



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

October 2, 2003

TO: Mary Beth O'Quinn, Development Review Division  
FROM: Sue Edwards, Community Based Planning Division *Sue*  
SUBJECT: Middlebrook Road CVS (Site Plan # 8-09017A)

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As we agreed, I am supplying language related to the Germantown Master Plan and the Germantown Streetscape guidelines concerning signage for this proposed project.

#### Master Plan Context

The subject site is within the Middlebrook Village analysis area of the Germantown Master Plan, adopted and approved in 1989. The concept drawing (Figure 10) shows office uses on the subject property in keeping with Master Plan recommendations for analysis area MI-1: "This analysis area contains four acres and has recently been rezoned O-M (Office Building, Moderate Intensity) with a schematic development plan" (page 73).

In 1996, the subject property and 2 adjacent lots were classified in the C-3 Zone by Local Map Amendment G-724. DPA 03-01 amended the schematic development plan to show the proposed use. Staff analysis during the development plan review indicated that signage would be considered in the subsequent site plan review.

#### Germantown Streetscape Concept Plan

The Germantown Master Plan directed Park and Planning staff to develop a streetscape plan "that creates a clear, positive image of Germantown, reinforcing its community identity". The Master Plan states that "To many, the visual quality of the street's edge establishes an image of the community. The kinetic experience of the street and the repetitive nature along its edge creates one of the primary elements which gives a community character and identity" (page 25).

Among the objectives of the Streetscape Plan is the statement:

- o Develop a Streetscape Plan that will reduce visual clutter and provide order.

The Montgomery County Planning Board approved the Germantown Streetscape Concept Plan: Approved Concept and Guidelines for the Germantown Community in March 1994.

“This streetscape plan recommends that all commercial signage located in the Town Center or at Village Centers should be restricted in height, similar to MD 118 in the Germantown Town Center, in order to ensure visibility under the canopy of street trees and to achieve a more attractive streetscape. Signage which is taller than 14 feet will not be obscured from view by the growth of street trees but will also contribute to visual clutter and competing roadside information (see Figure 14 for appropriate design styles which remain under 14 feet in height).

Exceptions to this guideline will be considered on a case by case basis if it achieves a superior design that complements architectural elements and reduced visual clutter” (Streetscape, page 19).

The Streetscape Concept Plan (Figure 2) depicts the area of MD 355 and Middlebrook Road covered by the formal Village Center concept for commercial and mixed uses. This depiction covers portions of MD 355 and Middlebrook Road such that all four quadrants of the intersection are affected. Signage at the Exxon station and Middlebrook Station commercial properties is consistent with the Streetscape Plan recommendations.

The case-by-case exception described in the Streetscape Plan would not be appropriate in this situation. The 28-foot tall sign with computerized message board does not achieve superior design and does not complement architectural elements or reduce visual clutter. The height and placement of the sign detracts from the setting and building elements and increases visual clutter at this intersection.

Staff recommends a free standing sign for the property no more than 14 feet in height as depicted in the Germantown Streetscape Concept Plan.

October 1, 2003

**MEMORANDUM**

TO: Mary Beth O'Quinn, Planner  
Malcolm Shaneman, Supervisor  
Development Review Division

VIA: Ronald C. Welke, Supervisor  
Transportation Planning

FROM: Ki H. Kim, Planner  
Transportation Planning

SUBJECT: Site Plan No. 8-98017B  
Preliminary Plan No. 1-98037  
Middlebrook Property  
Germantown

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This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject preliminary plan and site plan. The application is for the proposed CVS drug store on the site currently occupied by the Friendly's Restaurant. The site is a part of the Middlebrook Property which is located in the northeast quadrant of the MD 355/ Middlebrook Road intersection in the Germantown East Policy Area. The Middlebrook Property development has an approved preliminary plan which allowed a 6,528-square-foot restaurant (occupied by Friendly's), a 3,800-square-foot restaurant (occupied by TACO Bell), and 8,529-square-foot day-care center. The CVS drug store will take the place of the 6,528-square-foot restaurant.

**RECOMMENDATIONS**

Based on our review of the submitted traffic study, Transportation Planning staff recommends the following conditions as part of the APF test for transportation requirements related to approval of this preliminary plan and site plan application.

1. Additional development of the Middlebrook Property development under this site plan application is limited to 4,352 square feet of retail use so that the total

development of the subject preliminary plan is limited to 14,680 square feet of retail use and 8,529 square feet of day-care center.

## DISCUSSION

### Site Access and Vehicular/Pedestrian Circulation

The subject site has currently three access points; two are located on MD 355 and one on Middlebrook Road. The access point on Middlebrook Road and one of the two access points on MD 355 are "right-in and right-out" only, and the other one on MD 355 is "right-in, right-out and left-in" only.

Staff finds the existing access points and the ingress/egress proposal shown on the site plan to be safe and adequate. Staff also finds that the internal pedestrian circulation using existing sidewalks along MD 355 and Middlebrook Road and internal walkways, as shown on the site plan, is safe and adequate.

### Local Area Transportation Review

Three local intersections were identified as critical intersections to be affected by the development of the subject site and were examined in the traffic study to determine whether they meet the applicable congestion standard of 1,500 Critical Lane Volume (CLV) for the Germantown East Policy Area. The CLV impacts of the proposed development on these intersections were analyzed and are summarized in Table I.

Table I

Intersection Capacity Analysis with CLV Under Various Development Schemes During the Peak Hour						
Intersection	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 355/MD 118	1110	1241	1189	1361	1192	1372
MD 355/Middlebrook Road	1367	1301	1459	1443	1460	1493
MD 355/Gunners Branch Road/Fox Chapel Drive	1103	1058	1156	1126	1157	1131

As shown in the above table, all existing intersections analyzed are currently operating at acceptable CLVs (CLV standard is 1,500) during weekday peak periods. Under the background development (developments approved but not built) and the total development (background plus site developments) conditions, all intersections examined are projected to operate at acceptable CLVs.

## Policy Area Transportation Review

Based on the FY 03 AGP staging ceiling capacity, there is sufficient capacity available for employment development (1,054 jobs as of July 31, 2003) in the Germantown East Policy Area.

### **CONCLUSION**

Staff concludes that the subject preliminary plan and site plan satisfies the APF requirements since all nearby intersections are anticipated to operate within the acceptable congestion standard.

KHK:kcw

cc: Mary Goodman

mno to oquinn 1-98037 & 8-89017B.doc

Resolution No: 15-136  
Introduced: April 22, 2003  
Adopted: April 22, 2003

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

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By: District Council

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**SUBJECT:** Approval of Schematic Development Plan Amendment (DPA) 03-1

**BACKGROUND**

1. Schematic Development Plan Amendment ("SDPA") application No. 03-1 was filed on November 27, 2002. The Applicant, Roadside Development LLC, seeks permission to develop a drug store on a 1.17-acre lot located in the northeast quadrant of the intersection of MD 355 (Frederick Road) and Middlebrook Road, Germantown, in the 9<sup>th</sup> Election District. The property is identified as Lot 1 of the Middlebrook East subdivision. A Schematic Development Plan for the subject property and two adjacent parcels was approved in 1996 in conjunction with the approval of zoning application G-724, which resulted in classifying the property and the two adjacent parcels under the C-3 (highway commercial) zone.
2. The existing schematic development plan and associated restricted covenants provided for the development of a 6,000-square-foot restaurant on the subject property.
3. The proposed Schematic Development Plan Amendment would allow the Applicant to develop a 10,880-square-foot drug store on the property, which is a permitted use in the C-3 Zone but is not permitted under the existing schematic development plan. All other covenants would continue to be binding on the property.
4. Technical Staff of the Maryland-National Capital Park and Planning Commission, by memorandum dated March 7, 2003, recommended approval of SDPA 03-1, concluding that it generally conforms to the recommendations of the Master Plan, is consistent with the purpose clause for the C-3 Zone, and satisfies the development standards for the C-3 Zone.

5. The Montgomery County Planning Board reviewed SDPA 03-1 at its regular meeting on March 17, 2003 and, in a 4-to-0 vote with one member absent, recommended approval for the reasons stated in the Technical Staff report.
6. There is no opposition to SDPA 03-1, the Planning Board does not recommend a public hearing in this case, and no request has been made for a hearing.
7. On April 22, 2003 the District Council reviewed SDPA 03-1 and concluded that the SDPA meets the requirements of the Zoning Ordinance and its approval would be in the public interest.

### ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

SDPA 03-1, which requests an amendment to the schematic development plan approved in conjunction with zoning application G-724 to allow the development of a 10,880-square-foot drug store on a 1.17-acre lot located in the northeast quadrant of the intersection of MD 355 (Frederick Road) and Middlebrook Road, Germantown, in the 9<sup>th</sup> Election District, is approved subject to the specifications and requirements of the Schematic Development Plan, Ex. 3, provided that the applicant submits the Schematic Development Plan for certification by the hearing examiner under the provisions of §59-D-1.64 within 10 days of the District Council action.

This is a correct copy of Council action.

  
Mary A. Edgar, CMC  
Clerk of the Council



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Office of the Chairman, Montgomery County Planning Board

## MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

March 13, 2003

TO: The County Council for Montgomery County, Maryland, sitting as The District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board Opinion on Schematic Development Plan Amendment No. SDPA 03-1

### BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Schematic Development Plan Amendment No. SDPA 03-1 at its regular meeting on March 13, 2003. By a vote of 4-to-0, the Planning Board recommends that the SDPA be APPROVED for the reasons set forth in the technical staff report, which is hereby approved and incorporated by reference in this recommendation.

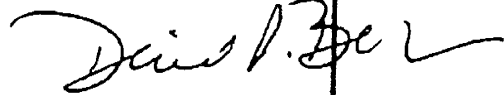
The technical staff notes that there is no opposition to the SDPA at this time and for that reason has recommended that it is not necessary for a public hearing to be held by the Hearing Examiner prior to this case proceeding to the District Council. The Planning Board takes no position on the need for a public hearing. The Board notes that any outstanding design issues including the granting of a parking waiver can be addressed at site plan review.

### CERTIFICATION

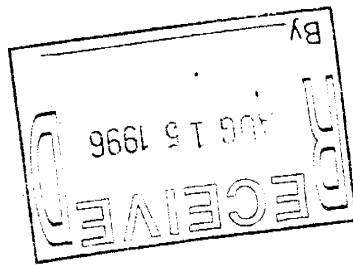
This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland - National Capital Park and Planning Commission on motion of Commissioner Wellington, seconded by



Commissioner Robinson, with Commissioners Wellington, Robinson, Perdue and Chairman Berlage voting in favor of the motion, and with Commissioner Bryant absent, at the regular meeting held in Silver Spring, Maryland, on Thursday, March 13, 2003.



Derick P. Berlage  
Chairman



HP 3000 log  
Case file

copies have been sent to  
Daniel  
Carawan  
Fugitt

Resolution No: 13-599  
Introduced: July 9, 1996  
Adopted: July 9, 1996

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

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By: District Council

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Subject: APPLICATION NO. G-724 FOR AMENDMENT TO THE ZONING ORDINANCE  
MAP, Robert H. Metz and Emily J. Vaias, Attorneys for Middlebrook Associates,  
L.C., Applicant, OPINION AND RESOLUTION ON APPLICATION  
Tax Account Nos. 00770804 & 00770815

Opinion

Application No. G-724 requests reclassification from the O-M Zone to the C-3 Zone of 3.65 acres known as the property of Middlebrook Associates, located in the northeast quadrant of the intersection of Frederick and Middlebrook Roads, Germantown, in the 9th Election District. The application was filed under the optional method, which permits binding limitations with respect to land use, density, development standards or staging.

The Hearing Examiner recommended approval of the application on the basis that the C-3 Zone at the proposed location would satisfy the requirements of the purpose clause, that the proposed reclassification as limited under the optional method would be compatible with existing and planned land uses in the surrounding area, and that the proposed reclassification manifests sufficient relationship to the public interest to justify it. The Planning Board and Technical Staff provided similar recommendations. The District Council agrees with these conclusions.

The subject property is located on the east side of the Germantown Vicinity Planning Area, a little over 3,000 feet east of I-270. The site possesses 600 feet of frontage along the east side of Frederick Road and about 240 feet of frontage along the north side of Middlebrook Road. The property was initially classified in the R-R Zone by the 1958 County-wide comprehensive zoning. In 1974, the property was reclassified to the R-60 and RT-12.5 Zones by comprehensive zoning. This split zoning was reconfirmed by comprehensive zonings in 1984, 1986, and again in 1987. In 1988, the property was rezoned to the O-M Zone by local map amendment under the optional method of application which restricted density to a floor area ratio of 0.25, minimum open space to 40%, and building height to 17 feet.

The proposed development will be restricted by a Schematic Development Plan. The plan contains binding elements that address height, setbacks, green area, density, land use and access. Building heights will be restricted to 35 feet with a pitched roof. Setbacks from the north and east property lines will contain a minimum of 35 feet, and the setback area will be used for tree preservation. A six-foot solid fence will be located along the north and east property lines. Green area will constitute a minimum of 25% of the site. Density will not exceed a FAR of 0.25. Land uses will be restricted to eating and drinking establishments excluding drive-ins, child day care facilities, garden supply shops, banks and financial institutions, clinics, duplication services, elderly day care facility, express or mailing offices, furniture or upholstery repair shops, general offices, insurance offices, real estate offices, private clubs and service organizations, health clubs, sales of farm products, cable communications systems, rooftop monitored antenna, transitory uses, ambulance or rescue squads (public or private), charitable institutions, places of religious worship, publicly owned or operated uses, and libraries and museums. Access will be restricted to a right turn in and a right turn out along Middlebrook Road and

at one access point along Frederick Road. The northern access point along Frederick Road will permit right turns in and out and a left turn in.

The surrounding area includes land uses extending along both sides of Frederick Road between relocated Route 118 on the north and Scenery Drive-Gunston Branch Road on the south. The land use pattern of the area reflects mixed uses. Townhouses are developed under the RT-12.5 Zone all along the east side of Frederick Road from Middlebrook Road north to relocated Route 118 and some of these townhouses abut the subject property on the north and east. A small triangular parcel which is classified under the C-3 Zone and owned by Montgomery County abuts the property on the south. Located south of Middlebrook Road is an Exxon filling station and a Goodyear Tire and Auto facility which are both developed under the C-3 Zone. The Fox Chapel Shopping Center is also located to the south and is classified under the C-1 Zone. Located along the west side of Frederick Road are commercial uses developed under the C-1, C-2 and C-3 Zones. These uses include the Middlebrook Village Shopping Center. The remaining uses located along both sides of Frederick Road as it extends south to its intersection with Scenery Drive reflect predominantly commercial uses. Located west of the site is R-60/TDR zoned land which is currently owned by Montgomery College. North of this area is land classified under the R-20 zone for garden apartment use.

The District Council finds that the subject property is eligible for the C-3 Zone because it fronts on and has access to a heavily traveled major highway with an existing and planned pavement of at least six lanes. In addition, the proposed development includes an internal circulation system and restricted access which are considered safe and adequate without the need for a service access road. The restrictions of the proposed development ensure a low profile form of development and access which will not interfere with through traffic movements along the two adjacent major highways. The

proposed development will provide for the orderly spacing of commercial development in a manner that does not depend on adjoining uses and is related to the traveler and highway user.

The District Council also concludes that the proposed development will provide for a compatible form of development with the adjacent townhouses, as well as the commercial uses to the south. Other uses located to the west across Frederick Road will be separated from the proposed development by a substantial highway and will not be adversely affected by the limited form of development proposed under the Schematic Development Plan. In terms of land use, bulk and density, the proposed development meets the compatibility requirements of the C-3 Zone.

The District Council determines that the proposed zoning bears sufficient relationship to the public interest so as to justify it. The planning recommendations support the zoning. The master plan contains recommendations that the site is suitable for commercial use if compatibility with the adjacent townhouses to the north and east is ensured. The Schematic Development Plan provides a form of development that is consistent with the recommendations of the master plan. The proposed development is consistent with other commercial zoning in the immediate area. The proposed development will not likely have an adverse impact on public facilities.

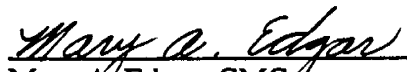
For these reasons and because to grant the instant application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be granted in the matter set forth below.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland approves the following resolution:

Zoning Application No. 724, for the reclassification from the O-M Zone to the C-3 Zone of 3.65 acres known as the property of Middlebrook Associates, located in the northeast quadrant of the intersection of Frederick and Middlebrook Roads, Germantown, in the 9th Election District, is granted for the C-3 Zone in the amount requested, subject to the specifications and requirements of the SDP, Ex. 38(b) and the executed Declaration of Covenants, Ex. 38(a); provided that within 10 days following this action the Applicant must submit to the Hearing Examiner for certification under §59-D-1.64 a reproducible original and three copies of the Schematic Development Plan along with evidence of recordation of the covenants.

This is a correct copy of Council action.

  
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Mary A. Edgar, CMC  
Acting Secretary of the Council

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-  
WASHINGTON REGIONAL DISTRICT IN  
MONTGOMERY COUNTY, MARYLAND**

**Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
217-6660**

**IN THE MATTER OF:  
Middlebrook Associates, L.C.**

Contract Purchaser, Applicant

Frank G. Bossong, IV  
Glenn E. Cook  
Judy Freshman  
Mark E. Friis

In Support of the Application

Robert H. Metz, Esquire  
Emily J. Vaias, Esquire

Attorneys for the Applicant

Zoning Application No. G-724

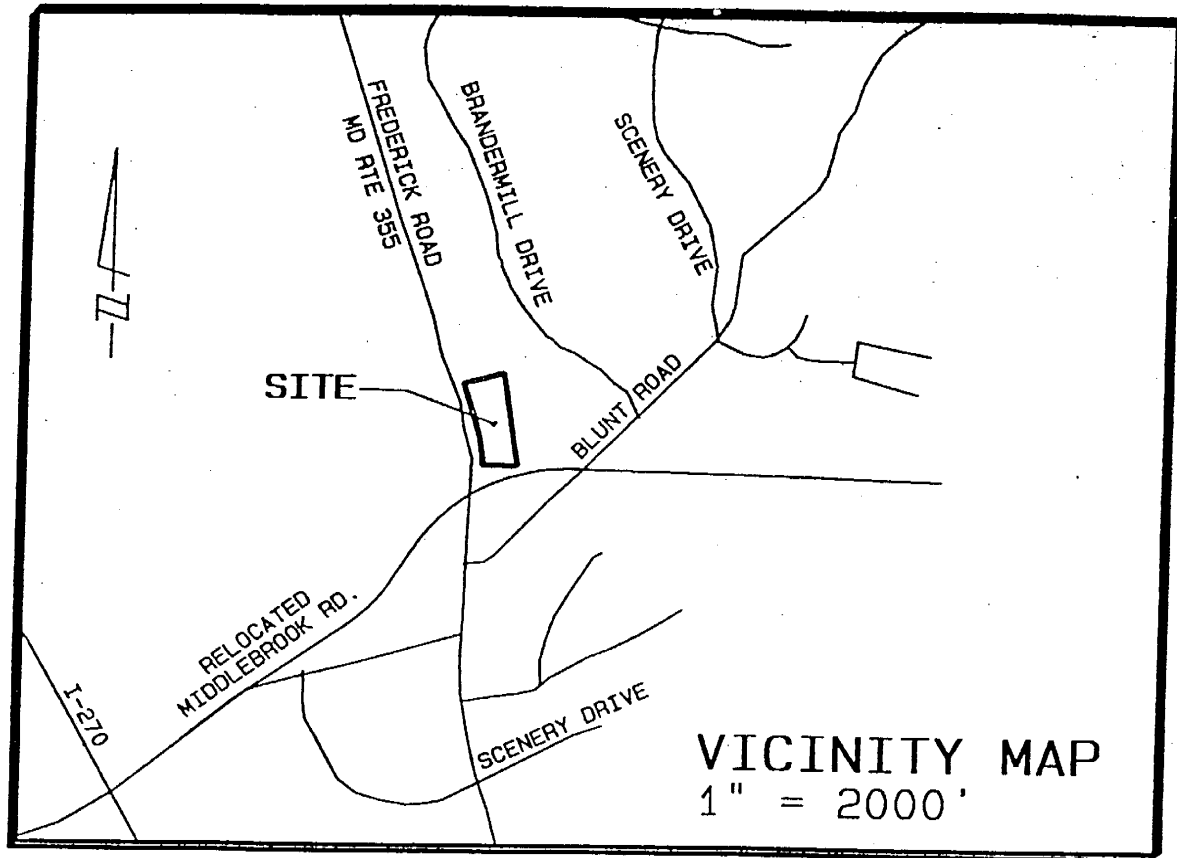
\* \* \* \* \*  
Katherine Kamminga, Project Administrator  
for the Fieldstone of Brandermill Rental  
Townhouses  
In Support of the Application  
\* \* \* \* \*

Before: Philip J. Tierney, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

**I. STATEMENT OF THE CASE**

Local Map Amendment (LMA) Application No. G-724, filed November 21, 1995, requests reclassification from the O-M Zone to the C-3 Zone of 3.65 acres known as the property of Middlebrook Associates, located in the northeast quadrant of the intersection of Frederick and Middlebrook Roads Germantown, in the 9th Election District. The application was filed under the Optional Method authorized in §59-H-2.5, which permits binding limitations with respect to land use, density, development standards or staging.

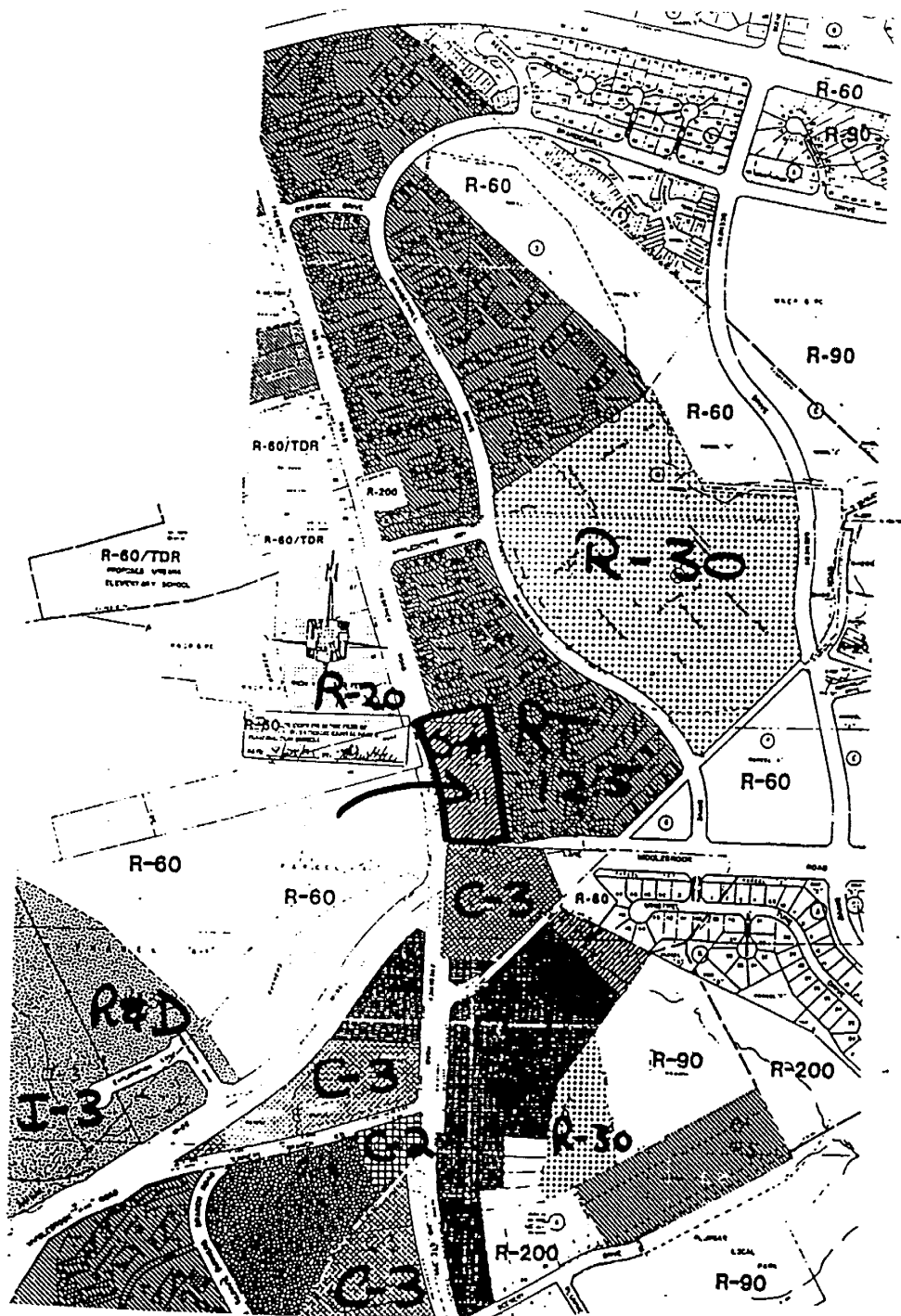


the development of the site. A Schematic Development Plan (SDP) limited density to a floor area ratio (FAR) of 0.25, minimum open space to 40%, and building height to 17 feet. The 1989 Master Plan recommended the property for employment use. Comprehensive zoning reconfirmed the O-M zoning in 1989.

### C. Surrounding Area

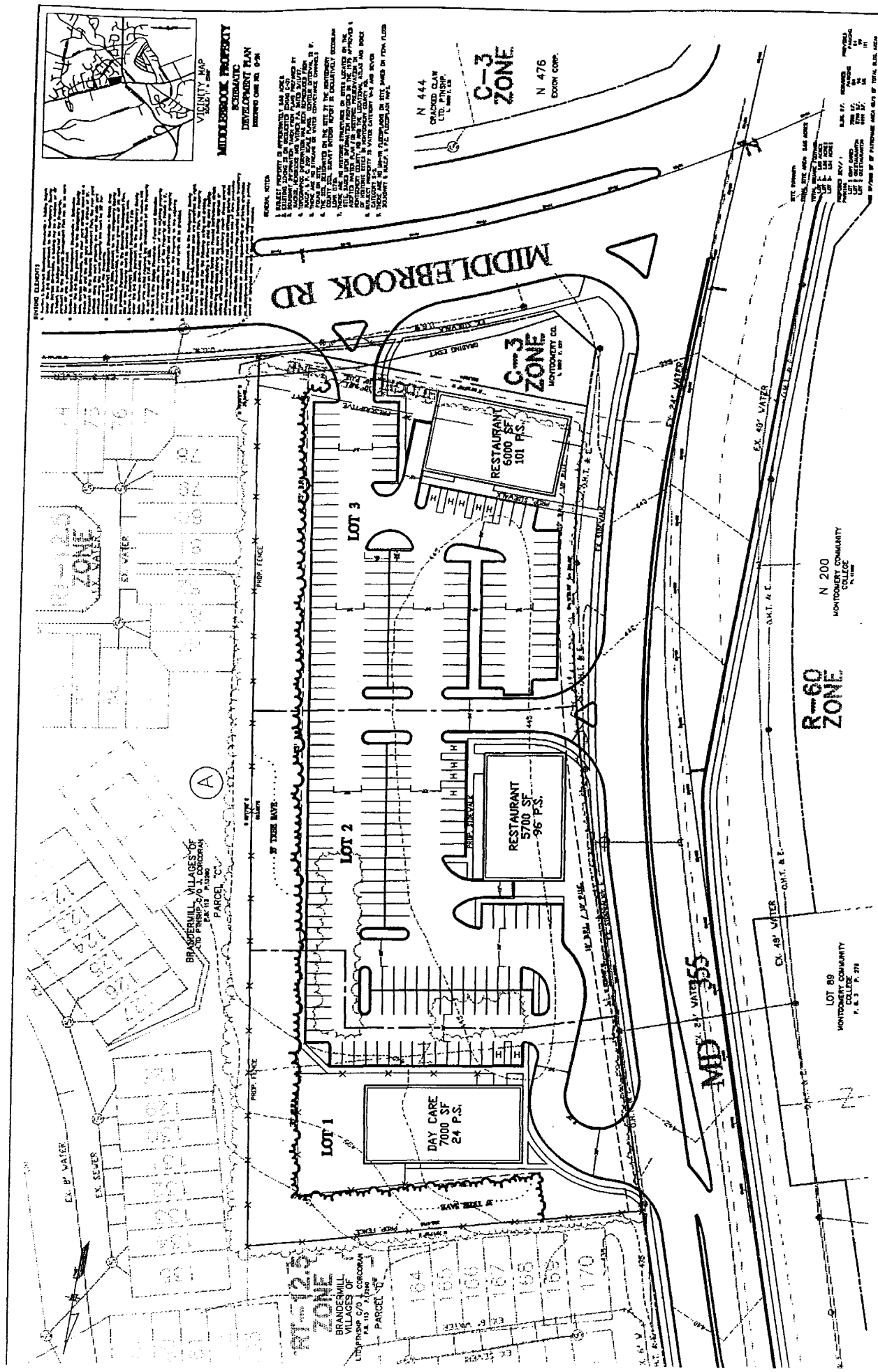
The Technical Staff defined the surrounding area as an area extending along both sides of Frederick Road between relocated Route 118 on the north and Scenery Drive-Gunston Branch Road on the south. This same area was applied by the District Council when it approved the O-M





constitute a minimum of 25% of the site. Density will not exceed a FAR of 0.25, which is the same limitation applied for the current O-M zoning.

In addition, the Applicant proposes some amenities to ensure compatibility with the adjacent townhouses. Binding elements will require a six-foot solid fence along the north and east sides. Sidewalks will not extend from the subject property to the adjoining property. Land uses will



NO.	DATE	DESCRIPTION
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PROJECT NO.	DATE	SCALE
SHEET NO.	DATE	SCALE
OWNER	DATE	SCALE
DESIGNER	DATE	SCALE
APPROVER	DATE	SCALE
CHECKER	DATE	SCALE
RELEASE FOR		

**R&A**  
**RODGERS & ASSOCIATES, INC.**  
 6000 GAITHERS ROAD  
 GAITHERSBURG, MD. 20877  
 (301) 948-8888 FAX  
 (301) 948-8888

**MIDDLEBROOK PROPERTY**  
**SCHEMATIC DEVELOPMENT PLAN**

OWNER:  
 MIDDLEBROOK ASSOCIATES, L.C.  
 1200 FAIR LAKES DRIVE, SUITE 400  
 FAIRFAX, VA 22030  
 703 261-8500  
 CONTACT: JEFF FREEMAN

PRELIMINARY NOT FOR CONSTRUCTION

the area, and the proposed development. The analysis concluded that satisfactory levels of service are expected at all critical intersections.

### III. SUMMARY OF TESTIMONY

Mark Friis qualified as an expert witness in the field of land planning. He described the subject property and the surrounding area. The site possesses 600 feet of frontage along Route 355 and about 240 feet of frontage along Middlebrook Road. The most impacted locations are the Villages of Brandermill which abut the northern and eastern boundaries of the site and contain about 260 rental townhouses in two-story structures. This project was developed under the RT-12.5 Zone. As a result of negotiations with the townhouse community, the Applicant amended the SDP to provide for a 35-foot treed buffer along the common boundary, prohibit any pedestrian access and provide a six-foot solid fence.

South of the subject property is a small County-owned parcel that is classified in the C-3 Zone. Located across Middlebrook Road are several C-3 zoned parcels including an Exxon gas station and a Goodyear Tire and Auto Repair Facility. The Fox Chapel Shopping Center is located south of the subject property. The west side of Route 355 south of Middlebrook Road reflects commercial use development of both C-3 and C-1 Zones. Located west of the subject property is vacant R-60/TDR zoned land which is owned by Montgomery College. North of this area is land classified under the R-20 Zone for garden apartment use.

Mr. Friis indicated that the 1989 master plan recommended uses for this location based on the recently approved O-M zoning. The master plan also recommended that development of the site be handled in a manner that is compatible with the adjacent residential townhouses. For example, the master plan calls for buildings to be of the same character and scale as the adjacent development. The master plan also recommended adequate buffers between the two uses.

internal traffic circulation system and access restrictions provide an adequate substitute for a service road at this location.

Mr. Friis also concluded that the proposed development satisfies the compatibility requirements of the C-3 Zone. The SDP provides for building height and setback restrictions. Building height will be limited to the same two story height of the adjacent townhouse development. Moreover, a 35-foot treed buffer area and 6-foot perimeter fence provide a clear demarcation between the two uses and also provide for adequate buffer to insure compatibility with the adjacent residential uses. In addition, the Applicant proposes a minimum green area of 25% of the site and a FAR limitation of 0.25.

Frank G. Bossong, IV, qualified as an expert witness in the field of civil engineering. He testified that a stormwater management plan contemplates an on-site pre-treatment facility for water quality. The site does not require a full stormwater management facility and the pre-treatment plant will satisfy the current environment regulations.

Mr. Bossong also testified about road access. Both the Montgomery County Department of Transportation and the State Highway Administration analyzed access to the site and concluded that restrictive access will provide for the safest and most convenient turning movements. This means that only right turns in and out will be permitted except at the northern access point along Route 355 where a southbound left-hand turn into the site will be permitted. There will be no left hand turns permitted out of the site. Cars leaving the site by way of Middlebrook Road may turn left on Route 355 for southbound trips.

Mr. Bossong, also addressed water and sewer facilities. He indicated that the current water and sewer classifications will permit the proposed development. He concluded that water and

Zone by the applicable master plan, or (3) be at locations adjacent to properties already classified under the C-3 Zone. The subject property clearly meets the first requirement. The property has direct access to Frederick Road which is under construction for a six-lane width.

In addition, the C-3 Zone contemplates that the proposed location will provide for the orderly spacing of commercial development in a manner that does not depend on adjoining uses and is related to the traveler and highway user. The C-3 Zone intends that access must be restricted to minimize interference with through traffic movements. The testimony of the Applicant's expert and the Technical Staff's analysis provide convincing evidence that the proposed development, as restricted by the SDP, satisfies the elements of the purpose clause. The SDP proposes an internal circulation system and restricted access which are considered safe and adequate without the need for a service access road. The restrictions of the SDP insure a low profile form of development and access which will not interfere with through traffic movements along the two adjacent major highways. The proposed development under these restrictions will provide for the orderly grouping and spacing of commercial development that does not depend on adjoining uses and is related to the traveler and highway user.

### **B. Compatibility**

Once the Applicant has addressed the eligibility standards, compatibility must also be established. The SDP will provide a compatible form of development with the adjacent townhouses as well as the commercial uses to the south. Other uses located to the west across Maryland Route 355 will be separated from the proposed development by a substantial highway and will not be adversely affected by the limited form of development proposed under the SDP. In terms of land use, bulk and density, the proposed development meets the compatibility requirements of the C-3 Zone.

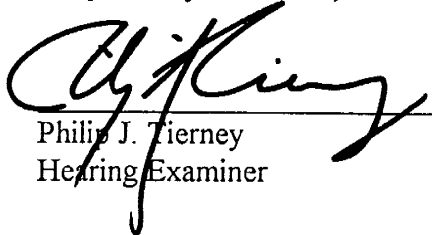
3. That the requested C-3 zoning, as restricted by the SDP, bears sufficient relationship to the public interest to justify it.

#### VI. RECOMMENDATIONS

I, therefore, recommend that Zoning Application No. 724, for the reclassification from the O-M Zone to the C-3 Zone of 3.65 areas known as the property of Middlebrook Associates, located in the northeast quadrant of the intersection of Frederick and Middlebrook Roads, Germantown, in the 9th Election District, be granted in the amount requested, subject to the requirements of the revised SDP, Ex. 38(b) and the executed Declaration of Covenants, Ex. 38(a).

Dated: June 12, 1996

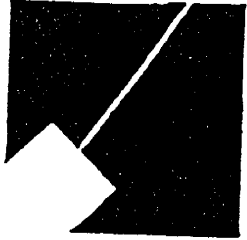
Respectively submitted,



Philip J. Tierney  
Hearing Examiner

PJT:rc

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: July 30, 1998  
SITE PLAN REVIEW: #8-98017  
PROJECT: Middlebrook Property

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*Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Holmes, with a vote of 5-0, Commissioners Bryant, Holmes, Hussmann, Perdue and Richardson voting for. All Commissioners were present.*

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The date of this written opinion is July 30, 1998, (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 August 30, 1998, (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, then this site plan shall remain valid for as long as Preliminary Plan #1-98037 is valid, as provided in Section 59-D-3.8.

On July 23, 1998, Site Plan Review #8-98017 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received 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 requirements of the zone in which it is located;
3. The locations of the buildings and structures, the open spaces, the landscaping, and the

- pedestrian 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.

The Montgomery County Planning Board APPROVES Site Plan Review #8-98017 which consists of 10,328 sf of restaurant and 8,529 sf of daycare subject to the following conditions:

1. Standard Conditions dated October 10, 1995, Appendix A.



**APPENDIX A: STANDARD CONDITIONS OF APPROVAL DATED 10-10-95:**

1. Submit a Site Plan Enforcement Agreement and Development Program for review and approval prior to approval of the signature set as follows:
  - a. Development Program to include a phasing schedule as follows:
    - 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
    - 2) Community-wide pedestrian pathways must be completed prior to seventy percent occupancy of each phase of the development.
    - 3) Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.
    - 4) Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
    - 5) Clearing and grading to correspond to the construction phasing, to minimize soil erosion;
    - 6) Coordination of each section of the development and roads;
    - 7) Phasing of dedications, stormwater management, sediment/erosion control, forestation, community paths or other features.
2. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by MCDPS:
  - a. Limit of disturbance;
  - b. Methods and location of tree protection;
  - c. Forest Conservation areas;
  - d. Conditions of DPS Concept approval letter dated May 29, 1998;
  - e. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
  - f. The development program inspection schedule.
  - g. Conservation easement boundary
  - h. Street trees 50 feet on center along all public streets;
3. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and MCDPS issuance of sediment and erosion control permit.
4. No clearing or grading prior to Planning Department approval of signature set of plans.

G:\spopinio\8-98017

July 30, 1998

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation  
Motion of Comm. Bryant, seconded by  
Comm. Holmes with a vote of 5-0;  
Comms. Bryant, Holmes, Richardson,  
Hussmann and Perdue voting in favor

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-98037

NAME OF PLAN: MIDDLEBROOK PROPERTY

On 12-15-97, MIDDLEBROOK ASSOCIATES submitted an application for the approval of a preliminary plan of subdivision of property in the C-3 zone. The application proposed to create 3 lots on 3.80 acres of land. The application was designated Preliminary Plan 1-98037. On 07-23-98, Preliminary Plan 1-98037 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-98037 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-98037, subject to the following conditions:

- (1) Prior to recording of plat, submit an Adequate Public Facilities (APF) agreement with the Planning Board limiting development to an 8,529 square foot day-care facility with maximum enrollment of 165 students and two restaurants with a total of 10,328 square feet (3,800 square feet and 6,528 square feet, respectively)
- (2) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS sediment and erosion control permit, as appropriate
- (3) Dedication of Frederick Road (MD355) and Middlebrook Road, as shown on plan
- (4) Access and improvements, as required, to be approved by MDSHA and MCDPW&T prior to recording of plat
- (5) No clearing, grading or recording of plats prior to site plan approval
- (6) Final landscape, lighting and parking facilities plan to be approved at site plan
- (7) Necessary easements

Preliminary Plan 1-98037

Page 2 of 2

- (8) This preliminary plan will remain valid until August 30, 2001 (37 months from date of mailing, which is July 30, 1998). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.