

June 10, 2024

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VIA ELECTRONIC SUBMISSION

Ms. Sandra Pereira
Montgomery County Planning Department
UpCounty Division, Regulatory Supervisor
2425 Reedie Drive
Wheaton, Maryland 20902

Re: Statement of Justification for Gunners Lake, Section 10 – Major Amendment to Site Plan No.819870680 (the “Site Plan”)

Dear Ms. Pereira:

On behalf of GS Limited Partnership (the “Applicant”), we hereby submit this Site Plan Amendment Application (the “Application”) for the property located at 12651 Wisteria Drive, which is located in the southeast corner of the intersection of Great Seneca Highway (MD 119) and Wisteria Drive in Germantown, Maryland and is improved with a retail center that was constructed in the late 1980’s with approximately 107,369 square feet¹ of various commercial uses under the PD-9 Zone (the “Property” or “Germantown Square”). As described in greater detail below, the Applicant proposes to eliminate several elements from the Site Plan approval so that it has the flexibility to adapt to current market conditions and standards at Germantown Square.

Since the time that Germantown Square was constructed approximately thirty-five (35) years ago, the mix of commercial uses and tenants have routinely changed in a market responsive fashion. In order to ensure that the Applicant can continue to capture market demand at Germantown Square, it is processing this Application to eliminate and modify several obsolete Site Plan conditions and elements. In this respect, these proposed revisions are intended to allow Germantown Square to continue as a successful retail center for the coming decades. The specific changes proposed by the Application are as follows:

- Eliminate Planning Board Condition No. 6 (“Tenancy is not to include fast-food”).

¹ The Site Plan approval allows for up to 108,400 square feet of commercial uses, and this Application reflects the “as-built” mix of commercial uses (107,369 square feet).

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- Terminate and extinguish the associated, Revised Site Plan Enforcement Agreement dated October 2, 1990 (and the original Site Plan Enforcement Agreement for the Property); and
- Update the minimum parking rates to apply the standards in Section 6.2.3 and 6.2.4 of the Zoning Ordinance, as permitted by Section 7.7.1.B.3.b of the Zoning Ordinance.

With respect to Planning Board Condition No. 6 of the Site Plan, “fast-food” is not a defined term in the Montgomery County Zoning Ordinance (it wasn’t defined in the prior Zoning Ordinance applicable at the time of the Site Plan approval either), which creates uncertainty and ambiguity for the Applicant. Moreover, there is no prohibition or restriction on fast food uses in the PD-9 Zone or in the approved and adopted 1989 Germantown Master Plan (the “Master Plan”).² Based upon our review of available historical records, the prior owner of the Property voluntarily committed to this condition, which was likely predicated on concerns with traffic impacts in the late 1980’s. Given all the changes in the retail market over the past thirty (30) years and that the governing adequate public facilities (APF) standards are much different today, there is no valid basis for this subjective limitation in Planning Board Condition No. 6 to remain. Similarly, the Revised Site Plan Enforcement Agreement (and the original Site Plan Enforcement Agreement) is obsolete and can be terminated upon approval of this Application. More specifically, site plan enforcement agreements are no longer used by Montgomery County Planning Board.

While the Application does not propose any changes to the existing improvements at Germantown Square (except for the addition of bicycle parking spaces), the Applicant is seeking the Planning Board’s approval to update the parking ratios for the Property to align with the current minimum standards in the Zoning Ordinance. The updated parking ratios are more consistent with the parking utilization and occupancies at Germantown Square, which will allow the Applicant to “manage its parking supply more efficiently” and thereby “increase the amount of space available for economically productive activity” as recommended by Thrive Montgomery 2050. (pp. 113 and 118). Additionally, updating the applicable parking ratios to meet the standards of the current Montgomery County Zoning Ordinance will result in the provision of bicycle parking spaces at Germantown Square which do not presently exist. Significantly, the provision of bicycle parking spaces through the Application will further Thrive 2050’s recommendation to “[p]rioritize the provision of safe, comfortable, and attractive ... micromobility infrastructure and services, and other improvements to support walking, bicycling, micromobility ... usage” (p. 112). As reflected in the parking tabulations included with the Application, Germantown Square will

² The Master Plan identifies the Property as Analysis Area GL-1. The Master Plan provides that the “[GL-1] analysis area has been deleted from the Plan since a site plan for Village Center retail center development has been approved and is now under consideration.” As a result, the Application proposes to continue to operate the Property as a retail center which substantially conforms with the Master Plan.

comply with all applicable standards in Section 6.2.3 and 6.2.4 of the current Zoning Ordinance and there will be a surplus of 108 parking spaces at the Property.

Required Findings for Approval (Section 59-D-3.4(c))

Since the Application is being processed under the grandfathering provisions of the Zoning Ordinance, Section 59-D-3.4(c) of the Prior Zoning Ordinance establishes the required findings the Planning Board must make to approve this Application. As delineated below, the Project satisfies all required findings.

- (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 Property is subject to Development Plan No. F-942³. As described in greater detail above, the Application does not propose any changes to the existing buildings that were constructed in full compliance with the Development Plan. The proposed changes to the Site Plan are necessary to respond to changes in the market and parking demands since Germantown Square was originally constructed in 1989. The revised Site Plan will continue to conform to all non-illustrative elements of the Development Plan.

- (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;**

As delineated on the plan submittals included with the Application, the Site Plan meets all requirements of the PD-9 Zone. Section 59-C-7.11 of the prior Zoning Ordinance states that the purpose of planned development zones is to implement “the area master plans by permitting unified development consistent with densities proposed by master plans,” and “provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories.” The Application is consistent with the Master Plan recommendations for Germantown Square, and the proposed revisions to the Site Plan are necessary to achieve flexible design and integrate mutually compatible commercial uses through re-tenanting of the existing improvements over time, as necessary.

³ The Development Plan permits up to 115,000 square feet of commercial uses.

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

The Site Plan provides safe, efficient and well-integrated buildings, green area, landscaping, recreation facilities, and pedestrian and vehicular circulation. The Application largely maintains the existing improvements while also allowing for the application of updated parking ratios and the inclusion of bicycle parking spaces. These proposed updates will enhance pedestrian and vehicular circulation systems by encouraging multimodal transportation options at the Property.

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

The Application is compatible with existing and approved pending adjacent development as it will allow for a market responsive mix of uses and greater flexibility for operations at Germantown Square in the coming years. The revisions to the Site Plan will also enhance compatibility with existing and proposed adjacent development by ensuring that this village retail center, as designated by the Master Plan, continues to complement the surrounding mix of residential and civic uses.

(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.

The Application complies with all applicable requirements under Chapter 22A and 19 of the County Code because the scope of revisions to the Site Plan are exempt from these requirements.

Pursuant to the Plan Submittal Requirements for Major Plan Amendment Applications (signed by Ms. Pereira on February 5, 2024), we hereby submit the following plans and materials in support of the Application:

- Application Form
- Statement of Justification (this cover letter)
- Certificate of Compliance
- Notice List
- Draft Application Notice Letter
- Signage Information
- Amended Plans (black-and-white)
- Markup of Approved Plans (redlined sheets)
- Original Plans and Resolution

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- Checklist
- Site Plan Intake Checklist for Applicants

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer
& Polott, P.C.**

Matthew Gordon

Matthew M. Gordon

cc: Patrick Butler, Chief, UpCounty Division
Robert Kronenberg, Deputy Director
Pete Federowicz, Nellis Corporation
Michael Glazer, Nellis Corporation
Meredith Byer, Dewberry
Mercedes Ward, Dewberry