



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

CONSENT ITEM #
MCPB 01/04/07

MEMORANDUM

DATE: December 22, 2006
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief *RK*
Michael Ma, Supervisor *Ma*
Development Review Division
FROM: Joshua Sloan *JS*
Development Review Division
(301) 495-4597



REVIEW TYPE: Site Plan Amendment
PROJECT NAME: Middlebrook Industrial Park
CASE #: 82003021A
APPLYING FOR: Site plan amendment to adjust building architecture, driveway and entrance locations, outdoor vehicle display areas, landscape plan, and site development table.
REVIEW BASIS: Div. 59-D-3.7.
ZONE: I-1
LOCATION: Southeast intersection of Amaranth Drive and Middlebrook Road.
MASTER PLAN: Germantown

APPLICANT: Kensington Realty
FILING DATE: July 20, 2006
HEARING DATE: January 4, 2007

STAFF RECOMMENDATION: Approval of the proposed amendments to Site Plan 820030210 and approval of the attached draft Planning Board Resolution for Site Plan 82003021A.

BACKGROUND

Original Preliminary Plan Approval

Preliminary Plan 119811220 (formerly 1-81122) was approved by the Planning Board on June 9, 1983 for the creation of two (2) lots on 2.93 acres of land in the I-1 zone.

Original Site Plan Approval

Site Plan 820030210 (formerly 8-03021) for Middlebrook Industrial Park was approved with conditions by the Planning Board on May 23, 2003. The approved plan proposed a 1,890 square-foot trailer for auto sales and storage for Phase I; an 18,232 square-foot building for auto sales and service and office for Phase II; and a 55,936 square foot commercial office building for Phase III. The Stormwater Management Concept for the subject site plan has been reconfirmed with conditions as of March 11, 2003 (Attachment B).

Conformance to Conditions of Approval

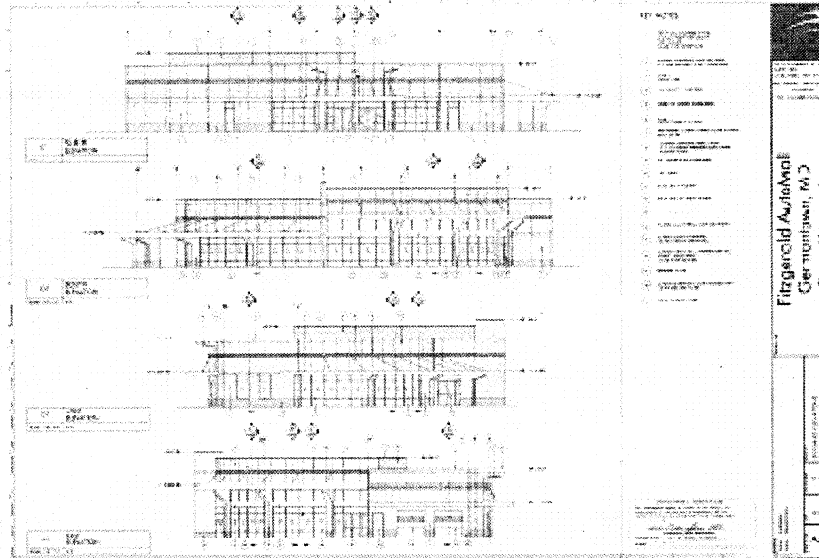
The proposed development shall comply with the conditions of approval for Site Plan 820030210 as listed in the Planning Board opinion dated May 23, 2003 except as modified by this amendment. Further, the applicant shall construct the proposed development in accordance with the Certified Site Plan and Site Plan Enforcement Agreement signed January 5, 2005 (Attachment C) except as modified by this amendment.

PROPOSED AMENDMENTS

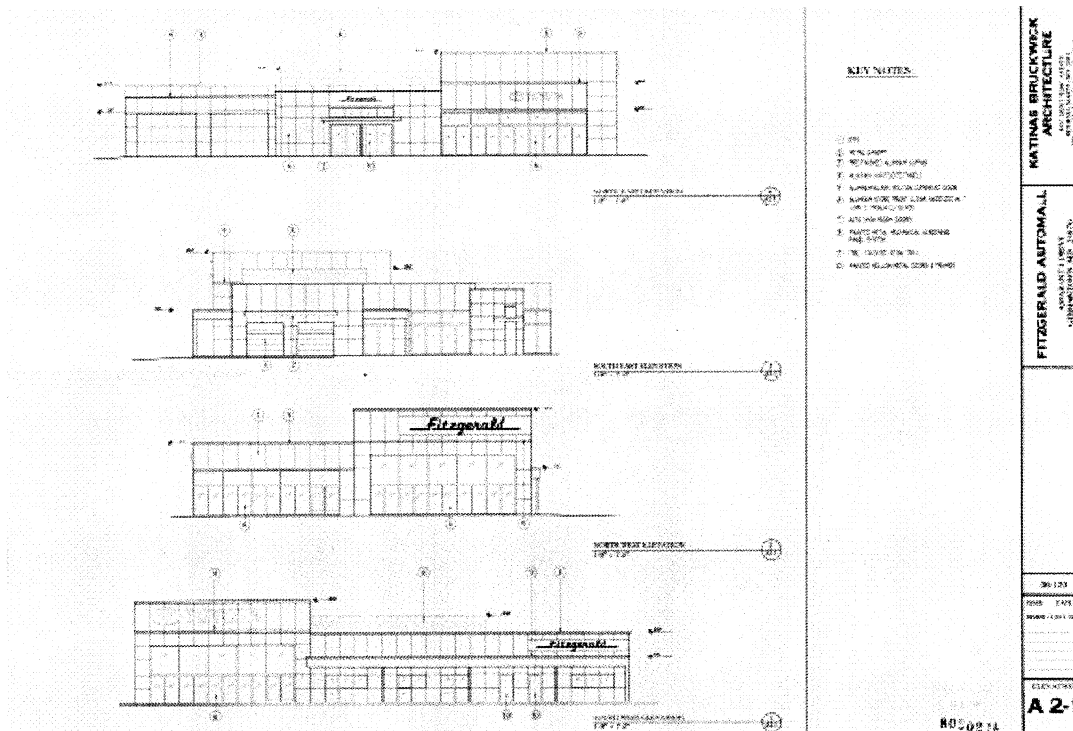
The applicant, Kensington Realty, filed the subject site plan amendment 82003021A on July 20, 2006. The proposed amendment requests the following modifications:

1. New auto sales, service, and office building.
 - The proposed building has been revised to a 7,645 square foot rectilinear design. This is in contrast to the 7,596 square foot modified half-circle building that was approved for Phase II.
 - The building height measuring point has changed to reflect new methods of building height determination. This has resulted in an increase to 31 feet from the approved 30 feet.
2. Revised driveways/entrances and lead walk locations.
 - The driveway to the optional service area has been realigned in conformance with the new architecture.
 - The sidewalks providing access to the proposed building have been revised from the approved layout in conformance with the new architecture.

3. Revised outdoor vehicle display areas.
 - The vehicle display areas for the proposed building now front along the interior parking lot and Middlebrook Road. The approved building's vehicle display areas were primarily along Amaranth Road.



Approved Architecture



Architecture in Proposed Amendment

4. Revised landscape plans.
 - Plantings have been revised to remain integrated with the site and the revised architecture and vehicle display areas.
 - Trees have been added to the interior parking island.
5. Revised site development table.
 - Associated changes to the “Site Tabulation (Phase Two)” have been recorded on the Amended Site Plan to reflect the changes discussed in Section 1.

PUBLIC NOTICE

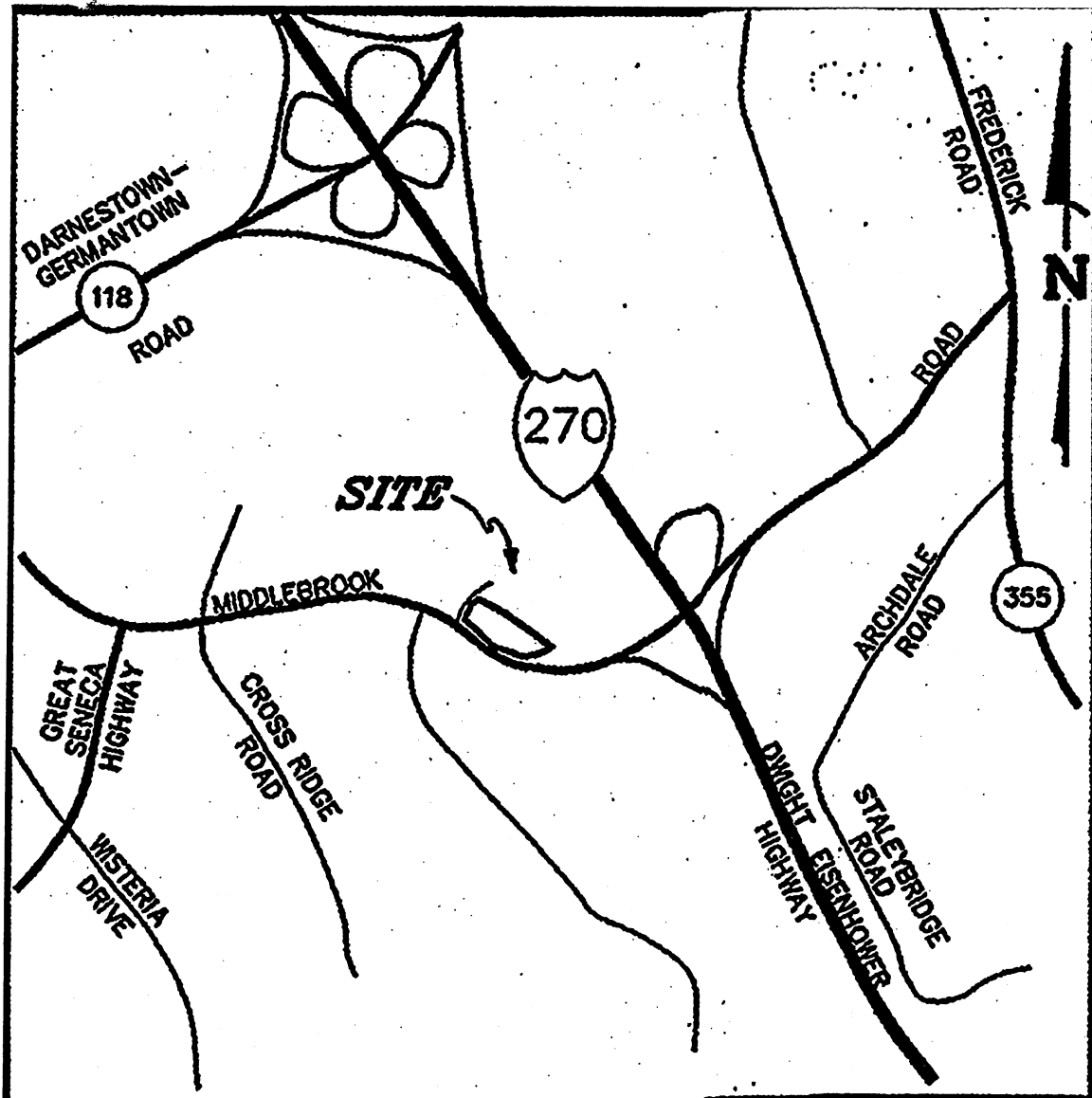
A letter regarding the subject site plan amendment was sent to all parties of record by the Applicant on June 14, 2006. The letter gave notice of a public meeting to present the amended site plan and respond to questions from the community. Two pre-submission meetings were held on the subject site plan amendment on June 26, 2006 and June 27, 2006 (Attachment D). Although an effort was made to elicit community response, including a phone conversation with the Germantown Alliance, staff did not receive any inquiry or comment regarding this amendment.

STAFF RECOMMENDATION

The proposed minor modifications to the site plan do not alter the overall design character of the development in relation to the original approval. Regarding the change in building height determination, the I-1 zone allows for building heights up to 42 feet and the actual height of the architecture from the ground floor remains unchanged. Staff, therefore regards this minor modification as acceptable given the intent and initial objectives of the approved site plan. Altogether, these revisions have a minimal impact on the total amount of impervious surface. Further, these modifications do not affect the compatibility of the development to its surrounding neighborhood. Staff, therefore, recommends **approval** of Site Plan Amendment 82003021A.

ATTACHMENTS

- A. Vicinity Map
- B. Stormwater Management Concept Reconfirmation
- C. Site Plan Enforcement Agreement
- D. Affidavit of Public Meetings
- E. Draft Planning Board Resolution



ATTACHMENT B: STORMWATER MANAGEMENT CONCEPT
RECONFIRMATION FOR SITE PLAN AMENDMENT
82003021A



RECEIVED
MAR 14 2003

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

March 11, 2003

Robert C. Hubbard
Director

Mr. Scott Roser
Macris, Hendricks & Glascock, P.A.
9220 Wightman, Suite 120
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT**
RECONFIRMATION Fitzgerald
Automotive
SWM Concept #: 200790

Dear Mr. Roser:

Your request for a stormwater management reconfirmation for the above site has been evaluated. The existing on-site stormwater management concept is hereby conditionally reconfirmed to allow for construction of the proposed building and to modify the existing stormwater management facility to remove portions of it from the proposed transitway right of way (including setback areas). The conditions to be met are as follows:

1. The roof drains from the proposed canopy for the vehicle display area must drain to the stormwater management facilities.
2. The existing Stormfilters must be disassembled according to the manufacturer recommendations. The design engineer must certify that the re-assembled Stormfilters are structurally sound and function according to the manufacturer specifications. Otherwise, they will have to be replaced.
3. The total amount of pipe storage in need of relocation will be determined at the sediment control design stage. New CMP elbows, tees, manifolds and pipe are required to reconfigure the system as you have proposed. Any damage to the existing facilities must be repaired to the satisfaction of MCDPS or be replaced.



If you have any questions regarding these actions, please feel free to contact Blair Lough
at 240-777-6335.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard R. Brush". The signature is fluid and cursive, with the first name "Richard" being more prominent.

Richard R. Brush, Manager
Water Resources Planning Section
Division of Land Development Services

RRB:dm

cc: SM File #: 200790

SITE PLAN ENFORCEMENT AGREEMENT
Middlebrook Industrial Park-Lots 1 and 2

THIS AGREEMENT, by and between Kensington Realty Incorporated (the "Applicant"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board"), is effective the date signed by the Planning Board.

WHEREAS, §59-D-3.3 of the Montgomery County Code (the "Code") requires the Applicant, as part of the site plan review process, to enter into a formal agreement with the Planning Board; and

WHEREAS, the Code requires the Applicant to agree to execute all features of the approved site plan noted in §59-D-3.23 in accordance with the development program required by §59-D-3.23(m).

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of §59-D-3.3 of the Code, the parties hereto agree as follows:

1. The Applicant agrees to comply with all of the conditions set forth in the Planning Board's Opinion and to execute all of the features of approved Site Plan No. 8-03021 (the "Site Plan"), including all features noted in §59-D-3.23, in accordance with the approved Development Program required by §59-D-3.23(m), attached and incorporated herein by reference.
2. This Agreement is binding on the Applicant, its successors and assigns, and on the land and improvements in perpetuity or until released in writing by the Planning Board.

IN WITNESS WHEREOF, the parties hereto have set our hands and seals as of the date
and year set forth below.

Rose A. Kuan
Montgomery County Planning Board of the
Maryland-National Capital Park and
Planning Commission

11/05/05
Date

Applicant: D. M. Jenkins PPREC
Kensington Realty Incorporated

By: _____

Name: Gary M. Jenkins

Title: President

Date: 11-15-04

EXHIBIT "A"

**COMMERCIAL
DEVELOPMENT PROGRAM
SITE PLAN NO. 8-03021**

Site Plan Name: Middlebrook Industrial Park-Lots 1 and 2

Applicant agrees to complete the following site plan features within the time frames stipulated below.

A. The project will be completed in three phases of development. The proposed site work will be completed as detailed on Exhibit A-1 attached and incorporated herein by reference.

B. Applicant will complete the following site plan elements prior to occupancy of the building(s) constructed in that constructed phase or section

1. Paving of roads (excluding final topping).
2. Parking areas
3. Sidewalks (on-site)
4. Street Tree planting must be installed as part of Phase Two, but no later than six months after completion of the Proposed Building.
5. Lighting (Parking lot).
6. Clearing and Grading, coordinate to minimize Soil Erosion.
7. Landscaping (on-site)
8. Fences for Dumpster Enclosure
9. Site Signage

C. Other stipulations as required by the Planning Board, and as enumerated in Exhibit A-2, attached and incorporated herein by reference. If no other stipulations are required, Exhibit A-2 to be attached stating "None."

D. Site Inspections:

1. Applicant shall conduct a preconstruction meeting with M-NCPPC staff and MCDPS Sediment Control staff prior to clearing and grading.
2. Prior to occupancy of the building(s), the Applicant shall schedule with M-NCPPC staff an inspection to ensure compliance with this Development Program and Site Plan Enforcement Agreement.
3. Applicant shall send written notice to M-NCPPC's Inspection Unit to initiate scheduling of preconstruction meetings and site inspections.
4. No clearing or grading prior to M-NCPPC approval of signature set of plans.

EXHIBIT "A-1"

PHASING

PHASE ONE

Phase One to include the following¹:

- Installation of Temporary Sales Trailer and associated deck and ramp
- Install Landscape Screening and Planters
- Minor Excavation and Restriping to accommodate Customer Parking.

PHASE TWO

Phase Two to include the following:

- Remove existing curbing and perform grading to accommodate building and parking islands.
- Construction of Dealership Showroom and Service Center.
- Construct new entrance from Amaranth Drive.
- Construct utilities connections to serve Showroom Building.
- Install landscape and street trees within Public right-of-way.
- Construct new curbing, sidewalks, and site retaining wall.
- Install lighting.

PHASE THREE

Phase Three to include the following:

- Remove existing curbing and perform grading to accommodate office building, Parking structure and parking islands.
- Construct utilities connections to serve office building and parking structure.
- Install landscape and modify lighting.

¹ If the Applicant decides not to install the sales trailer, (i.e., Phase One), the Applicant will proceed directly to Phase Two and will only be responsible for the Phase Two Improvements listed herein.

EXHIBIT "A-2"

ADDITIONAL STIPULATIONS

Prior to issuance of any building permits for Phase II, the Applicant shall submit a reservation plat for the future transit right-of-way along Middlebrook Road. The right-of-way shall be 70' wide, as shown on the site plan per recommendation of the Approved and Adopted Germantown Master Plan. The plat of reservation shall be recorded in the month of July of the year closest to the issuance of the building permit. The term of reservation shall not exceed three (3) years. The Applicant will be able to leave its parking and stormwater management facilities in the reservation area.

EXHIBIT "A-3"

Planning Board Opinion

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IMANAGE:303161 v.1 09000.0001 Curr: 09/16/02 05:00pm
Orig: 9/12/02 5:20:23 PM Ed: 9/16/02



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

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

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: May 23, 2003

SITE PLAN REVIEW #: 8-03021

PROJECT NAME: Middlebrook Industrial Park, Lots 2 and 3

Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Perdue, with a vote of 4-1, Commissioners Bryant, Perdue, Robinson and Wellington voting for and Commissioner Berlage voting against.

The date of this written opinion is May 23, 2003, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before June 22, 2003 (which is thirty days from the date of this written opinion. If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-81122 is valid, as provided in Section 59-D-3.8.

On May 1, 2003, Site Plan Review #8-03021 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development if required;
2. The Site Plan meets all of the requirement of the I-1 zone;
3. The location of the buildings and structures, the open spaces, the landscaping, and the pedestrians and vehicular circulation systems are 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;
5. The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;

Therefore, the Montgomery County Planning Board **APPROVES** Site Plan #8-03021, which consists of an 1,890 sf trailer for auto sales and storage for Phase I, 18,232 sf facility for auto sales and service and office for Phase II, and 55,936 sf of commercial office in Phase III, subject to the following conditions:

1. Stormwater Management

Conditions of MCDPS stormwater management concept approval dated January 27, 2003 [Appendix A]. The stormwater management concept was reconfirmed on March 11, 2003 [Appendix A] to modify the existing stormwater management facility, if necessary, to remove portions of it from the proposed transit right-of-way (including setback areas). The alternative revised conditions are as follows:

- a. The roof drain from the proposed canopy for the vehicle display area must drain to the stormwater management facilities;
- b. The existing stormfilters must be disassembled according to the manufacturer recommendations. The design engineer must certify that the re-assembled stormfilters are structurally sound and function according to the manufacturer specifications. Otherwise, they will have to be replaced;
- c. The total amount of pipe storage in need of relocation will be determined at the sediment control design stage. New CMP elbows, tees, manifolds and pipe are required to reconfigure the system as you have proposed. Any damage to the existing facilities must be repaired to the satisfaction of MCDPS or be replaced.

2. Site Plan Enforcement Agreement

Submit a Site Plan Enforcement Agreement, Development Review Program for review and approval prior to approval of the signature set as follows:

- a. Development Program to include phasing as follows:
 - i. Clearing and grading to correspond to the construction phasing, to minimize soil erosion;
 - ii. Coordination of each section of the development of roads;
 - iii. Street tree planting must progress as street construction is completed, but no later than six months after completion of the building and parking facilities;
 - iv. Phasing of dedications, stormwater management, sediment and erosion control; or other features.
 - v. Prior to issuance of any building permits for Phase II, the applicant shall submit a reservation plat for the future transit right-of-way along Middlebrook Road. The right-of-way shall be 70' wide, as shown on the site plan per recommendation of the Approved and Adopted Germantown Master Plan. The plat of reservation shall be recorded in the month of July of the year closest to the issuance of the building permit. The term of reservation shall not exceed three (3) years. The applicant will be able to leave its parking and stormwater management facilities in the reservation area.
- b. No clearing or grading prior to M-NCPPC approval of signature set of plans.

3. Signature Set

Prior to signature set approval of site/landscape plans, the following revisions shall be made, subject to staff review and approval:

a. Site Plan

Phase I-Interim Sales Trailer

- i. Show north arrow, LODs, road dedications, road centerlines and dimensions, PUE, PIE, storm water parcel boundary; placement and dimensions of sidewalks, storm drain outlets, oil/grit separators; show all road ROW variations across site frontage;
- ii. Provide statement on plan for site plan requirement.
- iii. Prior to issuance of any building permits for Phase II, the applicant shall submit a reservation plat for the future transit right-of-way along Middlebrook Road: subject to the conditions in Paragraph 2 above.
- iv. Relable the "sidewalk ramp detail" on the detail sheet to the appropriate heading.

Phase II-Automobile Showroom

- i. Relocate the trash dumpster to a more appropriate area, not as visible to Middlebrook Road;

Phase III-Office and Parking Garage

- i. Provide signs and markings for vehicles entering and exiting the parking garage and office building;
- ii. Note on the site plan the number of parking spaces to be specifically reserved for sales and office. Spaces to be identified.

b. Landscape and Lighting Plan

Phase I-Interim Sales Trailer

- i. Obtain approvals for planting within the MDSHA right-of-way;
- ii. Provide photometric layout. Lighting fixtures to be full cut-off, not adjustable or angled.
- iii. Lighting for all phases to conform to IENSA lighting standards referenced in IESNA RP-33-99, Table 7: Secondary Business Districts. Lighting summary not to exceed Maximum level of 10 footcandles and Max./Min. ratio of 5:1.
- iv. Show all existing streetlights, including those on Middlebrook Road and Amaranth Drive.
- v. Provide details for lights mounted on the proposed trailer.
- vi. Poles not to exceed a mounting height of 24 feet as provided in the adjacent site, (Criswell Honda, Site Plan #8-01011) adjacent to the public roads.
- vii. Place shields on all fixtures directly abutting Middlebrook Road and Amaranth Drive, and on any fixtures causing any negative glare or reflection onto both public roads.
- viii. Light levels shall not exceed 0.5 footcandles past the boundary line from the proposed development.

Phase II-Automobile Showroom

- ii. Place shields on all light fixtures, which directly shine onto Middlebrook Road;
- iii. Reduce the height of the light fixtures to a maximum of 24 feet, including mounting height.

Phase III-Office and Parking Garage

- i. Provide landscape planters with smaller ornamental or shade trees appropriate for parking garage structures. Provide details of modified planters, including soil mixture on the Landscape Plans.
- ii. Provide planting on all levels of the parking garage. Include terrace boxes and planters on the perimeter of the lower levels.
- iii. Reduce the height of the light fixtures on the top of the parking garage to 12 feet. Provide shields on all of the light fixtures.
- iv. Provide revised photometric and lighting distribution plan to create zones for office, automobile dealerships and structured parking.

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ATTACHMENT D: AFFIDAVIT OF PUBLIC MEETINGS FOR SITE PLAN
AMENDMENT 82003021A

June 29, 2006

To: Robert.Kronenberg@mncppc-mc.org
From: Perry Berman, Berman Ventures
Subject: Fitzgerald Middlebrook Road Auto Dealership-Site Plan Amendment # 8-03021
Pre-Submission Community Meetings

In accordance with your new site amendment Pre-Submission procedures, on behalf of Fitzgerald AutoMalls, the applicant for site plan amendment # 8-03021 is hereby providing you with a notarized affidavit stating that two pre-submission meetings were held on said application.

On June 26, 2006 a presentation was made before the Germantown Citizens Association annual board election meeting. The meeting was held in the Upcounty Regional Services Center, 12900 Middlebrook Road, Germantown, Maryland 20874. Perry Berman and Michael Bruckwick of Katinas Bruckwick Architecture present the revised site plan and building elevations. Questions were asked and answered about the nature of the building redesign, building function, lighting, preservation of the transitway easement and the request by Toyota to bring the approved building design into conformance with Toyota design program. In attendance at the meeting were David Sapoznick, President of the Germantown Citizens Associations and one other person. Our presence at the meeting was noticed by the Germantown Citizens Association to its members.

On June 27, 2006 another community meeting was held at the Germantown College at 7:00 PM notice was mailed by certified mail to the following community associations. A copy of the invitation/letter is attached for your records as is list of those communities invited to the meeting. Unfortunately besides Perry Berman and Esther Gelman who represent the applicant, no other person attended the meeting.

Perry Berman

7/12/06

Perry Berman

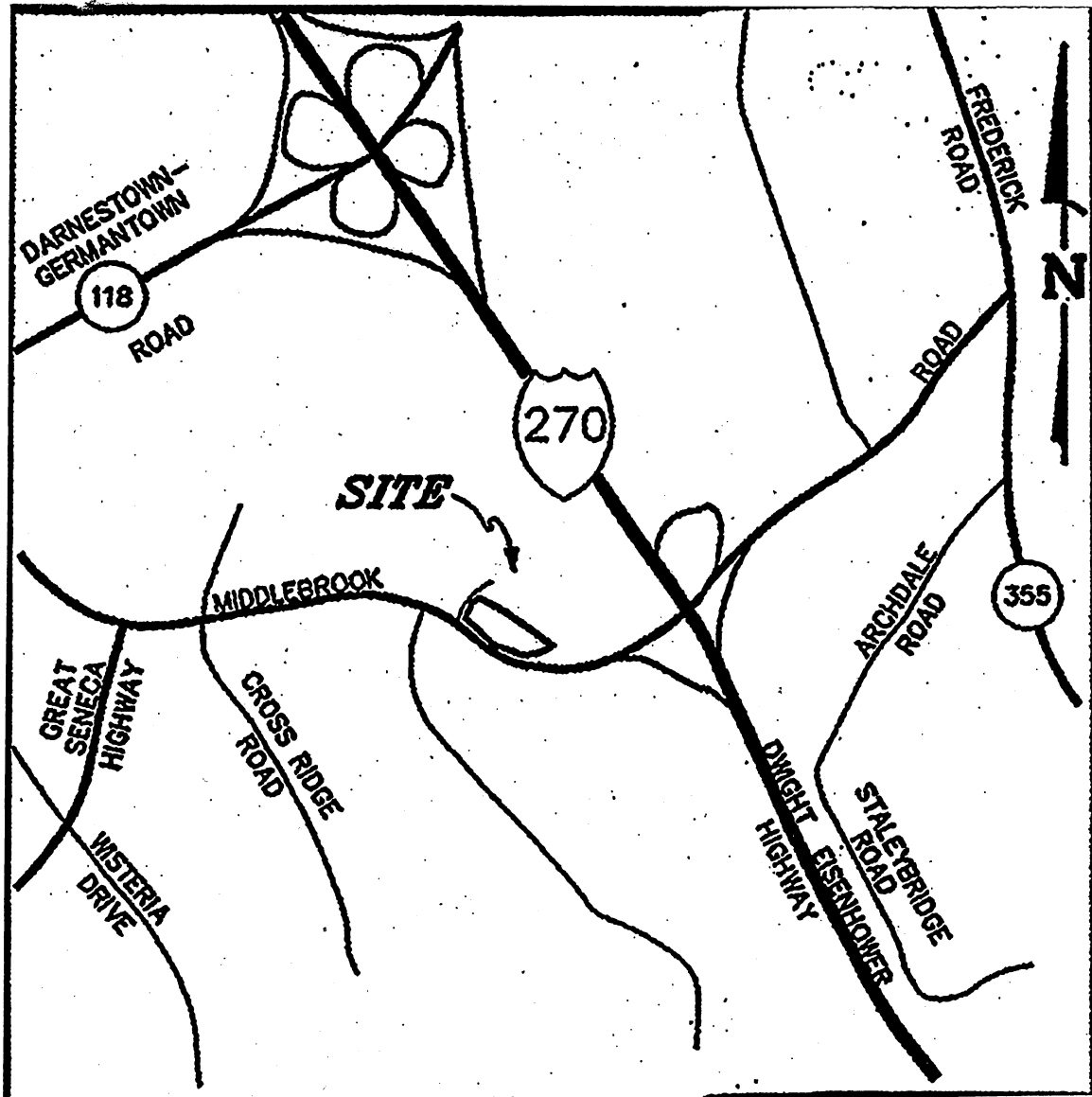
Date

STATE OF MARYLAND, COUNTY of Howard County, to wit:
I hereby certify that on the 12 day of July, 2006, before me, the subscriber, a notary public of the State of Maryland, in and for Howard County for which notary is appointed, personally appeared _____ and made affirmation in due form of law that the matters and facts set forth in the here describe document to which the person are true.
As witness, my hand and notarial seal.



Alisa D. Lopez

[Notary Seal] Notary Public State of Maryland
My Commission expires My Commission Expires July 1, 2009



ATTACHMENT B: STORMWATER MANAGEMENT CONCEPT
RECONFIRMATION FOR SITE PLAN AMENDMENT
82003021A



RECEIVED
MAR 14 2003

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

March 11, 2003

Robert C. Hubbard
Director

Mr. Scott Roser
Macris, Hendricks & Glascock, P.A.
9220 Wightman, Suite 120
Montgomery Village, MD 20886-1279

Re: Stormwater Management **CONCEPT**
RECONFIRMATION Fitzgerald
Automotive
SWM Concept #: 200790

Dear Mr. Roser:

Your request for a stormwater management reconfirmation for the above site has been evaluated. The existing on-site stormwater management concept is hereby conditionally reconfirmed to allow for construction of the proposed building and to modify the existing stormwater management facility to remove portions of it from the proposed transitway right of way (including setback areas). The conditions to be met are as follows:

1. The roof drains from the proposed canopy for the vehicle display area must drain to the stormwater management facilities.
2. The existing Stormfilters must be disassembled according to the manufacturer recommendations. The design engineer must certify that the re-assembled Stormfilters are structurally sound and function according to the manufacturer specifications. Otherwise, they will have to be replaced.
3. The total amount of pipe storage in need of relocation will be determined at the sediment control design stage. New CMP elbows, tees, manifolds and pipe are required to reconfigure the system as you have proposed. Any damage to the existing facilities must be repaired to the satisfaction of MCDPS or be replaced.



If you have any questions regarding these actions, please feel free to contact Blair Lough at 240-777-6335.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard R. Brush", written in a cursive style.

Richard R. Brush, Manager
Water Resources Planning Section
Division of Land Development Services

RRB:dm

cc: SM File #: 200790

SITE PLAN ENFORCEMENT AGREEMENT
Middlebrook Industrial Park-Lots 1 and 2

THIS AGREEMENT, by and between Kensington Realty Incorporated (the "Applicant"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board"), is effective the date signed by the Planning Board.

WHEREAS, §59-D-3.3 of the Montgomery County Code (the "Code") requires the Applicant, as part of the site plan review process, to enter into a formal agreement with the Planning Board; and

WHEREAS, the Code requires the Applicant to agree to execute all features of the approved site plan noted in §59-D-3.23 in accordance with the development program required by §59-D-3.23(m).

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of §59-D-3.3 of the Code, the parties hereto agree as follows:

1. The Applicant agrees to comply with all of the conditions set forth in the Planning Board's Opinion and to execute all of the features of approved Site Plan No. 8-03021 (the "Site Plan"), including all features noted in §59-D-3.23, in accordance with the approved Development Program required by §59-D-3.23(m), attached and incorporated herein by reference.
2. This Agreement is binding on the Applicant, its successors and assigns, and on the land and improvements in perpetuity or until released in writing by the Planning Board.

IN WITNESS WHEREOF, the parties hereto have set our hands and seals as of the date
and year set forth below.

Rose A. Kuan

Montgomery County Planning Board of the
Maryland-National Capital Park and
Planning Commission

1/05/05

Date

Applicant:

D. M. Jenkins PREC
Kensington Realty Incorporated

By:

Name:

Gary M. Jenkins

Title:

President

Date:

11-15-04

EXHIBIT "A"

**COMMERCIAL
DEVELOPMENT PROGRAM
SITE PLAN NO. 8-03021**

Site Plan Name: Middlebrook Industrial Park-Lots 1 and 2

Applicant agrees to complete the following site plan features within the time frames stipulated below.

A. The project will be completed in three phases of development. The proposed site work will be completed as detailed on Exhibit A-1 attached and incorporated herein by reference.

B. Applicant will complete the following site plan elements prior to occupancy of the building(s) constructed in that constructed phase or section

1. Paving of roads (excluding final topping).
2. Parking areas
3. Sidewalks (on-site)
4. Street Tree planting must be installed as part of Phase Two, but no later than six months after completion of the Proposed Building.
5. Lighting (Parking lot).
6. Clearing and Grading, coordinate to minimize Soil Erosion.
7. Landscaping (on-site)
8. Fences for Dumpster Enclosure
9. Site Signage

C. Other stipulations as required by the Planning Board, and as enumerated in Exhibit A-2, attached and incorporated herein by reference. If no other stipulations are required, Exhibit A-2 to be attached stating "None."

D. Site Inspections:

1. Applicant shall conduct a preconstruction meeting with M-NCPPC staff and MCDPS Sediment Control staff prior to clearing and grading.
2. Prior to occupancy of the building(s), the Applicant shall schedule with M-NCPPC staff an inspection to ensure compliance with this Development Program and Site Plan Enforcement Agreement.
3. Applicant shall send written notice to M-NCPPC's Inspection Unit to initiate scheduling of preconstruction meetings and site inspections.
4. No clearing or grading prior to M-NCPPC approval of signature set of plans.

EXHIBIT "A-1"

PHASING

PHASE ONE

Phase One to include the following¹:

- Installation of Temporary Sales Trailer and associated deck and ramp
- Install Landscape Screening and Planters
- Minor Excavation and Restriping to accommodate Customer Parking.

PHASE TWO

Phase Two to include the following:

- Remove existing curbing and perform grading to accommodate building and parking islands.
- Construction of Dealership Showroom and Service Center.
- Construct new entrance from Amaranth Drive.
- Construct utilities connections to serve Showroom Building.
- Install landscape and street trees within Public right-of-way.
- Construct new curbing, sidewalks, and site retaining wall.
- Install lighting.

PHASE THREE

Phase Three to include the following:

- Remove existing curbing and perform grading to accommodate office building, Parking structure and parking islands.
- Construct utilities connections to serve office building and parking structure.
- Install landscape and modify lighting.

¹ If the Applicant decides not to install the sales trailer, (i.e., Phase One), the Applicant will proceed directly to Phase Two and will only be responsible for the Phase Two Improvements listed herein.

EXHIBIT "A-2"

ADDITIONAL STIPULATIONS

Prior to issuance of any building permits for Phase II, the Applicant shall submit a reservation plat for the future transit right-of-way along Middlebrook Road. The right-of-way shall be 70' wide, as shown on the site plan per recommendation of the Approved and Adopted Germantown Master Plan. The plat of reservation shall be recorded in the month of July of the year closest to the issuance of the building permit. The term of reservation shall not exceed three (3) years. The Applicant will be able to leave its parking and stormwater management facilities in the reservation area.

EXHIBIT "A-3"

Planning Board Opinion

2020134_v1

IMANAGE:303161 v.1 09000.0001 Curr: 09/16/02 05:00pm
Orig: 9/12/02 5:20:23 PM Ed: 9/16/02



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

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

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: May 23, 2003

SITE PLAN REVIEW #: 8-03021

PROJECT NAME: Middlebrook Industrial Park, Lots 2 and 3

Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Perdue, with a vote of 4-1, Commissioners Bryant, Perdue, Robinson and Wellington voting for and Commissioner Berlage voting against.

The date of this written opinion is May 23, 2003, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before June 22, 2003 (which is thirty days from the date of this written opinion. If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-81122 is valid, as provided in Section 59-D-3.8.

On May 1, 2003, Site Plan Review #8-03021 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan is consistent with the approved development plan or a project plan for the optional method of development if required;
2. The Site Plan meets all of the requirement of the I-1 zone;
3. The location of the buildings and structures, the open spaces, the landscaping, and the pedestrians and vehicular circulation systems are 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;
5. The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;

Therefore, the Montgomery County Planning Board APPROVES Site Plan #8-03021, which consists of an 1,890 sf trailer for auto sales and storage for Phase I, 18,232 sf facility for auto sales and service and office for Phase II, and 55,936 sf of commercial office in Phase III, subject to the following conditions:

1. Stormwater Management

Conditions of MCDPS stormwater management concept approval dated January 27, 2003 [Appendix A]. The stormwater management concept was reconfirmed on March 11, 2003 [Appendix A] to modify the existing stormwater management facility, if necessary, to remove portions of it from the proposed transit right-of-way (including setback areas). The alternative revised conditions are as follows:

- a. The roof drain from the proposed canopy for the vehicle display area must drain to the stormwater management facilities;
- b. The existing stormfilters must be disassembled according to the manufacturer recommendations. The design engineer must certify that the re-assembled stormfilters are structurally sound and function according to the manufacturer specifications. Other wise, they will have to be replaced;
- c. The total amount of pipe storage in need of relocation will be determined at the sediment control design stage. New CMP elbows, tees, manifolds and pipe are required to reconfigure the system as you have proposed. Any damage to the existing facilities must be repaired to the satisfaction of MCDPS or be replaced.

2. Site Plan Enforcement Agreement

Submit a Site Plan Enforcement Agreement, Development Review Program for review and approval prior to approval of the signature set as follows:

- a. Development Program to include phasing as follows:
 - i. Clearing and grading to correspond to the construction phasing, to minimize soil erosion;
 - ii. Coordination of each section of the development of roads;
 - iii. Street tree planting must progress as street construction is completed, but no later than six months after completion of the building and parking facilities;
 - iv. Phasing of dedications, stormwater management, sediment and erosion control, or other features;
 - v. Prior to issuance of any building permits for Phase II, the applicant shall submit a reservation plat for the future transit right-of-way along Middlebrook Road. The right-of-way shall be 70' wide, as shown on the site plan per recommendation of the Approved and Adopted Germantown Master Plan. The plat of reservation shall be recorded in the month of July of the year closest to the issuance of the building permit. The term of reservation shall not exceed three (3) years. The applicant will be able to leave its parking and stormwater management facilities in the reservation area.
- b. No clearing or grading prior to M-NCPPC approval of signature set of plans.

3. Signature Set

Prior to signature set approval of site/landscape plans, the following revisions shall be made, subject to staff review and approval:

a. Site Plan

Phase I-Interim Sales Trailer

- i. Show north arrow, LODs, road dedications, road centerlines and dimensions, PUE, PIE, storm water parcel boundary; placement and dimensions of sidewalks, storm drain outlets, oil/grit separators; show all road ROW variations across site frontage;
- ii. Provide statement on plan for site plan requirement.
- iii. Prior to issuance of any building permits for Phase II, the applicant shall submit a reservation plat for the future transit right-of-way along Middlebrook Road: subject to the conditions in Paragraph 2 above.
- iv. Relable the "sidewalk ramp detail" on the detail sheet to the appropriate heading.

Phase II-Automobile Showroom

- i. Relocate the trash dumpster to a more appropriate area, not as visible to Middlebrook Road;

Phase III-Office and Parking Garage

- i. Provide signs and markings for vehicles entering and exiting the parking garage and office building;
- ii. Note on the site plan the number of parking spaces to be specifically reserved for sales and office. Spaces to be identified.

b. Landscape and Lighting Plan

Phase I-Interim Sales Trailer

- i. Obtain approvals for planting within the MDSHA right-of-way;
- ii. Provide photometric layout. Lighting fixtures to be full cut-off, not adjustable or angled.
- iii. Lighting for all phases to conform to IENSA lighting standards referenced in IESNA RP-33-99, Table 7: Secondary Business Districts. Lighting summary not to exceed Maximum level of 10 footcandles and Max./Min. ratio of 5:1.
- iv. Show all existing streetlights, including those on Middlebrook Road and Amaranth Drive.
- v. Provide details for lights mounted on the proposed trailer.
- vi. Poles not to exceed a mounting height of 24 feet as provided in the adjacent site, (Criswell Honda, Site Plan #8-01011) adjacent to the public roads.
- vii. Place shields on all fixtures directly abutting Middlebrook Road and Amaranth Drive, and on any fixtures causing any negative glare or reflection onto both public roads.
- viii. Light levels shall not exceed 0.5 footcandles past the boundary line from the proposed development.

Phase II-Automobile Showroom

- ii. Place shields on all light fixtures, which directly shine onto Middlebrook Road;
- iii. Reduce the height of the light fixtures to a maximum of 24 feet, including mounting height.

Phase III-Office and Parking Garage

- i. Provide landscape planters with smaller ornamental or shade trees appropriate for parking garage structures. Provide details of modified planters, including soil mixture on the Landscape Plans.
- ii. Provide planting on all levels of the parking garage. Include terrace boxes and planters on the perimeter of the lower levels.
- iii. Reduce the height of the light fixtures on the top of the parking garage to 12 feet. Provide shields on all of the light fixtures.
- iv. Provide revised photometric and lighting distribution plan to create zones for office, automobile dealerships and structured parking.

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ATTACHMENT D: AFFIDAVIT OF PUBLIC MEETINGS FOR SITE PLAN
AMENDMENT 82003021A

June 29, 2006

To: Robert.Kronenberg@mncppc-mc.org
From: Perry Berman, Berman Ventures
Subject: Fitzgerald Middlebrook Road Auto Dealership-Site Plan Amendment # 8-03021
Pre-Submission Community Meetings

In accordance with your new site amendment Pre-Submission procedures, on behalf of Fitzgerald AutoMalls, the applicant for site plan amendment # 8-03021 is hereby providing you with a notarized affidavit stating that two pre-submission meetings were held on said application.

On June 26, 2006 a presentation was made before the Germantown Citizens Association annual board election meeting. The meeting was held in the Upcounty Regional Services Center, 12900 Middlebrook Road, Germantown, Maryland 20874. Perry Berman and Michael Bruckwick of Katinas Bruckwick Architecture present the revised site plan and building elevations. Questions were asked and answered about the nature of the building redesign, building function, lighting, preservation of the transitway easement and the request by Toyota to bring the approved building design into conformance with Toyota design program. In attendance at the meeting were David Sapoznick, President of the Germantown Citizens Associations and one other person. Our presence at the meeting was noticed by the Germantown Citizens Association to its members.

On June 27, 2006 another community meeting was held at the Germantown College at 7:00 PM notice was mailed by certified mail to the following community associations. A copy of the invitation/letter is attached for your records as is list of those communities invited to the meeting. Unfortunately besides Perry Berman and Esther Gelman who represent the applicant, no other person attended the meeting.

Perry Berman

7/12/06

Perry Berman

Date

STATE OF MARYLAND, COUNTY of Howard County, to wit:
I hereby certify that on the 12 day of July, 2006, before me, the subscriber, a notary public of the State of Maryland, in and for Howard County for which notary is appointed, personally appeared _____ and made affirmation in due form of law that the matters and facts set forth in the here describe document to which the person are true.
As witness, my hand and notarial seal.



Alisa D. Lopez

[Notary Seal] Notary Public State of Maryland
My Commission expires My Commission Expires July 1, 2009

ATTACHMENT E: DRAFT PLANNING BOARD RESOLUTION FOR SITE PLAN
AMENDMENT 82003021A

MCPB No. 06-124
Site Plan No. 82003021A
Project Name: Middlebrook Industrial Park
Hearing Date: January 4, 2007

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on July 20, 2006, Kensington Realty ("Applicant"), filed a site plan amendment application, designated Site Plan No. 82003021A ("Amendment"), for approval of certain modifications to the approved development; and

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated December 22, 2006, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on January 4, 2007, Staff presented the Amendment to the Planning Board as a consent item for its review and action.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves Site Plan No. 82003021A, including the following modifications as reflected in plans stamped by M-NCPPC on November 8, 2006:

1. New auto sales, service, and office building.
 - The proposed building has been revised to a 7,645 square foot rectilinear design. This is in contrast to the 7,596 square foot modified half-circle building that was approved for Phase II.
 - The building height measuring point has changed to reflect new methods of building height determination. This has resulted in an increase to 31 feet from the approved 30 feet.
2. Revised driveways/entrances and lead walk locations.
 - The driveway to the optional service area has been realigned in conformance with the new architecture.
 - The sidewalks providing access to the proposed building have been revised from the approved layout in conformance with the new architecture.
3. Revised outdoor vehicle display areas.
 - The vehicle display areas for the proposed building now front along the interior parking lot and Middlebrook Road. The approved building's

vehicle display areas were primarily along Amaranth Road.

4. Revised landscape plans.

- Plantings have been revised to remain integrated with the site and the revised architecture and vehicle display areas.
- Trees have been added to the interior parking island.

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 Amendment shall be effective as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this Resolution is _____ (which is the date that the 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 within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

JCS

APPROVED AS TO LEGAL SUFFICIENCY
TAB
M-NCPPC LEGAL DEPARTMENT
DATE 12/22/06