

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

Stella Werner Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

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| IN THE MATTER OF: |) | |
| DONG YA, LLC, AND |) | |
| HONG CHENG, LLC. |) | |
| |) | |
| Petitioner |) | |
| |) | |
| Kevin Foster |) | |
| Tim Longfellow |) | Conditional Use Application |
| Nick Driban |) | |
| |) | |
| For the Petitioner |) | |
| |) | |
| Patricia A. Harris, Esquire |) | |
| |) | |
| Attorney for the Petitioner |) | |

PETITIONER'S STATEMENT OF THE CASE

On behalf of Dong Ya, LLC and Hong Cheng, LLC (collectively, the "Petitioner"), we submit this Statement of the Case (the "Statement") in connection with the request for approval of a Conditional Use (the "Application") to permit a six-pump fueling station with a convenience store for the Property located at 15585 and 15595 Old Columbia Pike (the "Property"). The Property is currently improved with a four-pump fueling station and convenience store pursuant to Special Exception S-847-A. The Petitioner incorporates by reference its Land Use Report, submitted contemporaneously with this Statement.

I. STATEMENT OF GROUNDS UPON WHICH THE CASE IS BASED

The Property, as defined in the Land Use Report is located at 15585 and 15595 Old Columbia Pike in the southwest corner of the intersection of Maryland Route 198 (hereinafter "Old Columbia Pike") and U.S. 29A (hereinafter "Business 29") in Burtonsville, Maryland. In 2019, the County Council sitting as the District Council approved Local Map Amendment H-134 (the "LMA") that rezoned the Property from CRN to CRTF to accommodate the continued use of the Property for an automobile filling station.

Exhibit 18
OZAH Case No: CU 24-15

The Property is currently zoned CRTF-1.5, C-1.0, R-0.5, H-45. The Property consists of two parcels: Parcel N913 (15585 Old Columbia Pike) is improved with four fueling dispenser, a canopy, and a 2,496 square foot 7-11 convenience store; and Parcel N924 (15595 Old Columbia Pike) is improved with a 8,208 square foot retail mattress retail store located along the eastern portion of the Property. Access to the Property from Old Columbia Pike is provided via two driveways, with the western driveway unrestricted and the eastern driveway limited to rights-in/rights-out as a result of the existing median.

The initial Special Exception (Case No. 2173) was granted in 1967 and approved a three-bay automobile filling station on the Property. In 1982 the Board of Appeals granted Special Exception S-847 to modernize the existing station by razing the service station and eliminating the services bays and constructing a new canopy and six fueling dispensers. The Opinion of the Board notes that petitioner will “construct a 2,560 square foot building to accommodate a 7-11 store (*a permitted use in the C-2 Zone*).”¹ The Opinion provided that the hours of operation were 24-hours per day, seven days a week. Two minor modifications to the Special Exception were granted in 1983 and 1994. The Special Exception was most recently amended in 1995, per S-847-A to among other things, reduce the number of dispensers from six to four.

The Petitioner is seeking Conditional Use approval for a six-pump gas station (thus reinstating the number approved in 1982 under the existing Special Exception) and to reconfigure the layout of the fueling dispensers and the canopy. In addition, the Petitioner will raze the existing convenience store and replace it with a 5,919 square foot convenience store. In accordance with Binding Element No. 5 of the LMA, the Conditional Use will include a 40 foot wide reserved land area for a potential private access roadway along the western side of the Property.

The Application is in substantial conformance with the Master Plan. The Property is subject to the recommendations of the 2012 Approved and Adopted Burtonsville Crossroads Neighborhood Plan (the “Master Plan”). Prior to the adoption of the Master Plan, the Property was zoned General Commercial (C-2) and in connection with the sectional map amendment following the adoption of the Master Plan, the Property was zoned CRN. As noted, in 2019 pursuant to the LMA, the Property was rezoned to CRTF. The Conditional Use adheres to the six binding elements of the LMA and proposes development that is consistent with that contemplated by the LMA.

The central goal of the Master Plan is:

...the creation of a complete community designed at a scale to serve the surrounding area with small businesses, retail local services, offices, residential and open spaces for local events, conservation, and recreation. The community will be connected by a system of enhanced local streets, sidewalks and trails.

¹ As a permitted use, the convenience store would not be subject to Conditional Use approval. There is no indication in the current Special Exception approvals that the existing convenience store is controlled by S-847-A.

The Property is located more than 425 feet from the closest dwelling and includes a substantial tree buffer. The proposed Application will allow the continuation of the existing use at a highly visible location at the intersection of two major roads – Old Columbia Pike and Business 29. As noted in connection with the LMA, and as explained further in the Land Use Report, the Conditional Use will promote four inter-related themes of the Master Plan – connectivity, design, economy and environment, thus evidencing its substantial conformance with the Master Plan.

Petitioner’s traffic consultant, Lenhart Traffic Consulting, Inc. has prepared a Local Area Transportation Review (“LATR”) report and traffic signal study that is included with the Application. The LATR report indicates that the proposed Conditional Use will have no adverse impacts on the surrounding roadway network. The LATR study indicates that all of the study intersections will operate well within the M-NCPPC standards for traffic adequacy. In addition, the traffic signal study demonstrates that a new traffic signal to be located at the intersection of Old Columbia Pike and the Property’s western driveway entrance is warranted and that the installation of this signal will result in the adequate functioning of this intersection. The State Highway Administration (“SHA”) has indicated that the traffic signal is warranted under existing conditions and should be installed prior to opening of the proposed use.

Adequate public facilities and services will continue to be available to serve the automobile filling station on the Property. The roadway network surrounding the Property and the proposed vehicular and pedestrian improvements (including installation of a separated bike path along the Property’s frontage and the elimination of the slip lane at Old Columbia Pike and Business 29) are safe, adequate and efficient. The Property will be served by existing water and sewer mains. Electric, gas and telecommunications services will also continue to be available to adequately serve the Property. Other public facilities and services – including police stations and firehouses – are currently available in the vicinity of the Project.

The evidence to be presented will demonstrate that the Conditional Use satisfies (1) the specific standards set forth in Section 59.3.5.13.C of the Zoning Ordinance for automobile filling stations; (2) the development standards of the CRTF Zone pursuant to Section 59.5.3.5; and (3) the general Conditional Use standards set forth in 59.7.3.1.E. In addition, the Petitioner will demonstrate that there will be adequate public facilities and services to serve the Project and that the Conditional Use substantially conforms with the recommendations of the Master Plan.

II. REPORTS INTENDED TO BE INTRODUCED AT THE HEARING

1. Land Use Report;
2. Statement of Operations (contained within the Land Use Report);
3. LATR report and traffic signal study prepared by Lenhart Traffic Consulting, Inc.; and
4. IMST Corp. Market Report.

III. SUMMARY OF EXPERT TESTIMONY

At the present time, the Applicant intends to call the following expert witnesses to testify in support of the rezoning application:

1. Kevin Foster, Certified Land Planner and Registered Landscape Architect with Gutschick, Little & Weber, P.A., will testify as to among other things, the existing conditions and physical characteristics of the Property; the zoning history of the Property; the existing and proposed site improvements; and the Project's compliance with the intent, applicable development standards, and all requirements of the Zoning Ordinance. He also will provide testimony regarding the proposed development's substantial conformance with the Master Plan and compatibility with the surrounding neighborhood.
2. Tim Longfellow, Civil Engineer with Gutschick, Little & Weber, P.A., will testify to the Project's compliance with the stormwater management and forestry requirements, adequacy of public facilities and the proposed frontage improvements.
3. Nick Driban, traffic engineer with Lenhart Traffic Consulting Inc., will testify as to traffic and transportation planning issues (including trip generation, site access, and signal warrants), in accordance with the LATR report prepared for the Application.

The resumes of the above-identified expert witnesses are attached. The Applicant reserves the right to call additional expert witnesses if it deems necessary.

IV. OTHER POTENTIAL WITNESSES WHO MAY TESTIFY

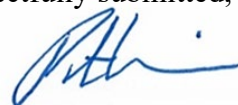
In addition to the above expert witnesses, the Property owner, Anthony Cheng, will testify about the status of the current tenancy on the Property and Christopher Hoffman, a representative of the proposed tenant, will testify as to the operational aspects of the use and the need for the proposed use.

V. ESTIMATED TIME REQUIRED FOR PRESENTATION

The Petitioner anticipates that, excluding questions, the presentation of its case-in-chief for the proposed Conditional Use will take approximately three (3) hours.

This submission is intended to satisfy the requirement of the Rules of Procedure for Petitions for Conditional Use cases. If it is subsequently determined that new or supplemental information is necessary, the Petitioner will make a supplemental submission in a timely fashion.

Respectfully submitted,



By: _____
Patricia A. Harris

Enclosures

A handwritten signature in blue ink, appearing to read 'Patricia A. Harris', is centered on the page.