it is deleted from further consideration.” Site

Plan No. 819870680 approved the existing multi-tenant commercial center for retail establishments, restaurants, a bank, services, and offices. Therefore, existing and future uses are governed by Site Plan No. 819870680, as amended.

The Amendment proposes to eliminate the Site Plan Enforcement Agreement (SPEA). SPEAs are no longer required. In 2006, the language and conditions of an SPEA were replaced with conditions of approval. Historically, SPEAs were completed after the site plan application was approved. The SPEAs were important in providing timing and milestones with respect to a development program. Items that were normally in the SPEA included permit milestones, transition of the common areas to homeowner’s associations and when agreements would be submitted. The SPEA was always a condition of the site plan approval and enforced in perpetuity.

The current SPEA contains language restricting “fast food” establishments, which is an undefined term and unregulated use in the Zoning Ordinance. Furthermore, the Amendment deletes a condition that prohibits “fast food” tenancy. This has created uncertainty and ambiguity for the property owner and prospective tenants. Furthermore, there is no prohibition or restriction of “fast food” uses in the PD-9 zone, the Master Plan, or the Zoning Ordinance. Based upon the Applicant’s available historic records, it appears the condition predicated concerns with potential traffic impacts in the late 1980s. Given how traffic impacts are currently analyzed for new uses and that the term “fast food” is not defined or regulated in the Zoning Ordinance, there is no continued basis for this subjective term and limitation in the site plan conditions.

Pursuant to Sec. 59-7.7.1.B.3.b (Amendment of Approved Plan before October 30, 2014), the Applicant proposes to update the parking standards in accordance with Sec. 59-6.2.3 and Section 59-6.2.4 of the 2014 Zoning Ordinance. All other development standards remain in full force and effect as previously approved.

Table 1 –Site Plan Amendment Data Table for Section 59.6.2.4 (Parking Requirements)

Development Standard	Permitted/ Required	Approved by Site Plan No. 819870680	Proposed Site Plan Amendment No. 81987068B
Vehicle Parking Spaces (Min.)			
Retail/service establishment (5 spaces per 1,000 SF of gross leasable area)	398 (79,589 SF)	321	--
Restaurant (4 spaces per 1,000 SF for patron use space)	66 (16,488 SF)	173	--
Office (2.25 spaces per 1,000 SF gross floor area)	n/a	95	--
Veterinarian, office/hospital (1 space per employee, plus 2.5 spaces per each doctor	11	n/a	--

Development Standard	Permitted/ Required	Approved by Site Plan No. 819870680	Proposed Site Plan Amendment No. 81987068B
practicing simultaneously, minimum 5 total spaces)			
Animal boarding (1 space per employee, plus 3 spaces)	9	n/a	--
Total vehicle parking spaces, minimum	484	589	484 ²
ADA spaces	11	11	11
ADA van spaces	3	n/a	3
Motorcycle/Scooter Parking	10	n/a	10
Car-Share Spaces	5	n/a	5 ³
Bicycle Parking Spaces			
Bicycle parking, short-term, minimum	10 spaces ⁴	n/a	10 spaces
Bicycle parking, long-term, minimum	3 spaces	n/a	3 spaces
Total bicycle parking spaces, minimum	13 spaces	n/a	13 spaces

3. The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient;

Site Plan No. 819870680 found that the location of buildings and structures, open spaces, landscaping, and pedestrian and vehicular circulation systems are adequate, safe, and efficient. The Applicant proposes to update the parking requirements to current standards, which will include the provision of three (3) long-term and ten (10) short term bicycle parking spaces. There are no changes to buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems facilities. Therefore, the Amendment continues to be adequate, safe and efficient.

4. Each structure and use is compatible with other uses and other site plans, and with existing and proposed adjacent development; and

² Applicant may reallocate parking spaces based on the allowed uses in the zone and if the total minimum number of vehicle parking spaces are maintained.

³ Pursuant to Sec. 59-6.2.3.D.2, if the Applicant cannot find a car-share organization willing to make use of the spaces, the property owner may use the spaces for publicly available parking.

⁴ Retail use requires 1 space per 10,000 SF with 15% long-term; Restaurant use requires 1 space per 10,000 SF with 15% long-term; no bicycle parking is required for veterinarian or animal boarding uses.

All structures and uses remain compatible with other adjacent uses and other site plans. The Subject Property is presently developed with a multi-tenant commercial center with retail, restaurant, and office uses. Except for eliminating the condition that prohibits a “fast food” use, the Amendment does not propose a change to any defined or regulated land use. The Amendment proposes to rescind the SPEA to reflect the revised conditions of approval. The Amendment does not propose an increase density or square footage. There is no known proposed adjacent development.

5. *The site plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

Other than updating parking standards, the Amendment does not propose any construction or land disturbing activities, and it is therefore exempt from Chapter 22A and Chapter 19. There is no other applicable law for this Amendment.

SECTION 6: CONCLUSION

As conditioned, the Site Plan Amendment application satisfies the findings under Section 7.3.4 and applicable standards of the Zoning Ordinance. The Amendment is exempt from the Forest Conservation Law, Montgomery County Code, Chapter 22A. Therefore, Staff recommends approval of the Site Plan Amendment No. 81987068B, with conditions.

ATTACHMENTS

Attachment A: Previous Approvals Resolutions

Attachment B: Applicant’s Statement of Justification

Attachment C: Site Plan Amendment

Attachment D: Site Plan Enforcement Agreement