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NORMAN G. KNOPF

July 2, 2003

VIA FACSIMILE AND MAIL

Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Special Exception Modification S-2351 (Mid Atlantic Petroleum)

Dear *Derick* Chairman Berlage:

This letter is submitted on behalf of Brooke Venture, LLC ("Brooke") in opposition to the proposed special exception modification. Brooke owns the office building adjacent to the newly constructed office building of petitioner. Petitioner has requested a modification to the special exception for his gas station/car wash/convenience store in order to provide parking for petitioner's office building which is not located on the special exception site. Brooke opposes the proposed modification on the ground that the distance of the proposed parking from petitioner's office building and the unsafe access from the parking spaces to the building will, as a practical matter, result in employees and visitors of petitioner's building not using the parking spaces. Rather, they will use the parking spaces on Brooke's property which provide closer parking and safer pedestrian access.

As set forth in the attached comments of Planner Malcolm Rivkin, the parking lot that petitioner proposes to locate on the special exception site to serve petitioner's office building is greater than a football field in length from the office building. It is situated on the opposite side of the gas station/car wash/convenience store from the office building. It therefore requires parkers to walk a great distance from the parking lot, through the gas station containing 6 gas pump islands, across the ingress and egress for the car wash, as well across the ingress and egress for the loading dock for the office building.

In order for a special exception modification to be granted, there must be a finding that the modification "will not adversely affect the ... safety ... of ... visitors or workers in the area at the subject site" (Section 59-G-1.2(f)); and that the "use ... will not create a traffic hazard or traffic nuisance because of its ... location in relation to other

Derick Berlage, Chairman

July 2, 2003

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buildings ... on or near the site and the traffic patterns from such buildings" (Section 59-G-2.206)

For the reasons set forth in the attached comments of Malcolm Rivkin, as will be supplemented by Mr. Rivkin and others at the hearing before the Planning Board, we believe it is obvious that the required findings of safety cannot be made. We therefore urge the Planning Board to recommend **denial**.

We also note that petitioner's construction of a new office building without adequate parking is a self-created condition. It results from petitioner's developing its property in a manner contrary to the representations it made to the Board of Appeals when it first obtained its special exception in 1998. As exhibit 21 to the original special exception proceedings reflects (a copy of the relevant portion is attached), the petitioner represented to the Board of Appeals that in the area adjacent to the proposed special exception, it would construct a "cleaning establishment" having "10 employees" and containing "cleaning establishment 6,500 S.F. 1200 S.F. retail". Parking, purportedly adequate for this small use, was shown on the exhibit to be located in the front of the building (facing Middlebrook Road).

The building that petitioner actually constructed is a two story office building approximately 2 ½ times the square footage originally represented, about 18,145 square feet. Much of the area that was originally represented as the parking area is now occupied by the larger building. (See a copy of the relevant portion of the special exception modification plan attached to this letter).

Petitioner apparently intended that the parking required by the Zoning Code for its larger building would be met by the employees and visitors using the parking spaces located on the adjacent Brooke property. Thus, the petitioner designed the building without an underground garage and very limited surface parking on petitioner's own property.

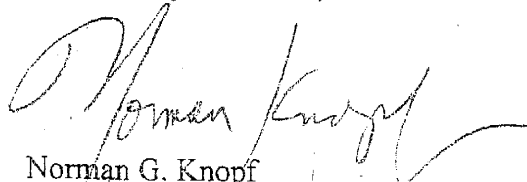
Brooke objected to petitioner's seeking to use Brooke's property to provide the parking spaces required by the Zoning Code and timely filed appeals with the Board of Appeals prior to construction of the building. (Building Permit and Use & Occupancy Certificate Appeals are pending before the Board of Appeals). Rather than stopping construction pending resolution of the issues on appeal, petitioner chose to continue construction. It is well settled law that petitioner proceeded at its own risk. The fact that the building has now been completed does not entitle the petitioner to any favorable equitable consideration. City of Hagerstown v. Long Meadow Shopping Center, 264 Md. 481, 287 A.2d 242, 250 (1972) (Building permit holder took "calculated risk" in building while appeal pending.) In response to Brooke's appeals, petitioner has filed this special

Derick Berlage, Chairman
July 2, 2003
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exception modification, again taking the calculated risk that the special exception modification will be approved.

Because of the unsafe conditions, we urge the Planning Board to recommend **denial** of the special exception modification.

Respectfully submitted,



Norman G. Knopf
Attorney for Brooke Venture, LLC

/attachments (3)

Comments of Malcolm D. Rivkin, PhD, AICP in Opposition
to Special Exception Modification

(No. S-2351)

12301 Middlebrook Road, Germantown, Maryland
June 26, 2003

Background for Opinion. I have been a practicing urban and regional planner for more than 35 years and have been certified for expert witness testimony by courts and/or regulatory bodies in Maryland, Virginia, and Delaware. In Montgomery County, I have undertaken numerous assignments for County agencies as well as private developers and non-profit groups. I have also contributed to the literature of the field and have served on three National Academy of Sciences' review committees dealing with planning matters.

Based on that experience, close review of the proposed Modification to the Special Exception, and detailed field investigation of the site and its surroundings, I have concluded as follows: This proposal would afford severe dangers --- on a continuing basis --- to occupants of the on-site office building forced to park on a deck on top of the stormwater management pond and walk across the full length of the service station and car wash between their parking spaces and the office building. This would be a safety hazard not countenanced by the Zoning Regulations of Montgomery County.

Violations of Zoning Ordinance. This proposal would violate two provisions of the Ordinance.

Section 59-G-1.2 (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."

Section 59-G-2-2.06 (Automobile filling stations) "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 the public or private school, park, playground or hospital, or other public use or place of public assembly."

The Hazards. This proposal places 36 of 54 required spaces east of the service station. The easternmost boundary of this parking area would be more than 420 feet from the entrance to the office. The length of a football field is 300 feet. Over this distance, parkers will be forced to walk across six pump islands (accommodating up to 12 vehicle movements at capacity), the entrance and parking area for the convenience store, and the entrance and exit for the car wash (a blacktop area of approximately 220 feet in addition to the parking lot itself) and the loading dock of the office building.

Even if the operator placed a chain link or other fence between the parking area and the station to force parkers to walk to the sidewalk on Middlebrook Road, no barrier could stop those pedestrians to take the shortest walk to and from the office, directly across the pump island driveways and the car wash exit. This proposal is a disaster waiting to happen.

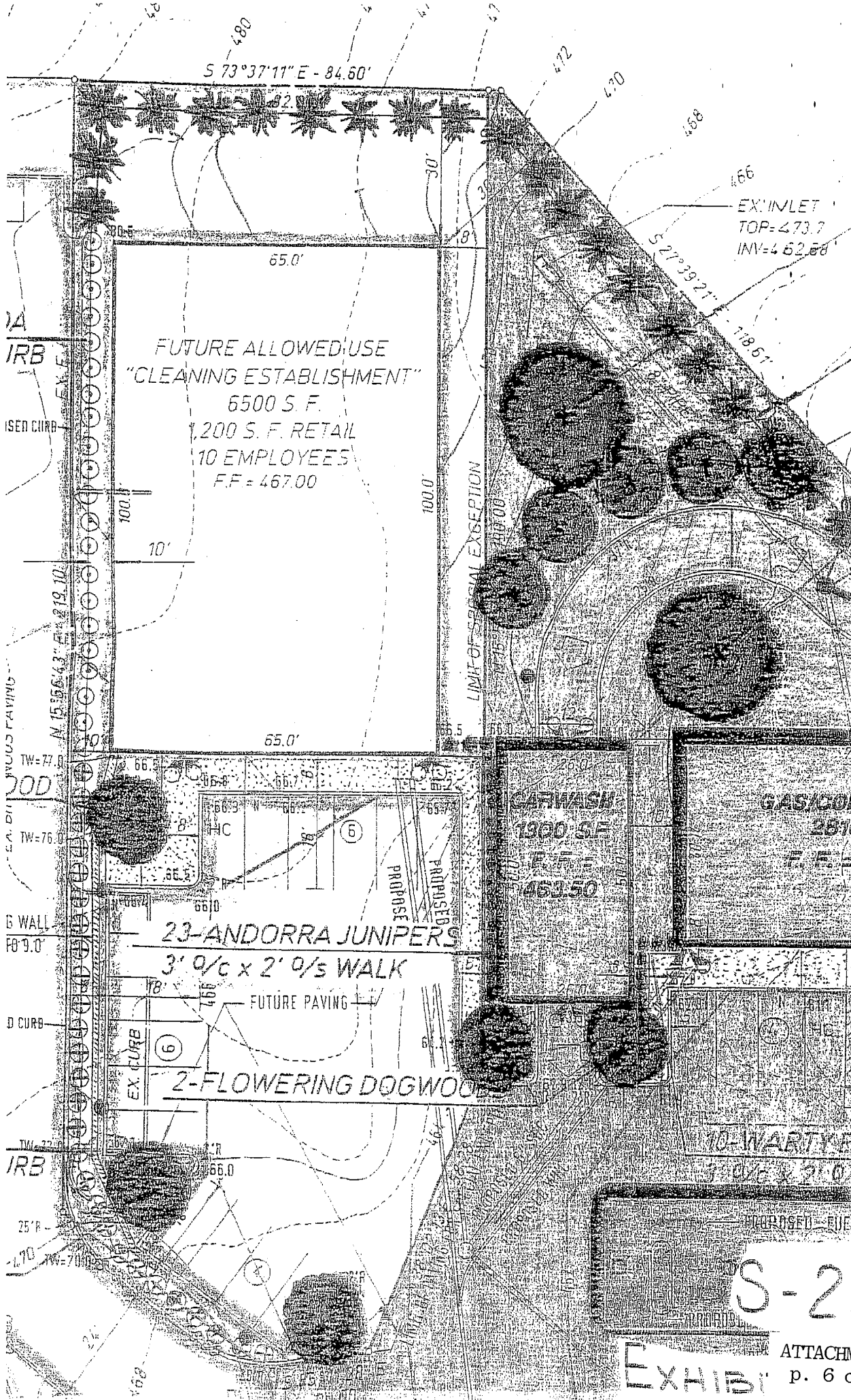
An additional eight spaces for the office building parking requirements are proposed perpendicular to the pump islands by the Middlebrook Road sidewalk. Those parkers would face even more dangerous conditions to access the office building.

According to a communication from the Washington-Maryland-Delaware Service Station and Automotive Repair Association to this writer, a six-pump-island service station is very large and is itself two-three times the scale of most service stations.

Scale of Hazardous Movements. When the original Special Exception was granted in 1998, Planning Staff made an analysis of potential vehicle movements for the service station in comparison with an office building at that site, permitted by the I-1 zoning. The comparison was dramatic. The staff report estimated Peak Hour AM trips generated would be 208 versus 45 for an office, while Peak Hour PM trips would be 377 versus 74 as an office. That would mean 3-6 movements per minute, representing serious obstacles to any pedestrian movement on site. Since no such pedestrian activity was contemplated, the Board of Appeals granted the Special Exception, citing no possibility of pedestrian hazards.

Additional Parking Shortfall

In his petition to the Board for major modification to the Special Exception, attorney Abrams (April 8, 2003) requested approval of the handsome, existing stone patio and fountain at the right of the building (Item 4, p. 2). This was to permit the owner to place "benches and/or tables and chairs on the patio for the use of patrons and/or employees." The only purpose for such placement would be for consumption, in equitable weather, of food or drink purchased within the convenience store. Indeed, the large sign for the Town Center on the property features, in addition to the Car Wash, the Café operated within the building including Quartermaine Coffee and Espresso Bar. No seating for consumption of food is provided within the building. If the patio were to be used for the Café, Montgomery County Zoning Ordinance (Article 59-B) would require 15 parking spaces/1,000 square feet. The patio is approximately 1,000 square feet in size, but absolutely no parking for such activity is provided in the present petition for modification.



FUTURE ALLOWED USE
 "CLEANING ESTABLISHMENT"
 6500 S. F.
 1200 S. F. RETAIL
 10 EMPLOYEES
 F.F. = 467.00

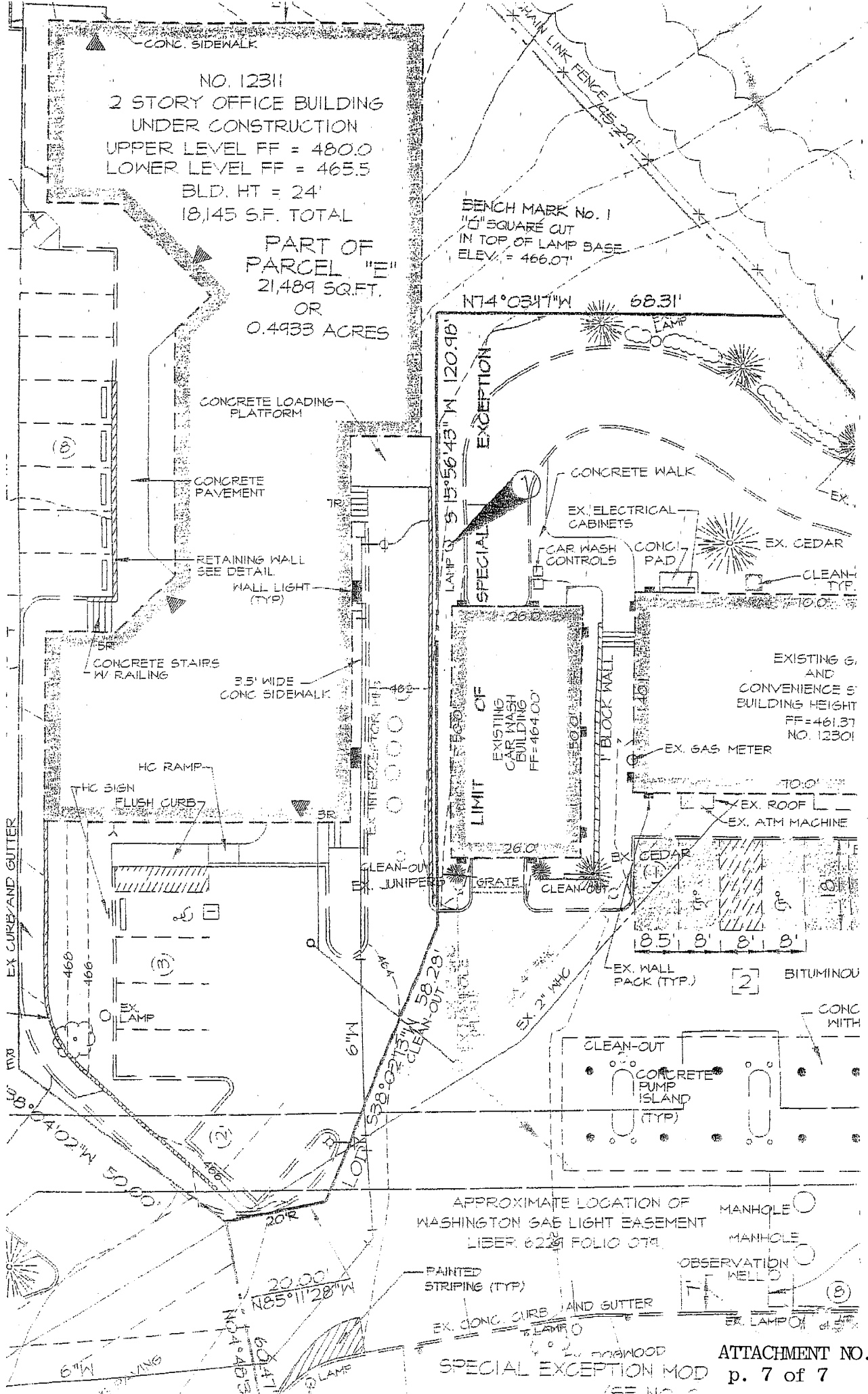
CARWASH
 1900 S.F.
 F.F. = 463.50

GAS/CON
 2871
 F.F. =

23-ANDORRA JUNIPERS
 3' O/C x 2' O/S WALK

2-FLOWERING DOGWOOD

S-2351



NO. 12311
 2 STORY OFFICE BUILDING
 UNDER CONSTRUCTION
 UPPER LEVEL FF = 480.0
 LOWER LEVEL FF = 465.5
 BLD. HT = 24'
 18,145 S.F. TOTAL

PART OF
 PARCEL "E"
 21,489 SQ.FT.
 OR
 0.4933 ACRES

BENCH MARK No. 1
 "6" SQUARE CUT
 IN TOP OF LAMP BASE
 ELEV. = 466.07'

N74°03'47"W 68.31'

LAMP N 5°15'56"43" N 120.98'

SPECIAL EXCEPTION

EXISTING 6'
 AND
 CONVENIENCE 5'
 BUILDING HEIGHT
 FF=461.37
 NO. 12301

8'5" 8' 8' 8'

APPROXIMATE LOCATION OF
 WASHINGTON GAS LIGHT EASEMENT
 LIBER. 6229 FOLIO 079

MANHOLE
 MANHOLE
 OBSERVATION WELL

SPECIAL EXCEPTION MOD
 (SEE NO. 5-

ATTACHMENT NO. 1
 p. 7 of 7

**Comments of Malcolm D. Rivkin, PhD, AICP in Opposition
to Special Exception Modification
(No. S-2351)**

12301 Middlebrook Road, Germantown, Maryland

September 10, 2003

These comments supplement a memo I prepared for the July hearing in response to the first submission of the applicant preparatory to its review by Planning Board and Staff. Subsequently the applicant has made modifications to the proposal, and the new submission is scheduled for Planning Board review on September 18.

In my opinion, the applicant has made absolutely no modifications to the proposal which enhance the pedestrian safety questions raised earlier. If approved, as I suggested earlier, this proposal is a disaster waiting to happen.

The applicant has now proposed erecting certain barriers from the proposed office parking lot on the current stormwater management pond to the service station pumps and circulation area. These barriers would, presumably, force people who park in that lot to take a roundabout route to the office entrance utilizing partial sidewalks on Middlebrook Road (Route A) or a newly constructed sidewalk from the parking lot that would snake around the rear of the convenience store and car wash to terminate at a service entrance at the rear of the office building (Route B).

Here are some dimensions to consider: In regard to Route A, from the western edge of the parking lot on Middlebrook Road, traversing two major driveways permitting vehicular entrance and exit from the service station, utilizing whatever sidewalks would be available, the distance to the main entrance to the applicant's office building would be about 450'. At the same time, a direct route from that end of the parking lot across the pumps and the car wash to the ground floor entrance of the office building will be about 250'. In regard to Route B, a direct distance to the service entrance from the mid-point of the parking lot would be about 320'.

Route B is "theoretical," however, because I am skeptical that the applicant can feasibly create such a paved 5' path along the route shown on the site plan. Two difficulties are clear. One is that the existing curb at the rear of the car wash entrance is close to a steep grade drop, suggesting that a major retaining wall (not shown on the drawings) would be required to build such a sidewalk. The second is that four light posts, anchored by concrete pillars, are in the route of the walk and would have to be moved to eliminate obstructions for pedestrians. Such removal is not shown on the drawings.

In sum, despite the proposed modifications, I conclude that most parkers will take the shortest possible route from the edge of the parking lot to their destination and will be continually exposed to the safety dangers cited in our earlier testimony.

It is also well to mention that the applicant proposes to install "a sliding gate" at the western side of the parking lot directly east of the pump islands. This gate would presumably open and close as it is traversed by vehicles entering the lot, preventing pedestrian access. Nothing, however, would prevent drivers with passengers letting those passengers debark as the gate opens. . . even further shortening their direct route to the office building entrance.

P. O. Box 41043
Bethesda, Maryland 20824-1043
Tel: 301-656-5155
Fax: 301-656-3441

Rivkin
Associates
Planning and Development
Services

To: Ki Kim
Transportation Planning Office, MNCPPC *MJK*

From: Malcolm D. Rivkin, AICP

Subject: Additional Safety Considerations Regarding Parking
in re Special Exception Modification NO. S-2351
Germantown, MD

Date: September 8, 2003

As a follow-up to our meeting today, I am presenting herewith certain additional considerations relating to safety at the site. Each of these is backed by citations in the literature that are quoted or referenced. These materials are accessible by the Internet, the library at the Transportation Research Board, or in MNCPPC reports.

1. The "Bible" of parking facility design is *The Dimensions of Parking, Fourth Edition*, produced by the Urban Land Institute and the National Parking Association. It places a major emphasis on pedestrian safety and summarizes its guidelines as follows:

"Because of the combination of vehicular and pedestrian traffic associated with all parking facilities, the possibility of serious injury to a patron or employee must be minimized, and therefore addressed during the early planning stages. In addition, before opening for business, each facility should be carefully reviewed to identify potential safety or security concerns that might have gone overlooked during the planning effort"¹

Based on the evidence we have presented about hazards to the pedestrian between the proposed parking facilities and the office-building entrances, it is difficult to establish that these guidelines were addressed.

2. The service station-car wash-convenience store-ATM facility which intervenes between the proposed parking area and the office building is larger than any other service station complex in the Germantown area and generates considerable peak hour traffic to interfere with office-building-bound pedestrians. Indeed, the Washington-Maryland-Delaware Service Station and Automotive Repair Association has told this writer that a six pump island service facility is two-three times as large as normal service stations. It is designed for significant on-site traffic. In fact, when the original Special Exception was heard in 1998, the Planning Staff report estimated the expected site generated traffic as much higher than might be expected if the site were developed as an office. Estimates were dramatic:

¹ *The Dimensions of Parking*, Fourth Edition, Urban Land Institute and National Parking Association, Washington, DC, 2001, p. 145

Peak Hour AM trips generated were 208 versus 45 as office, while Peak PM trips would be 377 versus 74 as office.² That means 3-6 movements per minute, representing significant concerns for any pedestrian activity on site.

3. Hazards are increased because of the mix of vehicles that patronize service stations and convenience stores (car washes aside). Research reports show SUVs and Panel trucks increasing³ in the vehicle mix, and these block pedestrian visibility. In a special study of vehicles parked at retail facilities in the Washington, DC Metropolitan Area, Christopher Tacinelli found the mix of small and mid-size cars only 59%, while large cars, SUVs, vans, and panel trucks comprised 41 percent of the total.⁴

4. Off-roadway pedestrian accidents are drawing increasing concern around the country. In a study of 1443 pedestrian and pedestrian/motor vehicle accidents reported to hospital emergency rooms, Stutts discovered that 657, or 45% occurred in parking lots, driveways, yards, or sidewalks as distinguished from roadways themselves.⁵

5. Of extreme significance is that, if the proposed parking is permitted to go forward, that would completely reverse two key findings of the Board of Appeals in granting the earlier Special Exception.

“The proposed Special Exception will not adversely affect the health, safety, security, morals or general welfare of residents, visitors, or workers in the area. The subject use is a typical automobile filling station with ancillary convenience store and carwash, and there is no reason to believe that it will have an adverse affect on anyone in the area.”⁶

“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 building on or near the site.”⁷

Please note also that the context is not a CBD where vehicles have to be more attentive to pedestrians. A convenience store and ATM in a less-developed area off an expressway is a quick in-and-out situation where normal hazards to pedestrians are compounded.

CC: Norman Knopf, Esq.

² Montgomery County Department of Park and Planning, “Special Exception Automobile Filling Station, Middlebrook Road west of Waring Station Road, Germantown”, September 25, 1998, p. 5.

³ James E. Staif in “Introduction”, *The Dimensions of Parking*, op. cit. pp 4-5.

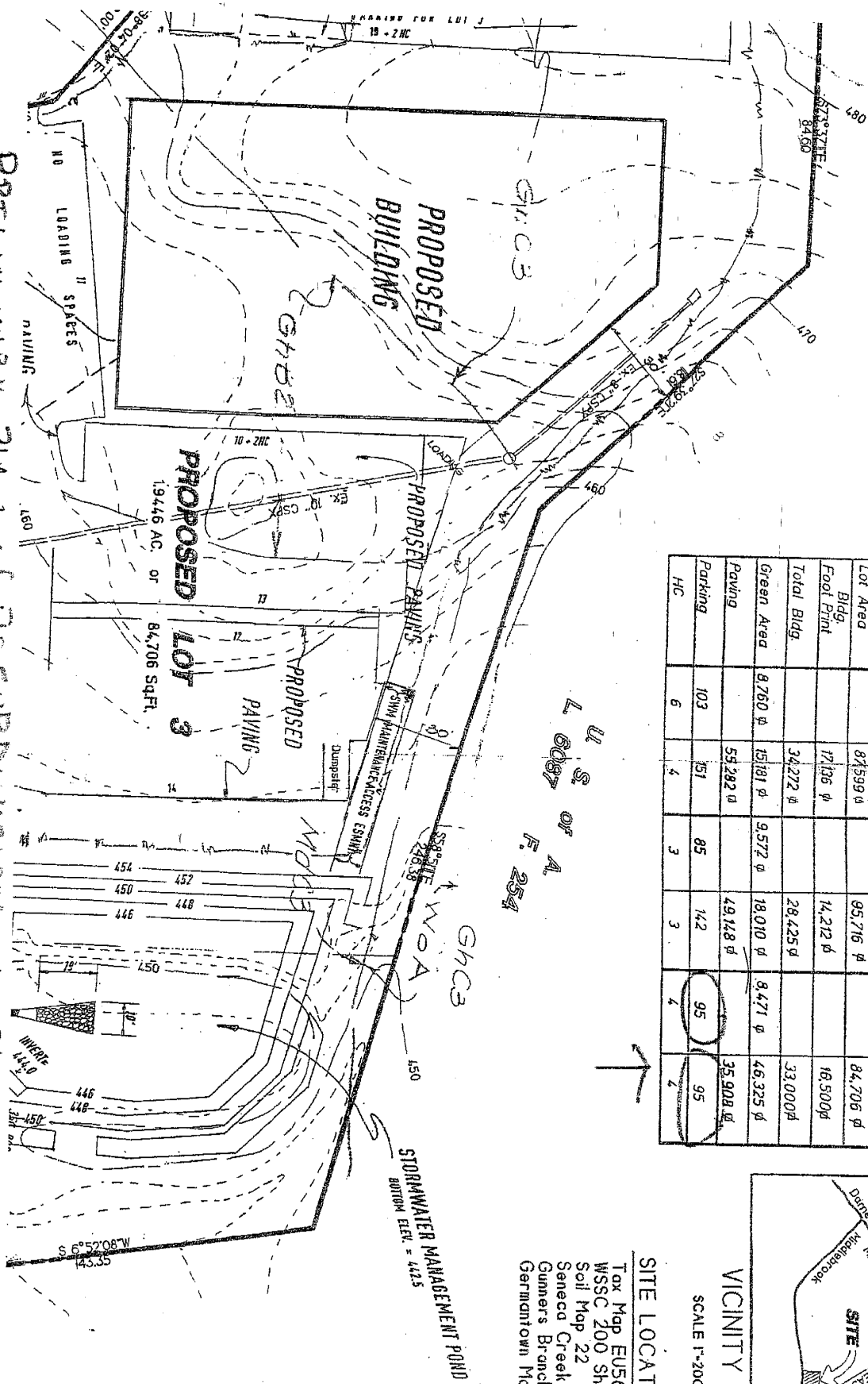
⁴ Christopher Tacinelli, “The size of Vehicles Today, Parking and Maneuverability,” presentation at the Year 2000 Institute of Transportation Engineers Annual Meeting, p.3.

⁵ Jane C. Stutts, “Non-motor Vehicle and Non-Roadway Events”, 41st Annual Proceedings, Association for the Advancement of Automotive Medicine, Orlando, FL, November 1997, p. 144.

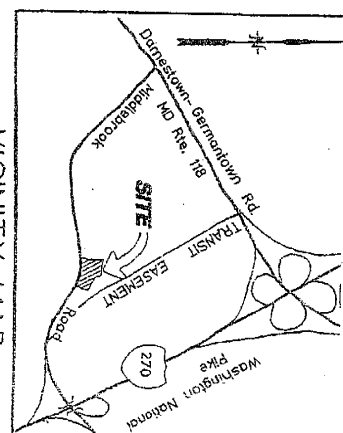
⁶ Board of Appeals for Montgomery County, Case No. S-2351, Petition of Mid-Atlantic Petroleum Properties, LLC, Opinion of the Board, November 2, 1998, p. 5.

⁷ *Ibid*, p. 6

PRELIMINARY PLAN OF RESUBDIVISION 1-94075
 Lot 3 is GAS STATION SPECIAL EXCEPTION SITE [now designated PARKING]



	LOT 1		LOT 2		LOT 3	
	Required	Shown or Existing	Required	Shown or Existing	Required	Shown or Existing
Lot Area		87,599 sq ft		95,716 sq ft		84,706 sq ft
Bldg. Foot Print		17,136 sq ft		14,212 sq ft		18,500 sq ft
Total Bldg		34,272 sq ft		28,425 sq ft		33,000 sq ft
Green Area	9,760 sq ft	15,181 sq ft	9,572 sq ft	18,010 sq ft	8,471 sq ft	46,325 sq ft
Paving		55,282 sq ft		49,148 sq ft		35,908 sq ft
Parking	103	151	85	142	95	95
HC	6	4	3	3	4	4



SITE LOCATION DATA
 Tax Map E0562 Plate 59
 WSSC 200 Sheet 227NW12
 Soil Map 22
 Seneca Creek Watershed
 Gunners Branch Plan
 Germantown Master Plan

TO DEPT. of ENERGY



MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES
255 Rockville Pike, 2nd Floor
Rockville, Maryland 20850-4166

NOTICE OF VIOLATION

FOR MONTGOMERY COUNTY, MARYLAND the undersigned issuer, being duly authorized, states that:

On, JANUARY 24, 2003 the recipient of this NOTICE, STANLEY D. ABRAMS, ESQUIRE
Date Recipient's Name

who represents the permittee/defendant, MID-ATLANTIC PETROLEUM PROPERTIES
Permittee's Name

is notified that a violation of Montgomery County Code: SECTION 59-6-1.3(a)(1) REVEALED THE FOLLOWING:
INTERIOR CHANGES MADE TO THE BUILDING WHEN COMPARED TO EXHIBIT NOS 13(a) AND 13(b) WITH-
OUT COUNTY BOARD OF APPEALS APPROVAL. THERE IS NO BOARD APPROVAL FOR EXTERIOR CHANGES
WHEN COMPARED TO EXHIBIT NOS 8(b), 21 AND 30(a). THE SUBJECT PROPERTY LISTS
12311 MIDDLEBROOK ROAD RATHER THAN THE ACTUAL ADDRESS LISTED ~~BELOW~~ BELOW.

exists at: 12301 MIDDLEBROOK ROAD GERMANTOWN, MARYLAND. SPECIAL EXCEPTION CASE NO. S-2551
Location Case #

The following corrective action(s) must be performed immediately as directed, RETURN THE INTERIOR FLOOR LAYOUT
AS APPROVED IN THE RECORD. REMOVE THE STONE PATIO AND FOUNTAIN ALONG WITH THE EXIT DOOR ON THE
BUILDING'S RIGHT SIDE. REMOVE ALL EXTERIOR WALL MOUNT FIXTURES, INSTALLING ONLY DOUBLE MOUNTED DIRECTIONAL
100 WATT FIXTURES IN AREA'S DELINEATED ON M-NCPPC 8-18-99 PLAN. INSTALL ALL PLANTINGS PER SAID PLAN.
REMOVE THE AWN AND ITS ILLUMINATED ROOF STRUCTURE. PROVIDE TO THE DEPARTMENT, ACTUAL HEIGHT OF
THE CANOPY, REMOVING ALL CANOPY FIXTURES, TO BE REPLACED WITH 7 RECESSED FIXTURES AS PER PLAN.
REDUCE THE SIZE OF THE TRASH ENCLOSURE TO 10'X15'. REMOVE EXISTING PARKING LOT STRIPING AND MARK
LOT AS
APPROVED. See attached Inspection Report(s) for additional violations and/or required corrective actions.

An inspection fee of \$ _____ is required in addition to any application fee(s).

Re-inspection Date(s): _____ Permit Number: _____ Code/Edition: MONT. Co. CODE

Failure to comply with this notice will result in the issuance of one or more \$500.00 civil citations.

A STOP WORK ORDER is also issued this date at the above referenced project. All construction activities on these premises must cease immediately. Only those activities required to correct violations may continue. Permission is required to resume construction.

ISSUED BY: STANLEY N GARBER
Printed Name

[Signature]
Signature

1/24/03
Date

Phone No. 301-370-3656

RECEIVED BY: _____
Printed Name

Signature

Date

JAN 29 2003

Phone No. _____ Sent by Registered Mail/Return Receipt On: 1/24/03

RECIPIENT'S SIGNATURE ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTICE OF VIOLATION