



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Items # 1 & 2**  
**07/10/03**

**MEMORANDUM**

**DATE:** July 3, 2003  
**TO:** Montgomery County Planning Board  
**VIA:** John A. Carter, Chief, Community-Based Planning *JAC*  
**FROM:** Sue Edwards, Community-Based Planning *sue*

**SUBJECT 1:** Forest Conservation Plan for Board of Appeals Petition No. S-2351A (Special Exception Modification). Mid Atlantic Petroleum Properties, LLC, applicant, requests a modification to existing automobile filling station, convenience store, and car wash, I-1 Zone, 12301 Middlebrook Road, Germantown

**SUBJECT 2:** Board of Appeals Petition No. 2351-A (Special Exception Modification), Mid Atlantic Petroleum Properties, LLC, applicant, requests a modification to existing automobile filling station, convenience store, and car wash, I-1 Zone, 12301 Middlebrook Road, Germantown

**FILING DATE:** April 8, 2003  
**PUBLIC HEARING:** July 31, 2003 at the Hearing Examiner

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**STAFF RECOMMENDATION:**

1. **Approval** of the Preliminary Forest Conservation Plan
2. **Denial** of the Special Exception Modification

## PROPOSAL

The applicant, Mid-Atlantic Petroleum Properties, LLC is seeking a modification to Special Exception S-2351 approved November 2, 1998. The subject parcel includes 1.94 acres in the I-1 Zone; 1.45 acres define the special exception area. The remainder of the parcel was to be developed in a use allowable in the I-1 Zone (Figure 1).

Elements of the special exception include: a 2,810 sf convenience store, twelve fuel dispensing stations covered by a lighted canopy, a single bay car wash, a monumental sign announcing gasoline prices and services, a surface stormwater management facility to serve the adjoining office development, landscaping and lighting.

The proposed modifications (Attachment A) include changes to exterior conditions including:

- Placing existing stormwater management facilities (wet pond) underground and constructing 36 parking spaces to support the 21,486 sf office building developed on the remainder of the parcel;
- Adding 8 parking spaces parallel to Middlebrook Road requested in a prior modification request approved administratively on October 16, 2002 . This approval was suspended due to the objection by the property owner of the adjoining office building;
- Approval of an existing Automated Teller Machine, small canopy and exterior lighting along the front wall of the convenience store;
- Acceptance of an existing stone patio and fountain with an exit door from the eastern building face;
- Approval of as-built lighting, landscaping, and canopy height.

Modifications requested for the interior of the convenience store to reflect as-built conditions are as follows:

• Customer area and customer lounge	1,263 sf
• Office area	58 sf
• Coolers	286 sf
• Food prep and sales	464 sf
• Cashier	177 sf
• Rest rooms	149 sf
• Utility room	118 sf
• Storage room	68 sf

**Background-** The Board of Appeals approved Special Exception S-2351 on November 2, 1998 subject to the representations of the applicant and conditions placed by the Planning Board (Figure 2). The opinion of the Board of Appeals is included as Attachment B. Mid-Atlantic Petroleum Properties began operating the convenience store, fueling stations, and car wash in 1999.

In November 2002, the adjoining property owner, Brooke Venture LLC, filed a notice of appeal for the issuance of a building permit to construct an office building on the remainder of the parcel not covered by the special exception. Further appeals by the applicant and counter-appeals by Brooke Venture followed without resolving the sufficiency of parking spaces available to the newly constructed office building. The applicant relied upon cross parking easements recorded by Brooke Venture as original owner of the applicant's parcel. Attachment C contains a submittal by Brooke Venture's attorney explaining the bases of the building permit appeals and the relevance to the proposed special exception modifications.

In January 2003, the Montgomery County Department of Permitting Services cited a number of violations of S-2351 (see Attachment D). The proposed modifications (Figure 3) would bring the alterations of the original special exception made during construction into conformance with as-built conditions.

**Site Description-** The site defined by this special exception modification consists of approximately 1.45 acres of a larger parcel (1.94 acres) known as Parcel E, Germantown Industrial Center. The property is located on the north side of Middlebrook Road and west of the signalized intersection of relocated Waring Station Road. Middlebrook Road is an arterial road with 150-feet of right-of-way. Improvements to Middlebrook Road including the frontage to the service station were completed in 1998-1999.

The site is relatively flat with the exception of grading used to develop the stormwater facilities for the special exception uses and the adjoining office uses.

Land uses on the north side of Middlebrook Road (see Figure 4) are Light Industrial. Further to the north and west of the service station is the Department of Energy in the R-200 Zone. Middlebrook Commons is a garden apartment complex in the R-30 zone on the south side of Middlebrook Road.

**Neighborhood Description-** The site is located within the Employment Corridor analysis area of the Germantown Master Plan. Directly opposite the subject site is the Middlebrook Commons residential community on the south side of Middlebrook Road. The nearest residential unit is approximately 150 feet away and approximately 20 feet higher than the subject property.

Land uses along the north side of Middlebrook Road are zoned I-1, Light Industrial.. Adjoining the service station property to the north and east is the Department of Energy (DOE) located in the R-200 Zone. In response to homeland security threats, DOE installed a reinforced gate on their property at the Waring Station Road secondary entrance. The agency intends to install a gatehouse and inspection station, protective bollards and perhaps fencing to reactivate this entrance which has been closed since 9/11/01.

To the east, is a complex of two low office buildings of the Middlebrook Industrial Park owned by Brooke Ventures. These properties are developed in accordance with master plan recommendations for the I-1 Zone. Surface parking is supplied for these office buildings.

**Elements of the Proposal-** The applicant is seeking modification of a special exception to construct and operate an automobile filling station in conjunction with a 2,810 sf convenience store and single bay car wash. The applicant's position is that the modification would address the violations cited and bring the special exception into compliance with the as-built conditions. The modification would also address parking needs of the recently constructed office building on the non-special exception portion of the property. The hours of operation and number of employees per shift remains as in the original special exception.

## **ISSUES**

**Master Plan** –The subject property is within the boundaries of the 1989 Germantown Master Plan. For planning purposes, the site is located within analysis area EC-10 in the Employment Corridor. The Master Plan recommends a continuum of light industrial uses along the north side of Middlebrook Road extending from I-270 through the analysis area EC-10. The requested modification is consistent with the Master Plan in so far as the Plan supports the existing I-1 Zone for the subject property and automobile filling stations are allowed by special exception in that Zone

**Development Standards-** Zoning Ordinance in Sections 59-C-5.33 and 59-C-5.41 establishes the development standards for the I-1 Zone. All buildings, off-street parking and maneuvering areas must meet setbacks from adjoining properties. These setbacks were met by S-2351.

The Ordinance also limits building height to three stories or 42 feet; the buildings on the special exception property meet this requirement. Green area must constitute at least 10 percent of the property. The proposed modifications alter the amount of green space by replacing the surface stormwater management facility with a paved parking area.

**Compatibility, Landscaping, and Lighting-** The principal design issues for the modification of this use are: compatibility with adjoining and confronting residential uses, landscaping, height and visibility of the canopy, and lighting. Landscaping as installed does not meet the specifications of the approved special exception. The approved landscaping provided buffering and screening of adjoining residential property (DOE), shading of the public sidewalk along Middlebrook Road, and buffering of the fuel station activities from the confronting Middlebrook Commons community to achieve compatibility.

The Germantown Streetscape Concept Plan, approved by the Montgomery County Planning Board in 1994 recommends 2.5 inch caliper trees spaced 45 feet on-center to establish an attractive, unified character for major roadways in employment areas such as Middlebrook Road.

The submitted lighting plan expresses lighting levels throughout the site that are unacceptable, excessive, and not compatible with adjacent residential development. Staff recommends significantly reducing lighting levels at the pump islands under the canopy. The applicant should demonstrate lighting levels that average 10 footcandles under the canopy and that do not exceed zero footcandles at the perimeter of the site. This recommendation is consistent with other Planning Board decisions for gas stations in the Upcounty region and conform to the Illuminating Engineer Society of North America (IESNA) recommended practices document 33-99.

The canopy ceiling height (18 feet 5 inches at the lowest, 22 feet 1 inch at the highest) is far in excess of the height of the approved canopy (16 feet 6 inches). See Figure 5.

A laser measurement device was used to record the canopy heights, as shown in the following table. The device was placed flat on the pavement between pump islands pointed toward the ceiling of the canopy. In addition to these heights, the overall measurement of the canopy as viewed from a position on or off-site would be increased by approximately 3 feet 6 inches feet of canopy facing which is lighted and contains the gasoline brand name.

Approved	16 feet 6 inches
Pumps 1-2	22 feet 5 inches
Pumps 3-4	21 feet 6 inches
Pumps 5-6	20 feet 10 inches
Pumps 7-8	20 feet 4 inches
Pumps 9-10	19 feet 8 inches
Pumps 11-12	18 feet 5 inches

The excessive height of the canopy, in violation of the height approved in the special exception, is more intrusive to the confronting Middlebrook Commons residential community. The excessive height of the canopy also permits glare and light spillage to fall on northbound Middlebrook Road.

Canopy heights for recent automobile filling stations by special exception have been established at 15 feet 6 inches for Goshen Oaks Citgo station in Gaithersburg (S-2524) and 15 feet 6 inches at the IO Partnership property (S-2568) located near the MARC station in Germantown. The minimum height for overpass bridges on the Interstate Highway System is 14 feet 9 inches.

**Transportation-** Transportation staff conducted a review of the requested modifications (Attachment E). 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 trips generated by the site.

Staff notes that a condition of the previous special exception approval has not been met. The applicant must revise the Adequate Public Facilities agreement associated with Preliminary Plan No. 1-94075 per the Board of Appeal's condition #3 in the November 2, 1998 opinion for approval of S-2351.

Safe and efficient vehicular and pedestrian circulation cannot be achieved with the 36-space parking area and 8 parallel parking spaces proposed in the special exception modification application.

**Neighborhood Need** – The Montgomery County Zoning Ordinance (Section 59-G-1.24) requires applicants for an automobile filling station to demonstrate "...from a preponderance of the evidence of record that, for the public convenience and service, a need exists for the proposed use for service to the population in the general neighborhood, considering the present availability of such uses to that neighborhood." The Board of Appeals accepted the need statement in approving Special Exception 2351.

**Environmental** – Environmental staff reviewed the special exception modification materials (Attachment F). The modifications meet Environmental Guidelines, subject to two conditions:

1. The Applicant must first meet landscaping and other requirements as per the original Landscape/Lighting Plan approved in 1998.
2. The Applicant must obtain Montgomery County Department of Permitting Services (DPS) approval for the underground detention and treatment facility.

The special exception request 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/Lighting Plan. The FCP covers the filling station, convenience store and car wash accessory uses.

The FCP requirements included off-site reforestation and on site landscaping planting. The Applicant complied with the off-site reforestation requirements but failed to fully comply with on-site landscape and lighting requirements. The Barberry (*Berberis thunbergii*), depicted on the Landscape Plan must be replaced by a suitable native species to receive landscaping credit.

A revised Final Forest Conservation Plan is required as part of this modification request.

**Community Concerns-** Staff has not received any community comments specific to this case. The letter submitted by Brook Ventures, in opposition to the application is included as Attachment C.

Germantown citizens, through meetings of the Germantown Alliance, have complained about excessive light levels at service stations and fast-food restaurants an Germantown. These concerns have been introduced in discussions with the Planning Board concerning S- 2568 (IO Limited Partnership).

### **Inherent and Non-inherent Adverse Effects**

The inherent and non-inherent adverse effects of a special exception on nearby properties and the general neighborhood must be considered.

Section 59-G-1.2.1 of the Zoning Ordinance states:

*Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.*

The first step in this analysis is defining the boundaries of the general neighborhood, in this case analysis area EC-10 from I-270 to Ridgecrest Road. The neighborhood is principally industrial in character on the north side of Middlebrook Road and residential in character on the south side of Middlebrook Road.

The inherent adverse effects associated with automobile filling stations include the amount of impervious surface and its effect on stormwater management, the potential environmental impact from spillage of oils and other automotive fluids, fumes associated with start-ups and idling, queing of vehicles entering the fueling islands, noise from outdoor activities and deliveries, lighting, and signage. Automotive filling stations are increasingly operating 24 hours a day. Staff finds that the physical and operational characteristics of most of the proposed modifications are no different than what is typically encountered with an automobile filling station.

For lighting, canopy height, and parking for the adjacent office building, the proposed modifications create conditions that are non-inherent of the use. Given the submitted plans and other supporting documentation, staff finds that the non-inherent adverse effects of the lighting, canopy height, and safe vehicular and pedestrian circulation generated by parking for the adjoining office building require denial of the special exception application.

### **Compliance with Specific and General Special Exception Provisions-**

Staff has reviewed the application for compliance with the applicable special exception provisions. As noted in the attached, only some of the general and specific requirements for an automobile filling station found in Sections 59-G-1.21 and 59-G-2.06 of the Zoning Ordinance will be satisfied. Staff recommends denial of the proposed modifications.

**Conclusion-** The special exception modifications requested do not entirely satisfy the violations cited by DPS. The canopy height must be reduced for compatibility with the confronting residential property. Excessive lighting throughout the site must be reduced to eliminate spill-over to Middlebrook Road. Landscaping must be installed in conformance with the approved special exception to provide screening, buffering, and shade.

Staff does not support construction of the 36-space parking area on the eastern boundary of the property or creation of 8 parking spaces parallel to Middlebrook Road since these parking areas create unsafe pedestrian and vehicular circulation. Landscaping with thorny, inhospitable species or fencing cannot be assured to prevent pedestrian entry into areas of the site where there are short term and constant vehicular operations around the fueling stations and convenience store.

The small sign advertising the café and coffee bar must be removed in order to conform with the conditions of approval for one monumental sign. Outdoor seating areas are conducive to consuming food and beverage on-site; parking standards for this use are different from convenience stores.

The staff recommends denial of this special exception modification application.

#### **Attachments:**

Figure 1: Vicinity Map

Figure 2: Approved Site/Landscape Plan

Figure 3: Proposed Site/Landscape Plan

Figure 4: Land Use

Figure 5: Canopy Illustration



- Attachment A: Application Letter
- Attachment B: Board of Appeals Opinion S-2351
- Attachment C: Letter from Brook Ventures
- Attachment D: Notice of Violations
- Attachment E: Transportation Staff Memo
- Attachment F: Environment Staff Memo

G: Edwards/S-2351A.middlebrook.staff

## Montgomery County Zoning Ordinance

### 59-G-1.21. General conditions.

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

*Automobile filling station including a car wash with up to 2 bays is a permissible use by special exception use as provided in section 59-C-5.21*

- (2) Complies with the standards and requirements set forth for the use in Section 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

*The use, as modified, does not comply with the standards and requirements of Section 59-G-2.06. Lighting, as built, reflects across Middlebrook Road to the Middlebrook Commons residential community. The number and location of parking spaces proposed for the site will create unsafe vehicular and pedestrian conditions.*

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

*The Germantown Master Plan, adopted and approved in 1989, recommends I-1 (Light Industrial) uses for this property. The proposed use, as modified, is in conformance with the Germantown Master Plan.*

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

*The use, as modified, will not be in harmony with the surrounding neighborhood. New parking spaces on the site create unsafe conditions for pedestrians seeking to reach the adjacent office building. Service stations and convenience stores are vehicular in nature with short periods where vehicles are not moving when on the site. The frequency and multi-directional nature of these vehicular movements cannot be mitigated so as to provide safe haven for pedestrians.*

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

*The use, as modified, will have a detrimental effect on the development of surrounding properties. Excessive lighting levels from the property have a detrimental effect on the use and enjoyment of the confronting residential use. Insufficient landscaping as installed does not provide screening or shade, as required. The outdoor automated teller machine generates additional activity on the special exception property not considered in the initial special exception application.*

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

*The use will not create objectionable noise, vibrations, fumes, odors, or dust. The use, however, as modified will generate adverse illumination, glare and physical activity at this location and into confronting residential properties.*

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

*When considering this use, the number, intensity or scope of special exception uses in the surrounding neighborhood will not adversely affect the nearby Middlebrook Commons residential community. The closest special exception for a filling station is located approximately 1.5 miles away at Middlebrook Road and MD 355. There are no other special exceptions in the vicinity immediate neighborhood. A special exception (S-632) filed in 1978 for an automobile filling station and a hotel/motel in combination with a trucking terminal was denied.*

- (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.

*The use, as modified, would adversely effect the health, safety, and security... of ...visitors or workers at the subject site due to the number and location of parking spaces proposed to serve an adjacent office building. The 36 parking spaces are located over 400 feet from the office building with the service station pumps as an intervening factor for pedestrians seeking to reach the office building.*

- (9) Will be served by adequate public services and facilities including schools, police and fire protection,

water, sanitary sewer, public roads, storm drainage and other public facilities.

- (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

*At the time of the initial S-2351 approval, the Planning Board determined that an automobile service related use would be served by adequate public facilities.*

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

**59-G-1.24. Neighborhood need.**

In addition to the findings and requirements of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- (1) Automobile filling station.
- (2) Automobile and light trailer rental lot, outdoor.
- (3) Automobile, truck and trailer rental lot, outdoor.
- (4) Automobile sales and service center.

- (5) Swimming pool, community.

**Sec. 59-G-2.06. Automobile filling stations.**

- (a) An automobile filling station may be permitted, upon a finding, in addition to findings required in division 59-G-1, that:

- (1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.

*The use will not constitute a nuisance for any of these reasons.*

- (2) 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 a public or private school, park, playground or hospital, or other public use or place of public assembly.

*The use, as modified, will create a traffic hazard or traffic nuisance due to the 36 parking spaces proposed for the eastern edge of the defined special exception site. In addition, 8 parking spaces proposed for the southern boundary parallel to Middlebrook Road would impact safe circulation and operation of gasoline tanker trucks servicing the underground storage tanks.*

- (3) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering service required, population, character, density and number of similar uses.

*The use, as modified, will not adversely affect nor retard the logical development of the general neighborhood in which the station is proposed.*

- (b) In addition, the following requirements must be complied with:
- (1) When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial,

sightly, solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Location, maintenance, vehicle sight distance provisions and advertising pertaining to screening shall be as provided for in article 59-E. Screening shall not be required on street frontage.

*The visible height of the canopy covering the fuel dispensing operation cannot be screened from the adjoining Department of Energy (R-200) property or the Middlebrook Commons (R-30) residential community by mature landscaping or solid fence.*

- (2) Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways are prohibited.

*No signs, product displays, ... or other obstructions are proposed that will adversely affect visibility at intersections or driveway entrances. The location of 8 spaces parallel to Middlebrook Road will adversely affect visibility at the station driveways.*

- (3) Lighting is not to reflect or cause glare into any residential zone.

*The lighting as proposed will exceed the lighting standards of the ISNEA. Staff recommends reducing the height of the canopy and modifying the number and type of fixtures to meet the IESNA standards and eliminate glare into adjoining and confronting residential properties.*

- (4) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in section 59-A-2.1, and such driveways shall not exceed 30 feet in width; provided, that in areas where no master plan of highways has been adopted, the street line shall be considered to be at least 40 feet from the center line of any abutting street or highway.

*The subject property is not a corner lot.*

- (5) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line; and all

service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall be at least 20 feet between driveways on each street, and all driveways shall be perpendicular to the curb or street line.

*All gasoline pumps will be at least 10 feet behind the building line. The driveway entrances are at least 20 feet apart and perpendicular to the curb.*

- (6) Light automobile repair work may be done at an automobile filling station; provided, that no major repairs, spray paint operation or body or fender repair is permitted.

*No repair work is proposed for this location.*

- (7) Vehicles shall not be parked so as to overhang the public right-of-way.

*All parking and drive aisles are set back a minimum of 10 feet from the public right-of-way. No vehicle will be able to park in such a way that it overhangs the right-of-way.*

- (8) In a C-1 zone, an automobile, light truck and light trailer rental, as defined in section 59-G-2.07, and in a C-2 zone, an automobile, truck and trailer rental lot, as defined in section 59-G-2.09, may be permitted as a part of the special exception, subject to the provisions set forth for such uses in this section. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.

*The proposed use will not include any vehicle rental facility.*