

Item # 1&2  
MCPB 5-18-06MEMORANDUM

**DATE:** May 8, 2006

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RK*  
Development Review Division

**FROM:** Robert Kronenberg, Planner Coordinator  
John Henderson, Enforcement Coordinator  
(301) 495-2187 *[Signature]*

**SUBJECT:** **CONSIDERATION of Alleged Height Violation  
Sanctions/Plan of Compliance**

**PROJECT NAME:** Germantown Professional Building  
**CASE #:** 82002010B (Formerly 8-02010B)

**REVIEW BASIS:** Div. 59-D-3.6 of the Montgomery County Zoning Ordinance  
**ZONE:** C-T  
**LOCATION:** 19731 Germantown Road  
**MASTER PLAN:** Germantown

**APPLICANT:** Willco Companies

**HEARING DATE:** May 18, 2006

**STAFF RECOMMENDATION:**

- *Finding that the height of Building B does not comply with site plan approvals.*
- *Assess a fine of \$11,700 for the height violation and require applicant to amend plan to reflect the correct building height.*

## **PROCEDURAL PREFACE:**

This item has been noticed as a public hearing during which the Board will consider whether there is a site plan violation with respect to building height. If the Board does not find any violation, then this matter will be concluded. If the Board does find a violation, then it will proceed immediately to consider any citations and/or corrective action that it may elect to impose. Based on staff's recommendation that the Board find a violation, staff has also included herein a recommended plan of compliance.

### **I. Project Description Site and Surrounding Vicinity**

The subject property is located at 19731 Germantown Road (Rt. 118), approximately 3,000 ft west of the I-270 interchange and 600 feet east of Middlebrook Road. Primary access is from MD 118 with a secondary access from Crystal Rock Drive to the east. The surrounding vicinity features the US Department of Energy complex approximately a quarter mile to the east, the Northlake Commercial Center to the west and the Germantown Town Center directly across MD 118 to the north. The Colony Garden Apartments and Kinder Care Daycare are located directly adjacent to the south.

The site is rectangular in shape with approximately 650 feet of frontage along its northern boundary on Germantown Road (MD 118). Two buildings were approved in the site plan. The first, an office building that is 35 feet high, was completed in 2005. The second building, located to the south and behind the first, is complete except for tenant fit-out. Finished site work includes vehicular and pedestrian circulation, landscaping, lighting and internal site amenities.

### **II. Original Project Approvals**

The Planning Board originally approved Site Plan 8-99018 for this parcel, known as North Germantown (8-99018) on December 17, 1999. It called for 121,700 square feet of office and 4,000 square feet of restaurant use in two, three-story buildings that were not to exceed 35 feet in height. That plan never went forward.

A new site plan, Germantown Gateway (8-02010), was approved by the Planning Board on November 30, 2001. It called for two, three-story buildings, one of which was parallel to MD Route 118, while the other was perpendicular to it. The two buildings were to contain a total of 125,000 square feet.

Amendment 8-02010A, submitted in July of 2002, pulled one of the buildings further away from Rt. 118, relocating it directly to the south and behind the first building. Some adjustments to the circulation pattern were required as a result. The amendment, which didn't change the total square footage, was approved by staff on July 31, 2002.

In 2003, Amendment 8-020101B was filed by the applicant. By this time, it was anticipated that that the second building would be an emergency health care facility for Adventist Healthcare. Since it was known that this facility needed only 27,272 square feet, the B Amendment sought to shift square footage from the second building to the first. The larger building (Building A)

would remain at three stories, 35 feet, while the smaller building (Building B) was shown as a one story, 15 foot structure. It is this smaller building that is the subject of the alleged violation.

Amendment B was approved on June 3, 2003.

## **II. Issues Surrounding the Alleged Violation**

The Department of Permitting Services (“DPS”) conducted an inspection of this project for height and setback violations on September 8, 2005, as part of an audit of all site plans approved since January 1, 2003. An alleged height violation was included by DPS in their audit findings, released formally in a February 16, 2006 Biweekly Update Report to the County Council. Although the site plan specifies a 15-foot height for Building 2, DPS found that the building actually measures 18 feet. Since the pertinent provision of the Montgomery Zoning Ordinance, Div. 59-C-4.301 (b), specifies that the maximum height of a building with a lot area of 12,000 square feet or more in the C-T zone is 35 feet, the alleged violation is in contradiction of the site plan but does not violate the zone.

DPS issued a stop work order in December 2005 as part of the audit. Since the building was complete except for tenant fit-out, the stop work order was lifted by DPS with the understanding that the Applicant would submit a site plan amendment to correct the height of Building B. The Applicant was also informed that the amendment would need to be heard before the Planning Board for a possible violation and plan of compliance.

The definition of height in the zoning ordinance allows the Applicant to measure Building B from the midpoint of the base at the front of the building to the midpoint of the roof, if a building is set back more than 35 feet from a public way. This building is set back much more than 35 feet from MD 118. The building measures to a height of 18 feet from the front of the building to the midpoint of the roof as defined in the zoning ordinance.

The Applicant has confirmed in a letter to the Planning Board dated May 4, 2006 (Attachment 5) that the building exceeds the height approved in the site plan and does not dispute either the violation or the measured height. The Applicant apologizes to the Board for this error but also explains how it occurred.

According to the applicant’s attorney, Jody Kline, the design of the health care facility was proceeding at the same time as the review of the B amendment to the site plan. During that time, the parties became aware that the ventilation equipment for the health care facility would have to be substantially oversized, to allow internal air to be filtered and recycled over a long period of time in the event of a biological disaster. This, in turn, required the installation of larger ductwork. Although staff apparently received illustrative elevations of the building that showed the top elevation to be “20” feet, this change was not noted in the staff report and the development standards set forth in earlier iterations of the plan were not changed. As a result, height was also not called out in the Planning Board opinion.

The drawings submitted as part of the building permit application reflected a building taller than 15 feet but, again, no one picked up on the discrepancy. The height violation was not uncovered until the audit took place, at which time the building was substantially complete.

#### **IV. Penalty**

Section 50-41(c) of the Montgomery County Code provides guidance on imposition of civil fines and penalties. Pursuant to this section, the maximum amount of the fine for each violation of a Planning Board Action is set at \$500.00 for each day that the violation has occurred. The law states explicitly that each day that the violation has not been corrected shall be considered a separate violation and that applicable fine or penalty will continue to accrue each day until corrected, without the need of issuing a new citation each day.

A development team experienced with Montgomery County policies, procedures and requirements prepared the submittals for this project. There is no evidence that the alleged height violation was willful or is an element in a pattern of conduct of the same or a similar nature. The building as constructed conforms substantially with the expressed intent of the applicant. Therefore, this violation is believed to be a negligent failure to accurately set the height of the proposed building at twenty feet as the Board considered the "B" amendment.

The alleged height violation contravenes limitations established by the Planning Board but does not violate zoning ordinance standards. Because the building is substantially complete, the violation cannot practicably be cured. A 3-foot height violation does not affect adversely the implementation of any master plan element or functional land use plan; no third parties are harmed. While the alleged violation has not caused substantive injury or harm to the physical environment, it has undermined the Planning Board Process and impaired the status of an approved site plan.

The date of building permit issuance was September 26, 2005, so 234 days have elapsed from permit issuance to the date of this hearing on the alleged violation. Staff recommends a fine of \$50 per day for a total of \$11,700 (234 days x \$50/day - \$11,700).

#### **V. Plan of Compliance**

Staff recommends that the Germantown Professional building be found in violation with respect to height of Site Plan 8-02010B, approved on March 15, 2004, because the building measures 18 feet in height, which is three feet above the approved standard of 15 feet.

The recommended plan of compliance is:

- 1) Payment of a fine \$11,700 to deter future violations, and
- 2) Filing an amendment of the site plan to reflect existing conditions.

Because this money cannot be used to cure the violation, staff proposes that it be applied to an on-site benefit for the general public or an off-site benefit for the immediate community, such as an amenity at a nearby park.

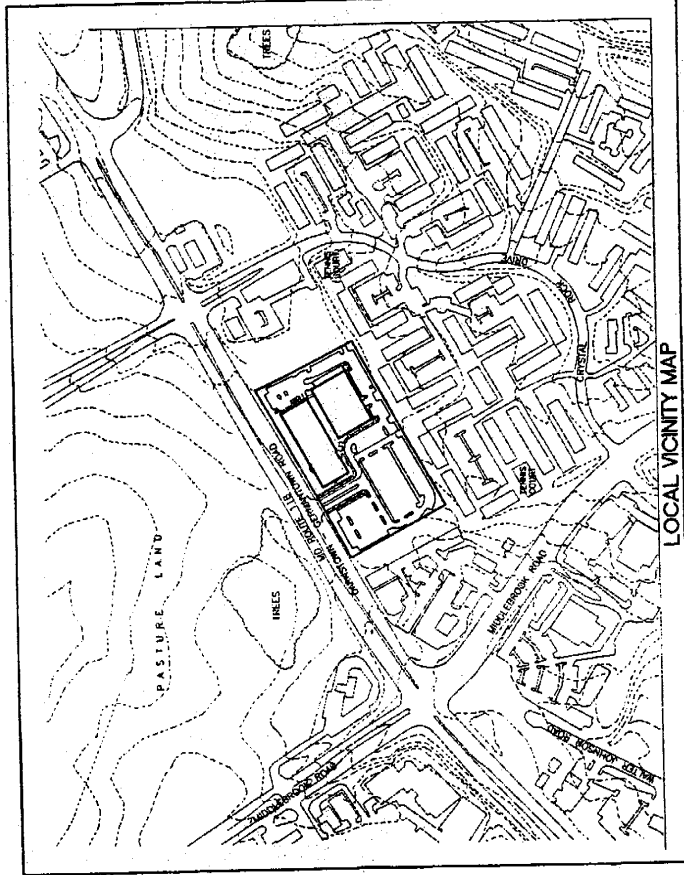
Attachment 1: Germantown Professional Building Site Development Plan

Attachment 2: Data Table from Approved Site Plan

Attachment 3: Site Plan Opinion (8-02010B)

Attachment 4: Letter to the Board from Miller, Miller & Canby, dated May 4, 2006

# SITE PLAN FOR LOT FIVE GERMANTOWN PROFESSIONAL BUILDING MONTGOMERY COUNTY, MARYLAND



LOCAL VICINITY MAP

USE / TYPE	RATIO	QUANTITY	PROVIDED
OFFICE	1.0000	18,000 SF	18,000
INFORMATION	0.1000	1,800 SF	1,800
RETAIL	0.1000	1,800 SF	1,800
RESTAURANT	0.1000	1,800 SF	1,800
TRUCK	0.1000	1,800 SF	1,800
STREET	0.1000	1,800 SF	1,800
TOTAL		25,200 SF	25,200

DESCRIPTION	QUANTITY	PROVIDED
SITE PLAN	1	1
COVER SHEET DEVELOPMENT DATA, NOTES	1	1
LANDSCAPE AND LIGHTING PLAN	1	1
STORM DRAINAGE CONCEPT AND DRAINAGE AREA PLAN	1	1
SEWER AND EROSION CONTROL CONCEPT PLAN	1	1
SITE AND ADJACENT AREA PLAN	1	1
PHOTOGRAMMETRIC PLAN	1	1

**PARKING SUMMARY**

USE / TYPE RATIO QUANTITY PROVIDED

OFFICE 1.0000 18,000 SF 18,000

INFORMATION 0.1000 1,800 SF 1,800

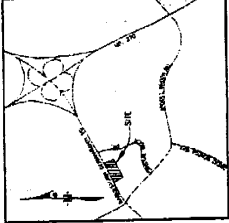
RETAIL 0.1000 1,800 SF 1,800

RESTAURANT 0.1000 1,800 SF 1,800

TRUCK 0.1000 1,800 SF 1,800

STREET 0.1000 1,800 SF 1,800

TOTAL 25,200 SF 25,200



**GENERAL NOTES**

1. DISTINGUISHING C-1 (COMMERCIAL, THROUGHWAY)
2. GERMANTOWN MASTER PLAN AREA
3. MINIMUM REQUIRED DEVELOPMENT 0.5 PER 131,344 CSF
4. PROPOSED DEVELOPMENT (DENSE) 125,000 CSF
5. BUILDING HEIGHT: 1 AND 3 FLOORS, MAX. HEIGHT=35
6. RECORD PLAN 11-22
7. PROJECT SUBJECT TO THE FOLLOWING APPROVALS:
  - 1-18-2007 CONSENT OF THE BOARD OF MONITORING AND INSPECTION
  - 1-23-2007 PRELIMINARY PLAN 11-20-07
  - 8-02-2010 SITE PLAN REVIEW APPROVAL PLAN 11/17/10
  - 8-02-2010 SITE PLAN REVIEW APPROVAL PLAN 11/17/10
8. THE SITE IS A PASTURE LAND WITH TREES, FIELDS, SPOKES, BY CORNERS AND DAVIS ALMOST 100% TO DISCONTINUE FROM AERIAL SURVEYS FIELD MARKED BY GERMANTOWN AND DATE APPROX. 1943
9. SITE TO BE SERVED BY MIDDLE WATER AND SEWER
10. ALL UTILITIES TO BE DEEPENED TO 10' TO BE PROTECTED
11. ALL UTILITIES TO BE DEEPENED TO 10' TO BE PROTECTED
12. SUBJECT PROPERTY IS IN GREAT SOURCE CREEK WATERSHED, CLASS I WATERS ON PROPERTY
13. STORMWATER MANAGEMENT WATER QUANTITY AND QUALITY CONTROL WILL BE PROVIDED BY EXISTING AND PROPOSED STORMWATER MANAGEMENT SYSTEMS AND RECORDED MAY 23, 2007. WATER QUANTITY PRE-TREATMENT TO BE PROVIDED ON-SITE.
14. THERE ARE NO HISTORIC RESOURCES ON SITE ACCORDING TO AVAILABLE RECORDS.
15. FORMAL CONSENT TO BE PROVIDED BY THE CIVIL ENGINEER AND ARCHITECT.
16. CONSENT PLAN #8-02-10, APPROVED 11-11-10.

**SITE INSPECTIONS**

1. THE SITE SHALL BE INSPECTED BY A MISC. STAFF AS THE FOLLOWING STEPS:
  - A. STAFF SHALL CONDUCT A PRECONSTRUCTION SURVEY WHICH WILL INCLUDE:
    - STAFF AND ARCHITECT CONTROL POINTS TO BE ESTABLISHED AND SHOWN.
  - B. STAFF TO OCCUPANCY OF THE BUILDING. THE STAFF SHALL CONDUCT A SURVEY TO OCCUPANCY OF THE BUILDING. THE STAFF SHALL CONDUCT A SURVEY TO OCCUPANCY OF THE BUILDING. THE STAFF SHALL CONDUCT A SURVEY TO OCCUPANCY OF THE BUILDING.
  - C. APPLICANT SHALL SEND WRITTEN NOTICE TO MISC. STAFF INSPECTION UNIT TO OCCUPANCY OF THE BUILDING. THE STAFF SHALL CONDUCT A SURVEY TO OCCUPANCY OF THE BUILDING. THE STAFF SHALL CONDUCT A SURVEY TO OCCUPANCY OF THE BUILDING.

**CLARK, FINEFROCK & SACKETT, INC.**  
ENGINEERS - PLANNERS - SURVEYORS  
1300 WOODBURN WAY, SUITE 200, GAITHERSBURG, MD 20878  
TEL: 410-281-2200 FAX: 410-281-2201  
WWW.CFSINC.COM

**GERMANTOWN PROFESSIONAL BUILDING**  
NORTH GERMANTOWN  
MONTGOMERY COUNTY, MARYLAND  
1300 WOODBURN WAY, SUITE 200, GAITHERSBURG, MD 20878  
TEL: 410-281-2200 FAX: 410-281-2201  
WWW.CFSINC.COM

**DATE APPROVED: 11-22-10**

Type of Plan	Case Name/Number of Case	Date
Final	11-22-10	11-22-10
Special Exception	11-22-10	11-22-10
Project Plan	11-22-10	11-22-10
Development Plan	11-22-10	11-22-10
Preliminary Plan	11-22-10	11-22-10
With Preliminary Plan	11-22-10	11-22-10
Site Plan - for each phase of a project	11-22-10	11-22-10
With Final Plan	11-22-10	11-22-10

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**DATE SUBMITTED:** June 3, 2010

**SITE PLAN REVIEW #:** 142010

**PROJECT NAME:** Germantown Professional Building

**APPLICANT:** GERMANTOWN PROFESSIONAL BUILDING

**DESIGNER:** CLARK, FINEFROCK & SACKETT, INC.

**REVIEWER:** OTINION

**APPLICANT'S STATEMENT:**

The site of this project is located in Lot 5, Block 1, Germantown Professional Building, which is a portion of the site shown on the site plan. The site is currently vacant and is located in the Germantown Professional Building area. The site is currently vacant and is located in the Germantown Professional Building area. The site is currently vacant and is located in the Germantown Professional Building area.

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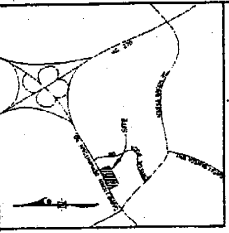
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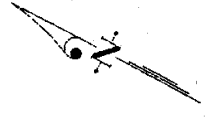
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VICINITY MAP  
Scale: 1" = 400'

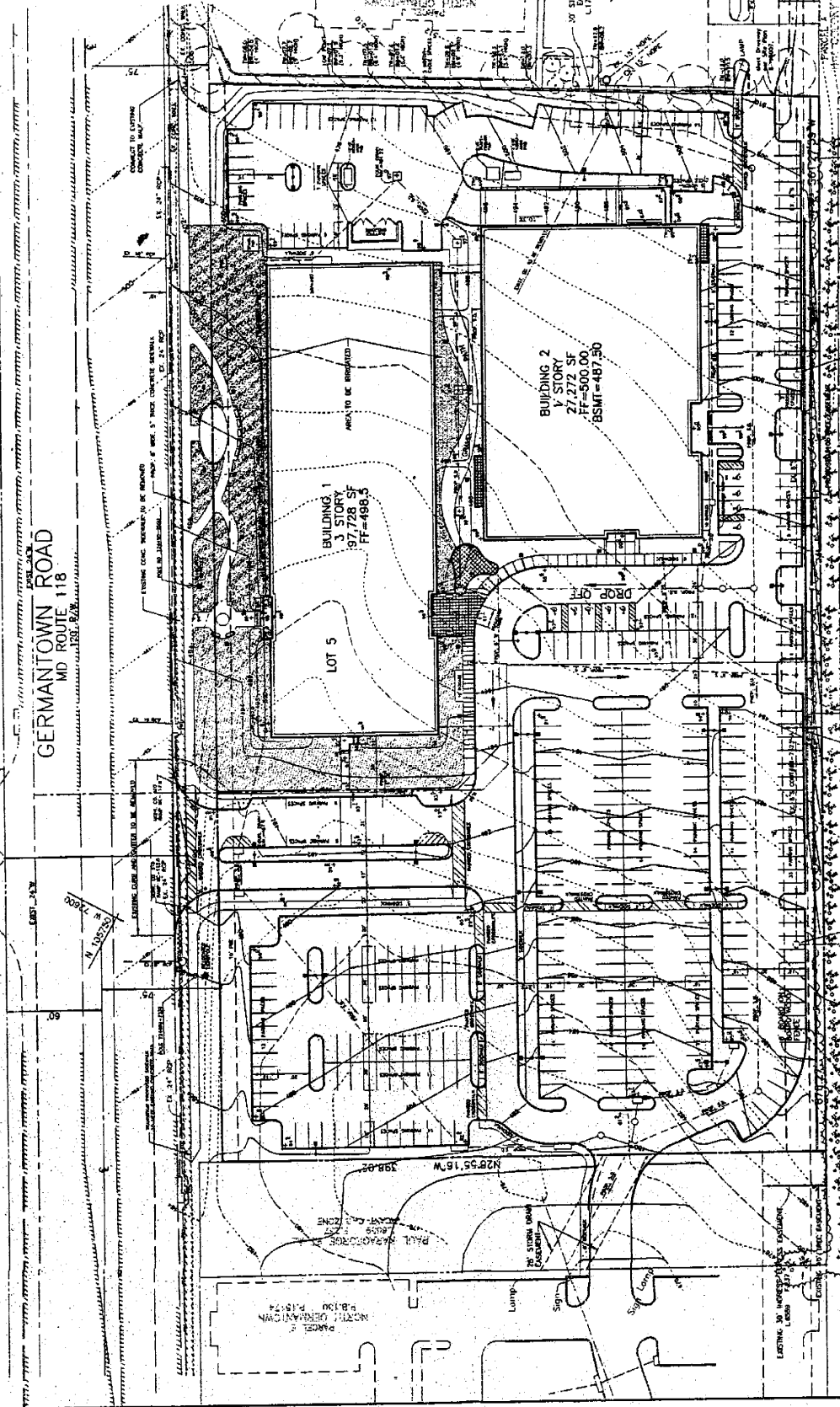


N.E. HANNAY MILLIP  
L 8113 P. 304

GERMENTOWN ROAD  
MD ROUTE 118

FUTURE  
TOWN CENTER ENTRANCE  
(SITE PLAN APPROVED)

N.E. NATIONAL BANK  
PARCEL 21  
RESIDENTIAL ZONE





# LOCAL VICINITY MAP

	BUILDING 2		BUILDING 1		TOTALS	
	REQ'D / PRMTD.	PROPOSED	REQ'D / PRMTD.	PROPOSED	REQ'D / PERMTD.	PROPOSED
NET AREA GROSS FLOOR AREA	SF	27,272 SF	SF	97,728 SF	6.03 AC. 131,333 SF	6.03 AC. 125,000 SF
PARKING PROVIDED** OFFICE USE HC PARKING INCLUDED	5/1000SF=137	137* 3 HC	3/1000SF=293	295 6 HC	430 9 HC	432 (3.46/1000SF)** 9 HC
BUILDING COVERAGE IMPERVIOUS AREA GREEN AREA					35% MAX. 10% MIN.	59,848 SF (22.8%) 120,533 SF (45.9%) 82,308 SF (31.3%)
BUILDING HEIGHT BUILDING SETBACKS FROM MD RTE 118 FROM LOT LINE PARKING FROM ADJ. LOT	35 FT. 20 FT MIN. 15 FT MIN. 4FT MIN.	1 STORY / 15 FT. 200 FT 73 FT 12 FT	35 FT	3 STORY / 35 FT. 35 FT 112 FT 8 FT		

SITE F	
C	
S	
LANDS	
DETAIL	
STORM	
SEDIM	
SITE /	
PHOTC	

\* 69 SPACES IN GARAGE UNDER BUILDING 2.  
 \*\* Building #2 will be used as either an emergency health care facility or as general offices. An emergency health care facility does not have a parking requirement specified in the Montgomery County Zoning Ordinance. therefore, a conservative parking rate of 5 spaces per 1000 square feet of gross floor area has been used to overestimate the amount of parking required to satisfy the parking demand and requirement for either use (even though parking required for general office use would be 3 spaces per 1000 feet of gross floor area).

PARKING SUMMARY		
USE / TYPE	RATIO	QUANTIT
OFFICE	3 SPACES / 1,000 SF	125,000 SF
HANDICAP	401-500 SPACES - 9 SPACES	432
MOTORCYCLE	2% OF TOTAL SPACES	432
BICYCLE	1 SPACE / 20 SPACES, MAX. 20	432





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MONTGOMERY COUNTY PLANNING BOARD

OPINION

**DATE MAILED:** June 3, 2003  
**SITE PLAN REVIEW #:** 8-02010B  
**PROJECT NAME:** Germantown Professional Building

*Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Wellington, with a vote of 4-0, Commissioners Bryant, Robinson, Perdue and Wellington voting for, no Commissioner voting against. Commissioner Berlage was necessarily absent.*

The date of this written opinion is June 3, 2003, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before July 3, 2003. (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, this Site Plan shall remain valid until the expiration of the project's APFO approval, as provided in Section 59-D-3.8.

On May 29, 2003, Site Plan Review #8-02010B was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. *The Site Plan is consistent with an approved development plan or a project plan for the optional method of development if required;*
2. *The Site Plan meets all of the requirement of the CT zone, and is consistent with an urban renewal plan approved under Chapter 56;*
3. *The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, 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;*
6. *The Site Plan meets all applicable requirements of Chapter 19 regarding water resource protection*

Therefore, the Montgomery County Planning Board APPROVES Site Plan #8-02010B, which consists of 27,272 sf of emergency health care facility on 6.03 acre (total site) with the following conditions:

1. Site Plan and Lighting and Landscaping Plan

- a. Applicant to provide a final lighting plan with highlighted changes to staff prior to signature set. Subsequent lighting plans to highlight all wall pack lighting or any other lighting not shown on the submitted lighting plan. No decorative wall wash lighting is to be allowed on the second phase building.
- b. The applicant needs to submit a subsurface parking layout for Building 2 for staff review prior to signature set. All cross walks (where pedestrian connections are made from one curb to the other) within the parking lot shall be painted with high contrast paint.
- c. Additional shade trees are required along the southern boundary at 40 feet on center.

2. Signature Set

- a. Submit a Site Plan Enforcement Agreement and Development Program for review and approval prior to approval of the signature set as follows:
  - 1) Development Program to include a phasing schedule if required;
  - 2) Community-wide pedestrian pathways must be completed prior to occupancy of the building..
  - 3) Landscaping associated with the parking lot and building shall be completed as construction 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) Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.
- b. Signature set of site, landscape/lighting, forest conservation and sediment and erosion control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
  1. Limits of disturbance;
  2. Methods and location of tree protection;
  3. Conditions of DPS Stormwater Management Concept approval letter;

4. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading;
  5. The development program inspection schedule.
  6. Landscaping as shown on the plan.
- c. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.
- d. No clearing or grading prior to MNCPPC approval of signature set of plans, except clearing or grading in accordance with previously approved signature set of plans.

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LAW OFFICES

**MILLER, MILLER & CANBY**

CHARTERED

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JSMK1.NE@MMCANBY.COM

**AGENDA DATE: MAY 18, 2006**  
**AGENDA ITEM:**

May 4, 2006

JAMES R. MILLER, JR.  
PATRICK C. MCKEEVER  
JAMES L. THOMPSON  
LEWIS R. SCHUMANN  
JODY S. KLINE  
ELLEN S. WALKER  
MAURY S. EPNER  
JOSEPH P. SUNTUM  
SUSAN W. CARTER  
ROBERT E. GOUGH  
GLENN M. ANDERSON\*  
MICHAEL G. CAMPBELL  
SOO LEE-CHO  
*\*Licensed in Maryland and Florida*Montgomery County Planning Board  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910**RE: Site Plan No. 8-02010B;**  
**Site Plan Violation;**  
**Germantown Professional Building**

Dear Chairman Berlage and Members of the Planning Board:

First of all, all members of the development team for the "Germantown Professional Building" project apologize that this matter has to appear on your agenda for consideration. As you will note in the following information, the discrepancy between the site plan approved by the Planning Board, and the building permit issued by Montgomery County for this important Germantown project, was completely accidental and unintentional. The following information is provided to explain how the discrepancy between approved and constructed height occurred.

By way of background, the Planning Board approved two previous site plans for this property. Site Plan No. 8-99018 (December 17, 1999) approved construction of 121,700 square feet of general office space and 4,000 square feet of restaurant (total 125,700 square feet) in two buildings of three stories each not to exceed the 35 foot height limit of the underlying C-T zone.

On November 30, 2001, the Planning Board approved a new site plan (No. 8-02010) which authorized construction of two buildings fronting directly on Maryland Route 118 containing a total of 125,000 square feet of office use in three story structures of 35 feet in height. In neither the 1999 or the 2001 site plan review proceedings did any party testify, or even participate, in opposition.

By 2003, when Site Plan Review No. 8-02010B was filed, Building No. 1 was under construction. At the time of submission of the Amendment Application, it was anticipated that the use of Building No. 2 would be a 27,272 square foot emergency health care facility for Adventist Healthcare Inc. that would be allowed by Zoning Ordinance Text Amendment No. 02-07 then pending for such a use in the C-T zone. At the same time, Adventist Healthcare, the tenant was

pursuing approval from the State of Maryland to permit a freestanding emergency care facility. That approval was eventually secured allowing the emergency room to become a reality.

Building No. 2, the structure subject of this site plan inquiry, was to be a one story building. Early versions of the site plan application materials, particularly the "Development Standards" table on the cover sheet of the site plan application, showed the building height to be "15 feet". As the design of the emergency health care facility progressed in tandem with review of the site plan, it became apparent that a larger, more sophisticated air handling system would be necessary to service the building. To be specific, as a health care facility, the building had to be designed so that, in the event of a biological disaster, internal air could be filtered and recycled for a period of time long enough for a "biocloud" to dissipate. Accordingly, the ventilation equipment had to be substantially oversized. Larger ductwork installed within the building resulted in the roofline being raised to accommodate the specially designed airflow equipment. Illustrative elevations that were made available to Staff during the site plan review, and which were displayed to the Board during a May 29, 2003 Planning Board public hearing, showed the top elevation of the building to be "20 feet". Unfortunately, a simultaneous change in reference to height from 15 to 20 feet was not made on the face of the site plan cover sheet. When Ms. Witthans authored the Staff Report, she apparently referred to the unaltered Development Standards Table rather than to the later elevations contained in the Commission's file. The incorrect height limit of "15 feet" was published in the Staff Report. Regrettably, none of the members of the development team noted the discrepancy. Height was not mentioned in the Planning Board's Opinion, so the height difference was not identified when the Opinion was published.

Construction of Building No. 2 then commenced under a building permit allowing construction of a building exceeding 15 feet in height until a site inspection identified the discrepancy. Work was allowed to continue on the new facility, fortunately, due to the importance of having the proposed Adventist emergency medical treatment facility on line at the earliest possible date, while the applicant processes its application (filed as Site Plan Amendment No. 8-02010C on March 3, 2006) to correct the discrepancy.


The applicant and its project team believe that at no time was the Planning Board or the public misled by the discrepancy in height nor has the public interest been undermined by construction of a building that is modestly taller than is shown on the application and approved plans. The applicant comes to that conclusion based on the following facts:

1. There were previous site plans approved for the subject property showing two office buildings at heights of 35 feet.
2. Building No. 1, which fronts directly on Maryland Route 118, is built to the height limits in the C-T zone (35 feet) and provides a backdrop for the lower one story building now known as Building No. 2.
3. No person would have been misled or misinformed by review of the Opinion for Site Plan No. 8-02010B because the Opinion is silent on the height of the building, either in terms of stories or feet.

We hope that the Planning Board accepts our joint apology and the explanation above regarding how this unfortunate oversight occurred.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody Kline". The signature is written in a cursive, slightly slanted style. Above the signature is a thick, horizontal black line that spans the width of the signature.

Jody S. Kline

JSK/dlt

cc: Rose Krasnow  
Robert Kronenberg  
Debra Daniel, Esquire  
Willco Construction Co., Inc.  
Dennis Ream  
Rick Donnally