

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

November 5, 2024

MCPB No. 24-105  
Site Plan Amendment No. 81987068B  
Gunner's Lake, Section 10  
Date of Hearing: October 24, 2024

## **RESOLUTION**

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on January 7, 1988, the Planning Board, by a Planning Board Opinion with a mailing date of February 1, 1988, approved Site Plan No. 819870680 for a 110,216 square foot multi-tenant commercial center with retail, restaurants, and offices on 11.1 acres of PD-9 zoned-land, located at the east quadrant of Wisteria Drive and Great Seneca Highway (12651 Wisteria Drive) ("Subject Property"), in the Germantown East Policy Area and 1989 Germantown Master Plan ("Master Plan") area; and

WHEREAS, on June 26, 2024, GS Limited Partnership ("Applicant") filed an application for approval of an amendment to the previously approved site plan to remove a tenancy condition and the site plan enforcement agreement, and update the required parking standards on the Subject Property; and

WHEREAS, Applicant's application to amend the site plan was designated Site Plan No. 81987068B<sup>1</sup>, Gunner's Lake, Section 10 ("Site Plan," "Amendment," or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated October 11, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

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<sup>1</sup> Site Plan Amendment No. 81987068A was withdrawn.

WHEREAS, on October 24, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Linden, seconded by Commissioner Hedrick, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, Commissioners Bartley, Hedrick, and Linden voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board approves Site Plan Amendment No. 81987068B to remove a tenancy condition, void the site plan enforcement agreement, and update the required parking standards by replacing all prior conditions with the following conditions:<sup>2</sup>

1. Add vegetation, berms, and a minimum three-foot masonry fence along the property line shared with Section 3 residential units.
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.
3. Submit detailed erosion and sediment control plans to assess removal of additional trees as per new state criteria.
4. Vegetation along the stream valley must be native vegetation.
5. Landscape plan 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).
  - 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.

BE IT FURTHER RESOLVED that all site development elements shown on the latest electronic version of Site Plan Amendment No. 81987068B, submitted via ePlans to the M-NCPPC as of the date of the Staff Report, are required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that having considered the recommendations of its Staff as presented at the hearing and/or set forth in the Staff Report, which the Board hereby adopts

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<sup>2</sup> For the purpose 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.

and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, and all findings not specifically addressed remain in effect.

- 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. 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 proposed 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.

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 Subject Property includes approximately 11.1 acres zoned PD-9. The Application satisfies the applicable development standards as shown in the following data table:

*Data Table*

<b>Development Standard</b>	<b>Permitted/ Required by Zoning Ordinance</b>	<b>Approved by Site Plan No. 819870680</b>	<b>Approved by Site Plan Amendment No. 81987068B</b>
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 practicing simultaneously, minimum 5 total spaces)	11	n/a	--
Animal boarding (1 space per employee, plus 3 spaces)	9	n/a	--
Total vehicle parking spaces, minimum	484	589	484 <sup>3</sup>
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 <sup>4</sup>
Bicycle Parking Spaces			
Bicycle parking, short-term, minimum	10 spaces <sup>5</sup>	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

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

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

In approving Site Plan No. 819870680, the Board found that the location of buildings and structures, open spaces, landscaping, and pedestrian and vehicular circulation systems are adequate, safe, and efficient. This Amendment updates 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 with the Amendment , therefore they remain 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.*

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. With this Amendment, the Board voids the Site Plan Enforcement Agreement (SPEA) executed on October 2, 1990. The SPEA is no longer required for the Subject Property and its requirements have been replaced with site plan conditions of approval. Historically, SPEAs were completed after the site plan application was approved and served to provide timing and milestones with respect to a development program. The SPEA voided with this Amendment contained 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, which created uncertainty and ambiguity for the property owner and prospective tenants. There is no prohibition or restriction of "fast food" uses in the PD-9 zone, the Master Plan, or the Zoning Ordinance. Based on the above, the Board finds that there is no continued basis for this subjective term and limitation in the site plan conditions. The Amendment does not propose an increase density or square footage. There is no known proposed adjacent development.

BE IT FURTHER RESOLVED that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is

November 5, 2024

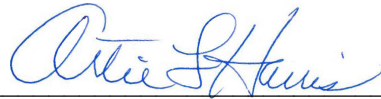
(which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions..

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by Commissioner Bartley, with a vote of 5-0; Chair Harris, Vice Chair Pedoeem, and Commissioners Bartley, Hedrick, and Linden, voting in favor of the motion, at its regular meeting held on Thursday, October 31, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair  
Montgomery County Planning Board