

CHENG PROPERTY- WAWA SPECIAL EXCEPTION MODIFICATION NO. S-847-B & FOREST CONSERVATION PLAN NO. F20240210

Exhibit 31
OZAH Case No: CU 24-15

Description

The Cheng Property seeks a Special Exception Major Modification to rebuild an Automobile Filling Station and Convenience/Retail Store along with associated changes to parking, lighting and landscaping, as well as approval of a Forest Conservation Plan.

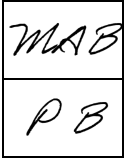
No. S-847-B & F20240210

Completed: 2-16-2024

MCPB
Item No. 11
February 29, 2024

2425 Reddie Drive
Floor 14
Wheaton, MD 20902

Planning Staff



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LOCATION/ADDRESS

15585 and 15595 Old Columbia Road,
Burtonsville 20866

MASTER PLAN

2012 *Burtonsville Crossroads Neighborhood Plan (Master Plan)*

ZONE

CRTF – 1.5 C-1.0, R-0.5, H-45’

PROPERTY SIZE

3.37 Acres

APPLICANT

Dong Ya, LLC and Hong Cheng, LLC

ACCEPTANCE DATE

October 31, 2023

REVIEW BASIS

Chapter 59 and Chapter 22A

HEARING EXAMINER PUBLIC HEARING

March 15, 2024



Summary:

- Staff recommends approval of the Modification to the Special Exception with conditions and transmittal to the Hearing Examiner.
- Staff recommends approval of the associated Forest Conservation Plan with conditions.
- The Subject Site has an existing Special Exception for an Automobile Filling Station which is being amended to allow for reconstruction and additional gas pumps to 6 total sets of pumps.
- Increase the square footage of the convenience to 5,919 square feet.
- Construct the associated changes to parking, lighting, and landscaping.
- Staff has received one email from a community member inquiring about some changes to the path system around the property.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

SPECIAL EXCEPTION MAJOR MODIFICATION NO. S-847-B

Staff recommends approval of Cheng Property- Wawa, Special Exception Major Modification No. S-847-B, to demolish and rebuild an Automobile Filling Station and Retail/Service Establishment (up to 5,000 square feet) along with the associated site improvements for parking, lighting and landscaping, subject to the following conditions:

1. The use is limited to an Automobile Filling Station under the Special Exceptions provisions of Section 59-G-2.06, and a retail/service establishment permitted by right per Section 59-C-15.5(c).
2. The Automobile Filling Station can increase to a maximum of 6 sets of pumps.
3. The Convenience Store can increase the square footage to a maximum of 5,919 square feet.
4. The Applicant must submit and obtain approval of a Preliminary Plan and Site Plan once the Special Exception Modification is approved by the Hearing Examiner.

FOREST CONSERVATION PLAN F20240210

Staff recommends approval of Forest Conservation Plan No. F20240210, to improve the automobile filling station, which includes two additional fueling dispensers (for a total of six) and a larger convenience store, subject to the following conditions:

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
3. The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the certified Final Forest Conservation Plan, except that minor modifications to the limits of disturbance within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings by the Department of Permitting Services or MDSA.
4. Before the start of any clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
 - a. Record a Category I Conservation Easement over all areas of forest retention as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.

- b. Execute a five-year Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M- NCPPC Forest Conservation Inspection Staff.
 - c. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the variance mitigation trees, fencing, easement markers, and maintenance required for meeting the requirements of the FCP.
5. Before the initial planting acceptance inspections of the required on-site reforestation, the Applicant must install the permanent conservation easement signage along the perimeter of the conservation easements, including the South broader of the subject property and or as directed by the M-NCPPC Forest Conservation Inspection Staff.
6. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 13 caliper inches and located outside of any right-of-way or utility easements, including stormwater management easements, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

VICINITY

The Subject Property outlined in Figure 1 in the yellow dashed line is located at 15585 and 15595 Old Columbia Pike, Burtonsville 20866. The Property is located in the 2012 *Burtonsville Crossroads Neighborhood Plan (Master Plan)* area.

As shown in Figure 1 below, Staff defined a neighborhood for purposes of analyzing this Special Exception and its possible impacts on the character of the surrounding area. Staff determined the neighborhood based on nearby and surrounding properties that are in close proximity to the Cheng Property, and that would be most impacted by the Special Exception Major Modification. The neighborhood is mostly occupied by commercial uses such as restaurants and retail stores. The properties to the north are zoned CRT and are a mix of retail stores and restaurants. The property to the east is split zoned EOF and IM and is a hardware store. The properties to the south are zoned R-200 and consist of a single-family house and a vacant parcel. The properties to the west are zoned CRN and consist of restaurants and retail stores.

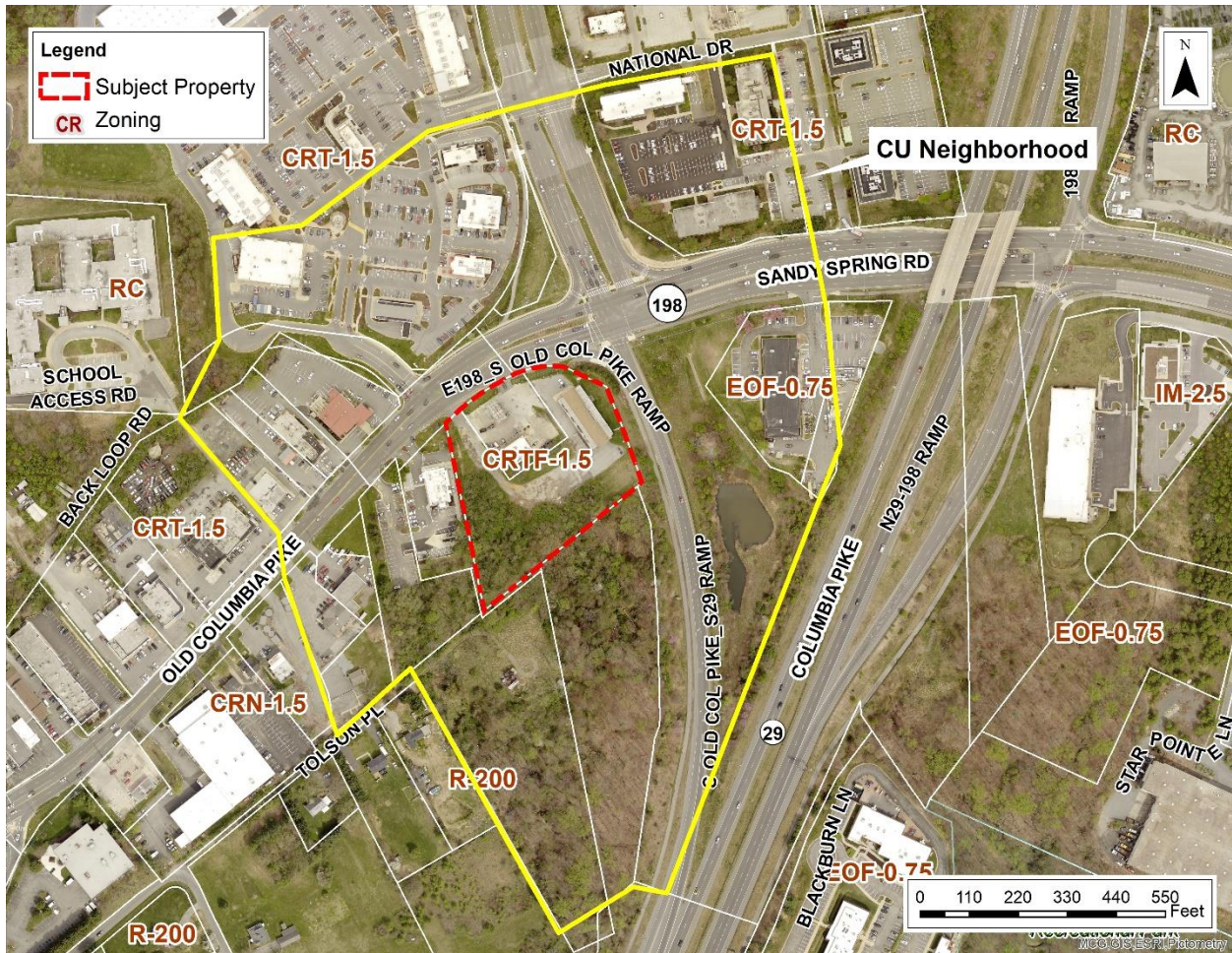


Figure 1: Vicinity Map with Staff-defined neighborhood highlighted in a solid yellow line

Staff identified four approved conditional use/special exception within the defined neighborhood:

- 15600 Old Columbia Pike: Starbucks CU201706 (Drive Thru)
- 15662 Old Columbia Pike: Roy Rogers, S-2839 (Drive Thru)
- 15569 Old Columbia Pike: McDonalds Corporation, S-738, S-738A, S-738B, S-738C (Drive thru)

PROPERTY DESCRIPTION

The Property consists of 3.37 acres identified as Parcel C and Parcel D, as recorded on Plat No. 12953. The Property is currently developed with an existing Automobile Filling Station, a 7-Eleven convenience store and an existing Mattress Barn retailer. Total retail space between the convenience store and the Mattress Barn is 10,800 square feet.

The Property is accessed from two entrances/exits along Old Columbia Pike (MD Rt. 198). The western ingress/egress is directly across from Burtonsville Town Square Shopping Center. The Property has some forested area along the south and southwest property lines. The Site does not contain streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, hydraulically-adjacent steep slopes, or known occurrences of Rare, Threatened and Endangered species.



Figure 2: Subject Property

History and Previous Approvals

Section 7.7.1.B.3.c of the current Zoning Ordinance allows an applicant to amend a previously approved Special Exception and expand it under the applicable development standards and procedures of the Zoning Ordinance in effect on October 29, 2014. The Applicant is submitting this Special Exception Modification under the standards and procedures of the Prior Zoning Ordinance, as set forth in Division 59-C-15, governing the commercial/residential zones.

The Property has an existing Special Exception which has been modified several times over the years. There was also a Local Map Amendment on the Property. Below is a list of approvals for the Property in chronological order.

1. **Case No. S-2173, March 23, 1967:** Special Exception approved for the Property in the C-2 zone, for three-bay “standard Cities Service Station”, 14 parking spaces (two for each bay, one for each of the six employees, and two extra), the two driveways from Maryland Route 198, two pump islands, lighting and landscaping. No major repairs including body and fender repairs were permitted under the 1967 approval and all storage was within the building with the exception of a small amount of necessary storage on the pump islands.
2. **February 1, 1968*:** Provided for a one-year plan extension of the Special Exception to establish the automobile filling station use to allow for a connection to the Burtonsville sewer line.
3. **Case No. S-847, December 2, 1982:** The Board of Appeals approved a major modification to the existing Special Exception. The modification permitted modernization of the existing “full service” automobile filling station allowing the operation as a “gas-n-go” with a retail convenience store. The modernization included a new canopy over the existing pump islands, an increase in the number of fueling dispensers to six (6), replacement of four (4) old storage tanks with three (3) new fiberglass tanks, a new identification sign and new landscaping. The modification also permitted the construction of a 2,560 square foot building to accommodate a 7-Eleven store and extended the hours of operation to be 24-hours per day, seven days a week.
4. **May 26, 1983*:** The minor modification to the Special Exception was limited to a reconfiguration of the curb and landscape area on the east side of the Property adjoining the abutting property.
5. **September 20, 1994*:** The Board approved the minor modification of the Special Exception to allow for necessary mechanical changes to meet the Environmental Protection Agency Stage II Vapor Recovery requirements. The 1994 approval included no other modifications.
6. **Case No. S-847-A, March 29, 1995:** The modification of the Special Exception permitted the removal and replacement of the concrete islands and dispensers with multi-product dispensers (reducing the number of dispensers from six to four), installation of Stage II vapor recovery system, installation of new canopy lighting and pole lights, and replacement of fascia on the canopy.
7. **December 4, 2012:** The County Council, sitting as the District Council for the Burtonsville planning area of the Maryland-Washington Regional District in Montgomery County, rezoned the Property from the General Commercial zone (“C-2”) to the Commercial/Residential Neighborhood zone (“CRN”).
8. **Case No. H-134, November 12, 2019:** The Montgomery County Council, sitting as the District Council, approved Local Map Amendment (“LMA”) H-134 to rezone the Property from CRN-1.5 C-1.0 R-0.5 H-45’ to the Floating zone CRTF-1.5 C-1.0 R-0.5 H-45’.

* Some of the modifications do not have case numbers.

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The Applicant is proposing to demolish the existing gas station, 7-Eleven convenience store and Mattress Barn, and reconstruct a new Wawa gas station with up to 6 sets of pumps and convenience store with a maximum of 5,000 square feet along with the associated parking, lighting, and landscaping. The Proposal will include spaces for up to 9 EV (electric vehicle) charging spaces. The Proposal will also include the installation of a new trash enclosure along the southeast corner of the Property and recordation of a Forest Conservation Easement along the southwestern portion.

The Applicant is proposing a new signalized intersection at the western driveway ingress/egress on Old Columbia Pike across from the Burtonsville Town Center Shopping Center. The eastern ingress/egress will become a right-out-only exit from the site. The Applicant is proposing a new 10-foot wide sidepath along Old Columbia Pike and a 16-foot Bike Breezeway along the ramp to Route 29.

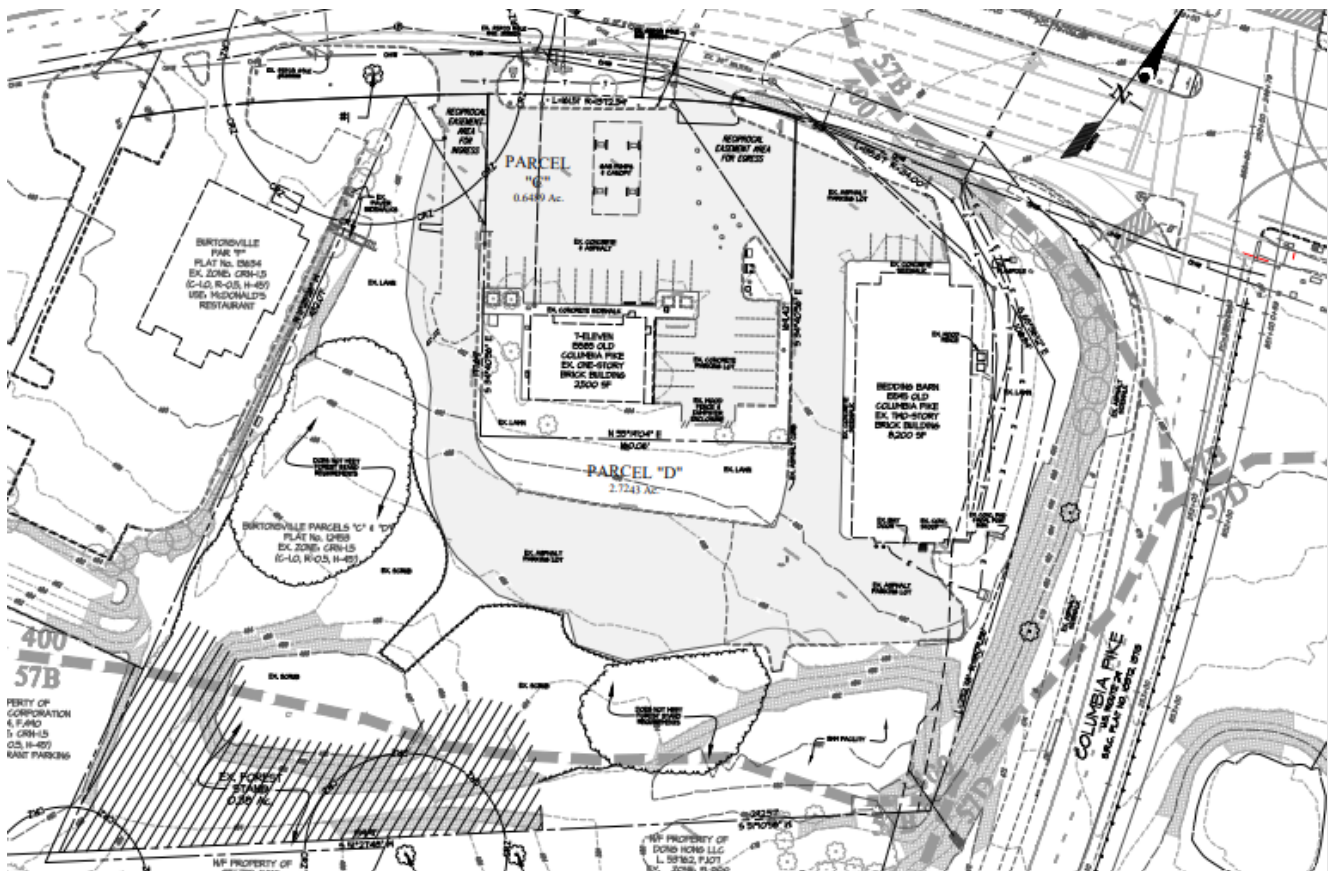


Figure 3: Existing Site Conditions

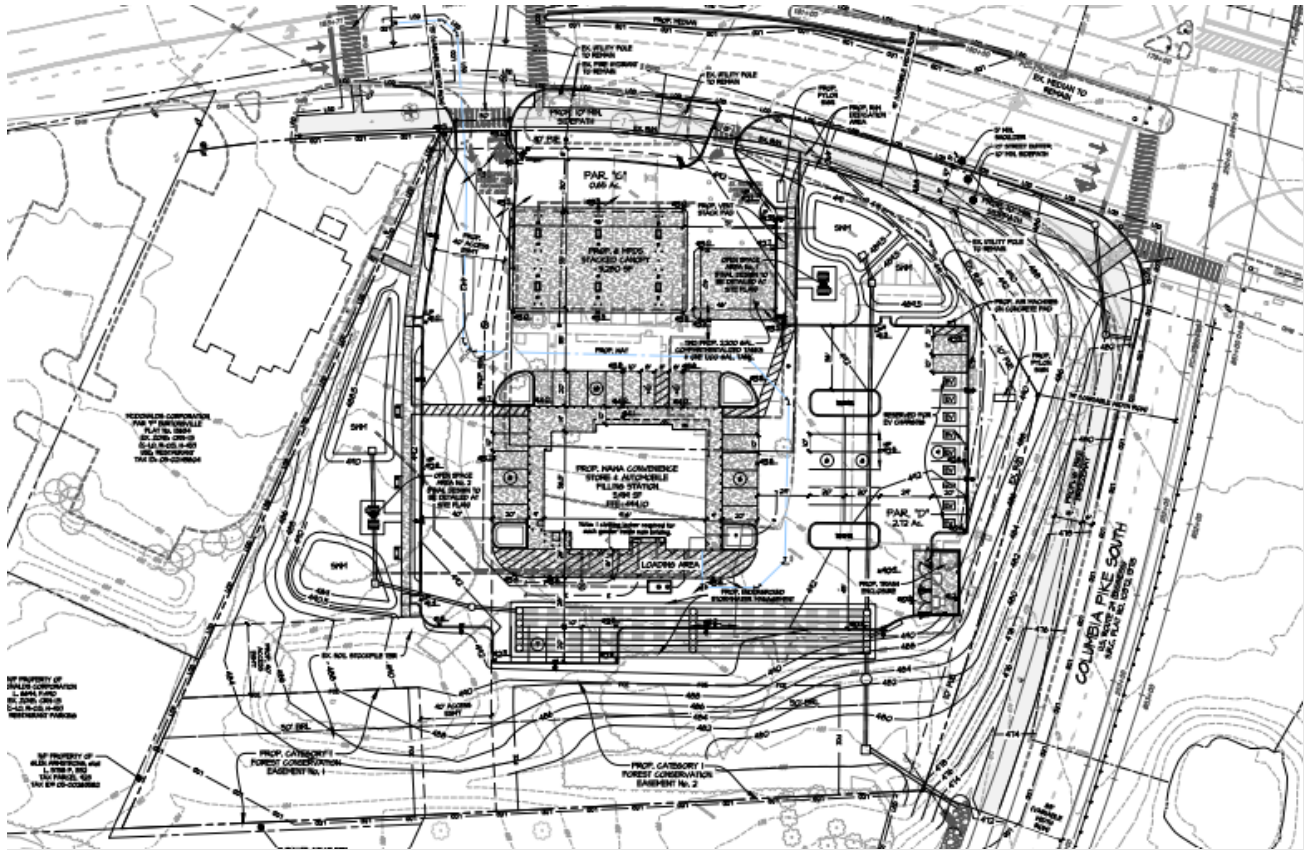


Figure 4: Proposed Site

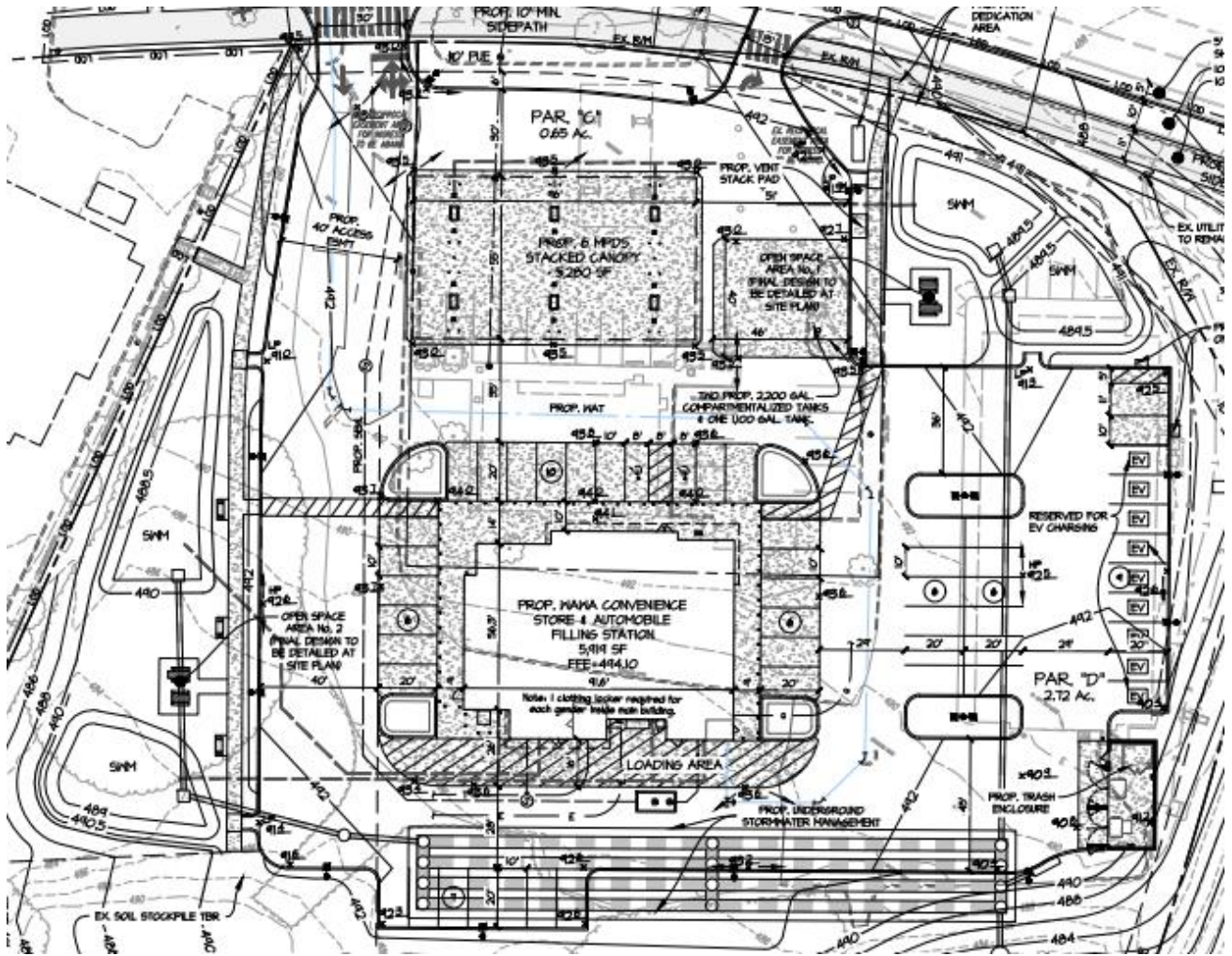


Figure 5: Close up of Site Layout



Figure 6: Elevations



Figure 7: Fuel Pump Canopy and Trash Enclosure

ENVIRONMENT

Environmental Guidelines and Forest Conservation

The property is located within the Little Paint Branch Watershed, which is classified as Class Use I. There are no 100-year floodplains, stream valley buffers, or Special Protection Areas associated with the site. The property has some forested areas along its southern border and small sections with steep slopes. The soils on the Property are classified as urban land and are not considered highly erodible or sensitive. There are no known rare, threatened, or endangered species on the property. As discussed in the required findings below, the application complies with the requirements of Chapter 22A of the Montgomery County Forest Conservation Law, and the Final Forest Conservation Plan (FFCP) was submitted as part of the review process.

SECTION 4: COMMUNITY CORRESPONDENCE

Staff received one email from a community member inquiring about some changes to the path system around the Property. Staff has been in contact with the community member to address their concerns.

SECTION 5: ANALYSIS AND FINDINGS

SPECIAL EXCEPTION MAJOR MODIFICATION NO. S-847-B

1. Per Section 59-G-2.06 of the Prior Zoning Code . Automobile Filling Station.

(a) In addition to findings required in division 59-G-1, an automobile filling station may be permitted if the Board of Appeals finds that:

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

According to the Land Use Report, the Automobile Filling Station use has been in existence for more than fifty years without any complaints from the surrounding neighborhood since at least 1997 when Petitioner acquired the Property. Since at least 1982 the convenience store and Automobile Filling Station have operated 24/7. The use is located in a commercial area at a busy intersection more than 450 feet away from the closest home (one single family home) and more than 625 feet from the closest cluster of homes. The overall retail square footage on the Property will decrease by 4,758 square feet (45 percent) and the Special Exception Modification will add only two fueling dispensers for a total of six, which was the maximum number of fueling dispensers previously located on the Property.

(2) the use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings, or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground, or hospital, or other public use or place of public assembly; and

Approval of the Special Exception Modification will not change the existing traffic patterns of the Property; the two entrances into the Property, with the eastern entrance operating as a right-out only are proposed to continue. However, because the Modification includes the installation of a traffic signal at the intersection of Old Columbia Pike and the western driveway, the existing traffic patterns will improve significantly. Turning movements in and out of the Property at the western entrance will be controlled by the signal and the signal will create gaps in traffic to improve ingress and egress at the eastern driveway.

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

The use is an existing use. The Modifications will in no way adversely affect or retard the development of the general neighborhood. The County Council approved the LMA in 2019 to allow the continued use and expansion of the Automobile Filling Station and retail store on the Property. Further, the Binding Elements of the LMA remain applicable and the project is in compliance with them. They include: use restrictions (not relevant here), 50-foot buffer abutting the R-200 property to the rear, installation of a 10-foot shared-use path and street trees along frontage, eastern access prohibits left turns, reservation of 40-foot future private access on west side of property, and required open space.

(b) In addition, the following requirements must be satisfied:

- (1) *After August 13, 2012, the area identified by a special exception application for a new automobile filling station designed to dispense more than 3.6 million gallons per year must be located at least 300 feet from the lot line of any public or private school or any park, playground, day care center, or any outdoor use categorized as cultural, entertainment and recreation use.***

The Modification will add only two fueling dispensers to the Property allowing the Automobile Filling Station to provide for a total of six dispensers. According to the Land Use Report, the Modification is not designed to dispense 3.6 million gallons of gas annual and there is no expectation that it will approach this figure. There is no public or private school or any park, playground, day care center, or any outdoor use categorized as cultural, entertainment and recreation use located within 300 feet of the lot line of the Property.

- (2) *When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use must be screened by a solid wall or a substantial, solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Location, maintenance, vehicle sight distance provisions, and advertising pertaining to screening must satisfy Article 59-E. Screening must not be required on street frontage.***

The southern boundary of the Property abuts R-200 zoned property (owned by the Petitioner) that is currently vacant and there will be 70-foot-wide forest conservation easement area along the Property line that serves as an adequate natural terrain feature to buffer the two disparately zoned properties.

- (3) *Product displays, parked vehicles, and other obstructions that adversely affect***

visibility at intersections or to station driveways are prohibited.

There will be no such obstructions at the intersections or driveways. As depicted on the Special Exception Plan, a freestanding sign will be located along Old Columbia Pike in essentially the same general location as the existing sign. Along Business 29, a freestanding sign will be located further to the north of the existing freestanding sign.

- (4) Lighting must not reflect or cause glare into any residential zone. Lighting levels along the side and rear lot lines adjacent to a residential zone must not exceed 0.1 footcandle.***

The properties abutting to the south are zoned R-200. According to the submitted Lighting Plan, the lighting will not exceed 0.1 footcandle at the property line.

- (5) When such use occupies a corner lot, the ingress or egress driveways must be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in Section 59-A-2.1, and such driveways must not exceed 30 feet in width.***

The eastern ingress/egress driveway is 200 feet from the intersection of Old Columbia Pike and the ramp to Business 29.

- (6) Each gasoline pump or other service appliance must be located on the lot at least 10 feet behind the building line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building. There must be at least 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line.***

The Property is zoned CRTF which does not have a minimum setback requirement. However, the gasoline pumps are setback 50 feet from the front property line. There are no other automobile services being provided onsite. There is 100 feet between the two driveways along Rt. 198.

- (7) Light automobile repair work may be done at an automobile filling station, but major repairs, spray paint operation or body and fender repair are prohibited uses.***

The Applicant is not proposing automobile repair on the Subject Property; therefore, this Section does not apply to this application.

- (8) Vehicles must be parked completely off of the public right-of-way.***

There is no proposed parking in the public right-of-way. All parking will be provided on the Subject Property.

- (9) In a C-1 zone, an automobile, light truck, and light trailer rental, as defined in***

Section 59-G-2.07, and in a C-2 zone, an automobile, truck and trailer rental lot, as defined in Section 59-G-2.09, may be permitted as a part of the special exception if the requirements of this section are satisfied. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.

The Subject Property is located in a CRTF zone; therefore, this Section does not apply.

(10) In a Rural Village Overlay Zone the following additional standards apply for new development:

- (A) Car wash is prohibited.**
- (B) Pump canopies must not exceed 35 feet in height.**
- (C) Any structure approved for the use must not exceed the scale and bulk of existing commercial structures in the village.**

The Subject Property is not located in a Rural Village Overlay Zone; therefore, this Section does not apply.

2. Per Section 59-G-1.21, to approve a special exception application, the Hearing Examiner must find that the proposed development:

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

Automobile Filling Station is allowed in the CRTF Zone as a Special Exception per Section 59-C-15.5(c).

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

This application complies with the standards and requirements for an Automobile Filling Station per Section 59-G-2.06 of the Prior Zoning Ordinance in effect on October 29, 2014 (See Table 1 below).

Table 1: Conditional Use Development and Parking Standards (CRTF)

Development Standard Section 59-C-1.32	Permitted/ Required	Proposed
Maximum Density	Mapped FAR 1.0	0.04 FAR
Minimum Front Setback	0 ft.	50 ft.
Minimum Side Setback	0 ft.	50 ft.
Minimum Rear Setback	25 ft. (or setback of adjacent zone- R-200, 30 ft. rear setback)	50 ft.

Maximum Height	45 ft.	45 ft.
Vehicle Parking Requirement (Section 59-C-15.63)		
Number of Spaces	4/1,000 sq. ft.= 24 spaces	50 Spaces
Charging Spaces	N/A	9 spaces
Bicycle Parking Spaces	4 spaces	4 spaces
Landscape Strip Adjacent to R/W	Min. 6ft. wide soil panel Min. 3 ft. hedge or fence One deciduous tree every 30' or per applicable streetscape standard	Provided, see Landscape Plan
Perimeter Landscaping	4 ft.	Provided, see Landscape Plan
Shading of Paved Areas	30%	Provided, see Landscape Plan (34.6%)

A. Section 59-E-2.7 Landscaping

1. ***Section 59-E-2.7 specifies, that the minimum landscape requirements of this section are intended to alleviate adverse visual and environmental effects associated with parking facilities. The application of these standards will serve to improve compatibility and the attractiveness of such facilities, provide relief from unshaded paved areas, and minimize noise, glare and lights associated with parking areas. In addition, these requirements will improve pedestrian safety, optimize traffic circulation patterns with better defined space, and will provide better definition of entrances and exits through the use of interior islands. The following requirements establish minimum acceptable standards for alleviating the visual and environmental problems associated with off-street parking facilities. Under the site plan review procedures of division 59-D-3, the planning board may require additional landscaping in order to ensure compatibility with adjoining properties.***

- a. ***Sec. 59-E-2.71; Landscape Strip area adjacent to a street right-of-way This Section in part states that parking facilities located adjacent to a street right-of-way shall provide a landscaping strip at least 10 feet in width. This area shall be planted with either shade or ornamental trees. A minimum of one tree for every 40 feet of lot frontage shall be provided as well as an evergreen hedge (at least 3 feet in height), a***

wall or fence, or other methods to reduce the visual impact of the parking facility.

The Application meets the requirements under Sec. 59-E-2.71. The Landscape Plan shows a landscape strip between the parking facility and the right-of-way to be 12 to 14 feet in width. Trees will be planted every 35 to 40 feet along the frontage along with a 3-foot-high row of shrubs.

- b. Sec. 59-E-2.72; Perimeter landscaping area adjoining property other than a street right-of-way. This Section in part states that landscaped areas shall be provided along the perimeter of a parking facility, other than area adjacent to a street right-of-way. The perimeter landscape strip shall be at least 4 feet in width, but not less than the setback required in section 59-E-2.8 where a parking facility adjoins a residential zone. Such area shall contain a minimum of one shade tree for every 40 feet of lot perimeter and, if space permits, shall incorporate landscaped berms.**

The Application meets the requirements of Sec. 59-E-2.72. The south side of the property abuts a residential zone. The landscape strip and the abutting Forest Conservation Easement combines for over a 70-foot of buffer to the abutting R-200 zone. The shade trees are spaced every 35 to 40 on center.

- c. Sec. 59-E-2.73; Internal landscaping of surface parking facility. This Section in part states that a minimum of 5 percent of the internal area of a surface parking facility shall be landscaped with shade trees. The internal area of a parking facility is defined by the perimeter of the curbs or edge of paving. The internal area shall include all planting islands and corner areas within the facility. The shade trees should be distributed in order to increase shade.**

The Application meets the requirements of Sec. 59-E-2.73. The Applicant is proposing a total of 12% of landscaping for the internal parking area. These islands contain groundcover and shade tree plantings meeting Sec. 59-E-2.73.

- d. Sec. 59-E-2.74; Minimum size of planting islands within internal landscape area. Within the interior of a surface parking facility, planting areas shall be provided with shade trees and shall be wide enough to protect the trees from a vehicle's swinging doors and bumper overhang. Planting islands which are parallel to the sides of parking spaces shall be a minimum of 8 ½ feet wide. Planting islands at the heads of parking spaces shall be a minimum of 8 feet wide.**

The Application meets the requirements of Sec. 59-E-2.74. The planting islands parallel to the sides of parking spaces are a minimum of 8 ½ feet wide and the planting area at the heads of parking spaces are a minimum of 8 feet wide. In addition, all shade trees and shrubs are placed approximately 5-feet away from the parking stalls to prevent contact with swinging car doors and bumper overhangs.

- e. Sec. 59-E-2.75; General Landscape Requirements. Section 59-E-2.75 specifies that deciduous shade trees with ground cover or low shrubs shall be used as the primary landscape material for parking areas. Use of tall shrubs or low branching trees which will restrict visibility should be avoided.**

The Application meets the requirements of Sec. 59-E-2.75. The Applicant has provided detailed landscape plans showing shade trees, shrubs and ground cover throughout the property. The shrubs will consist of azaleas with a maximum grow of 24 inches high.

B. Section 59-E-2.83; Parking and Loading facilities for special exception uses in residential zones

1. Section 59-E-2.83(c); Screening

- a. This Section in part states that each parking and loading facility, including driveways and dumpster areas, must be effectively screened from all abutting lots. Screening must be provided in a manner that is compatible with the area's residential character. Screening must be 6 feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm or combination of them. Along all street rights-of-way screening of any parking and loading facility must be at least 3 feet high and consist of evergreen landscaping, a solid wood fence or masonry wall.**

The Application meets the requirements of Sec. 59-E-2.83(c). The Property is zoned CRTF and is not a Residential zone, but the Applicant is proposing trees and shrubs along all the lot lines shared with the public right-of- ways to help screen the Special Exception. The Applicant is proposing new trees along the southern boundary along with a Forest Conservation Easement bordering the R-200 zoned properties to the south.

2. Section 59-E-2.83(d); Shading of paved areas

- a. This Section in part states that trees must be planted and maintained throughout the parking facility to assure that at least 30 percent of the paved area, including driveways are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.**

The Application meets the requirements of Sec. 59-E-2.83(d). The 30% tree canopy coverage requirement is equal to 8,824 square feet and the Applicant is proposing 10,079 square feet (34.3%) tree canopy coverage.

C. Section 59-E-2.91; Required Standards, Screening from land in a residential zone or institutional property.

- 1. Per Section 59-E-2.91 an off-street parking facility for 6 or more vehicles must be effectively screened on each side that adjoins or faces land in a residential zone or institutional property.**

The Application meets the requirements of Sec. 59-E-2.91. The Applicant is proposing a line of trees along the southern end of the parking lot to help screen the adjoining R-200 zoned properties. In addition, the Applicant has proposed a Forest Conservation Easement along the southern boundary adjoining the neighboring R-200 properties. The new trees along with the proposed Forest Conservation Easement meets the requirements under Sec. 59-E-2.91.

D. Section 59-G-1.23; General Development Standards

- 1. Section 59-G-1.23(h); Lighting in Residential Zones Per Section 59-G-1.23(h) all outdoor lighting must be located, shielded, landscaped or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:**

- a. Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.**

b. Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

The Property is located in a CRTF zone and not a Residential Zone, therefore this Section does not pertain. However, according to the submitted Lighting Plan, the lighting will be less than 0.1 footcandle at the southern property boundary where the Property abuts the R-200 zone.

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

The proposed Automobile Filling Station use with accompanying convenience/retail store is in conformance with the 2012 Approved and Adopted Burtonsville Crossroads Neighborhood Plan ("Master Plan").

The existing Automobile Filling Station serves an important function at this very busy intersection. The County Council approved the LMA with the knowledge that the rezoning would accommodate the expansion of the Automobile Filling Station.

The proposed project is consistent with the 2012 *Burtonsville Crossroads Neighborhood Plan* (BCNP) as follows. The BCNP states that, "special exceptions may continue [on the south side of MD 198] if lawfully existing before the new zoning," further noting that, "buildings may expand up to 10 percent above the total existing floor area if less than 10,000 square feet of area is disturbed" (p. 35). With an overall decrease in total existing floor area on the site, from 10,800 square feet to 5,919 square feet, the proposed Special Exception is consistent with these plan provisions. The subject property is located within an area designated as a Gateway, leading to the Main Street corridor along MD 198, west of the subject property. (p. 5)

The BCNP recommends an improvement to the character and design of MD 198 as the main street for the Burtonsville community, establishing streets that improve the traffic function and community character, reduce curb cuts, left turns, and provide enhanced streetscape elements (p. 36). The proposed site plan for the Special Exception is consistent with the Plan since it improves traffic function and streetscapes by limiting turn movements from the site onto Old Columbia Pike, aligning a driveway with a future signalized intersection on Old Columbia Pike, across from an access road into a shopping center to the north, and adding trees, landscaping, and bike and walking paths along both property frontages.

The BCNP recommends that buildings be established that define the streets and that parking be located at the back and side of buildings. (p. 36). The Applicant is seeking a waiver to the parking location provisions of the Zoning Code (59-C-15.633), which requires parking to be located behind the main front wall of a building, unless otherwise approved through a waiver. A portion of the total parking spaces for the site are proposed to be located in front of the front building line. Since the proposed project is a continuation of an existing auto-oriented use, this plan recommendation is not appropriate at this time. The proposed project would, however, provide landscape screening between the street and the parking and fueling areas, as well as modernize and improve the building design for the Convenience Store as it is seen from the street frontage.

The BCNP recommends that parking lots and major roads include tree cover, either as part of landscaping or from street trees. (p. 32). The initial landscape plan for the Special Exception, to be followed by approval under a subsequent Site Plan approval, provides a significant amount of shade trees and other landscaping, throughout the Property, as well as in the public right-of-way along the proposed bike path and sidewalk parallel to Old Columbia Pike and Columbia Pike. Furthermore, the Special Exception indicates that deciduous shade and ornamental trees will be proposed as part of a subsequent Site Plan to provide shade for the sitting areas in open space areas No. 1 and No. 2.

The BCNP recommends an expanded bikeway system in the plan area, including a bikeway along the southern side of MD 198. (p. 37). The proposed project includes such a bikeway with addition of an eleven-foot sidepath and six-foot buffered bike lane along their northern property frontage and a sixteen-foot bike breezeway along their eastern property frontage.

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

The Property is located within the commercial enclave of Burtonsville and is surrounding to its north, east and west by other commercial uses. The overall retail square footage on the Property will be reduced by 4,785 square feet and the general aesthetic of the Property will be greatly improved with the new structure and the removal of the two existing retail establishments. In addition, the improved streetscaping and landscaping will benefit the surrounding area. The current use and general operations of the Property will continue. The overall surrounding area will benefit from the installation of the traffic signal proposed as part of the Special Exception Modification.

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

The Special Exception Modification will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood; it is simply a continuation of the existing use. Because the Modification will upgrade the Property in the various ways already identified, to the extent there is any impact on the economic value of the surrounding properties and general neighborhood, it will be positive, not negative.

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

The Automobile Filling Station will not cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the Property. The existing automobile filling station has operated for more than 50 years, without objection, for at least as long as the Petitioner has owned the Property (since 1997). The Modifications are intended to accommodate the continuation of this use in an improved manner. As such, the Modifications herein requested will have no adverse impacts on the surrounding community.

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

The Petitioner is seeking to modify an existing Special Exception on the Property and therefore the requested Modification will not result in a greater number of Special Exceptions in the area. Moreover, the Property is located in a commercial area.

(8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed Modification to the existing Special Exception will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers within the Property. Because the Modifications will improve the Property with stormwater management, a forest conservation area, and an improved streetscape, it will provide an overall benefit to the residents, visitors or workers in the area.

(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

The Cheng Property is on public sewer and water service. The Burtonsville Fire Station is located approximately two miles from the Cheng Property at the intersection of Old Columbia Pike and Briggs Chaney Road. There is an approved Fire Department Access Plan for the latest plans submitted to Staff.

Master-Planned Roadways

The Subject Property is located along Old Columbia Pike/ Sandy Spring Road (MD 198), identified by the Complete Streets Design Guidelines as a Town Center Boulevard with a 120-foot-wide right-of-way (ROW) and Blackburn Road/Old Columbia Pike, identified by the Complete Streets Design Guidelines as a Boulevard, and also serving as an access ramp to Columbia Pike (US 29) with a 100-200 foot wide right-of-way (ROW) as needed to serve highway access. As part of the subsequent Preliminary Plan application, additional dedication may be required for both roads.

Bike and Pedestrian Facilities

The *Bicycle Master Plan* recommends a sidepath along the southern side of Old Columbia Pike/ Sandy Spring Road (MD 198), which is proposed to be constructed along the frontage by the Applicant. The *Complete Streets Design Guide* recommends two-way separated bike lanes for the road; however, in consultation with MCDOT and MDSHA and in line with current plans to reconstruct this portion of the road, the on-street bikeway is not recommended to be included. Instead, cyclists will use the proposed sidepath. Along the Blackburn Road, the *Bicycle Master Plan* routes the Silver Spring Breezeway, which will be constructed as part of subsequent development applications.

Local Area Transportation Review

The proposed 5,919 square foot convenience store with 6 sets of pumps will replace a 8,100 square foot furniture store and 2,496 square foot convenience store with 8 pumping stations fuel dispensers. This will result in 342 net new AM person trips and 238 net new PM person trips. The numbers are based on the 2022 Local Area Transportation Review. The proposed use exceeds 50 peak-hour person trips, requiring a full multimodal LATR study, provided as part of this application. Nine local intersections were studied using the CLV methodology. No intersection exceeded the 1,550 CLV limit and no congestion mitigation is required.

Table 2: Trip Generation – Person Trips

ITE Trip Generation

Policy Area Adjustment Factor (Burtonsville Town Center) – 99%		AM Peak Hour			PM Peak Hour		
Proposed Use		In	Out	Total	In	Out	Total
Convenience Store/Gas Station with 8 Fueling Positions (ITE 945)		189	190	379	161	162	323
Total Vehicle Trips Per ITE 11 th Edition		189	190	379	161	162	323
Total LATR Adjusted Vehicle Trips by Mode Share (Cloverly Policy Area – 100%)		AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Auto Driver		187	188	375	160	160	320
Auto Passenger		63	64	127	55	54	109
Transit		2	3	5	2	2	4
Non-Motorized (Bike)		9	8	17	7	7	14
Total Person Trips		261	263	524	224	223	447
Total LATR Adjusted Vehicle Trips by Mode Share (Cloverly Policy Area – 100%)		AM Peak Hour			PM Peak Hour		
Existing Use		In	Out	Total	In	Out	Total
Furniture Store @ 8,100 sq. ft. (ITE 890)		2	1	3	2	3	5
Convenience Store/Gas Station with 8 Fueling Positions (ITE 945)		64	64	128	73	74	147
Total Vehicle Trips Per ITE 11 th Edition		66	65	131	75	77	152
Total LATR Adjusted Vehicle Trips by Mode Share (Cloverly Policy Area – 100%)		AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Auto Driver		66	64	130	74	76	150
Auto Passenger		22	22	44	25	26	51
Transit		1	1	2	1	1	2
Non-Motorized (Bike)		4	2	6	3	3	6
Total Person Trips		93	89	182	103	106	209
Net Trip Generation		AM Peak Hour			PM Peak Hour		
Proposed Person Trips		261	263	524	224	223	447
Existing Person Trips		-93	-89	-182	-103	-106	-209
<u>TOTAL NET NEW PERSON TRIPS</u>		168	174	342	121	117	238

Source: Transportation Impact Statement from Lenhart Traffic Consulting, Inc., October 2nd, 2023, revised January 22nd, 2024, modified by staff

The proposed use exceeds 50 peak hour person trips, requiring a full multimodal LATR study. Six local intersections were studied using the CLV methodology. No intersection exceeded the 1,550 CLV standard.

Table 3: CLV Methodology

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Burtonsville Town Center (1,450)</i>						
MD 198 & US 29 Northbound Ramps	957	1,041	1,009	1,041	1,013	1,042
MD 198 & Old Columbia Pike/US 29 Southbound On-Ramp	808	916	931	1,197	937	1,198
Old Columbia Pike & National Drive	477	671	581	981	582	982
MD 198 & Old Columbia Pike	860	1,056	911	1,119	915	1,120
US 29 Southbound Off Ramp & Blackburn Road	114	355	114	355	114	355
MD 198 & Lions Den Drive/Burtonsville Drive	1,093	1,052	1,120	1,086	1,125	1,087
Old Columbia Pike & Greencastle Road	753	1,052	780	1,087	782	1,087
MD 198 & Site Access/Shopping Center	791	849	821	887	874	923
MD 198 & Site Access	441	513	475	554	523	585

The notable absence of bike and pedestrian infrastructure in the project vicinity combined with traffic on Old Columbia Pike results in the lowest acceptability rating for the bike and pedestrian networks. For bicyclists, the Level of Traffic Stress Rating for Old Columbia Pike/MD 198 is 4, “High Stress.” Likewise for pedestrians, the Pedestrian Level of Comfort (PLOC) is rated as a Level 4, or “Undesirable.” To address these deficiencies in the bicycle and pedestrian network, the Applicant is constructing the following bike/ped improvements along their frontages:

1. Installation of a sidepath along the Property frontage on Old Columbia Pike/MD198.
2. Construction of a breezeway on the Property frontage near the intersection of MD 198 and the southbound ramps of Columbia Pike/US 29.
3. Removal of the existing “hot right” turning lanes at MD 198 and US 29 southbound.
4. Construction of an additional breezeway along the Site’s frontage on MD 198.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.

The Property will need to go through the Preliminary Plan and the Site Plan processes after the Special Exception Major modification is approved by the Hearing Examiner.

(B) If the special exception:

- (i) does not require approval of a new preliminary plan of subdivision; and**
- (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact, then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.**

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

The Applicant is proposing a new signalized entrance at Old Columbia Pike (Rt. 198). This application is also narrowing down the second entrance/exit to be only a right out with no entry. The Applicant is also proposing a new 10-foot-wide sidepath along Rt. 198 and a 16-foot-wide Bike Breezeway along Columbia Pike southbound entrance ramp.

FOREST CONSERVATION

All Forest Conservation Law, Chapter 22A requirements are satisfied.

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(a) as a project by "a person required by law to obtain approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan." The Application meets the requirements of Chapter 22A- Montgomery County Forest Conservation Law ("FCL")¹. Final Forest Conservation Plan ("FFCP") No. F20240210 was submitted for review and approval concurrently with Special Exemption S847B. The Property is zoned CRT- 1.5, C1-0, R-0.5, H-45 and is classified as Mixed-Use Development ("MDP") as defined in Section 22A-3 of the FCL and specified in the Trees Technical Manual. The Property contains 0.38 acres of forest. The Application

¹ Based on the initial acceptance date for the Subject Application, the Forest Conservation Plan is subject to the Forest Conservation Law in effect after April 3, 2023.

proposes to clear 0.28 acres of forest and retain 0.10 acres of forest. The retained forest will be protected in a Category 1 Conservation Easement. There is an offsite afforestation requirement of 0.83 acres within the same Watershed or Priority Area and, conversely, 0.97 acres outside of the Watershed or Priority Area as calculated in the Forest Conservation Worksheet. The Applicant proposes to meet this requirement by reforesting 0.42 acres on-site in a Forest Conservation Easement Category I, and taking the balance of the reforestation requirement, either 0.41 acres or 0.55 acres, to an M-NCPPC approved off-site forest bank. If no offsite forest banks are available, then the Applicant will pay a fee-in-lieu to meet the 0.55-acre requirement. All planted and retained forest will be placed into a Category I Conservation Easement as shown on the approved FCP.

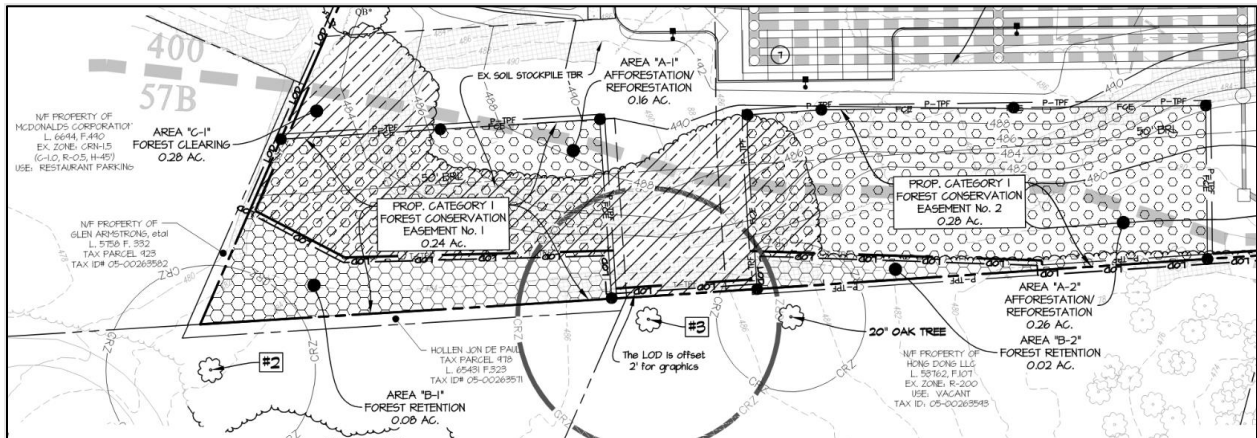


Figure 8: Category I Conservation Easements

FOREST CONSERVATION VARIANCE

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-21 ("Variance"). Otherwise, such resources as defined under Section 22A-12(b)(3) must be left in an undisturbed condition.

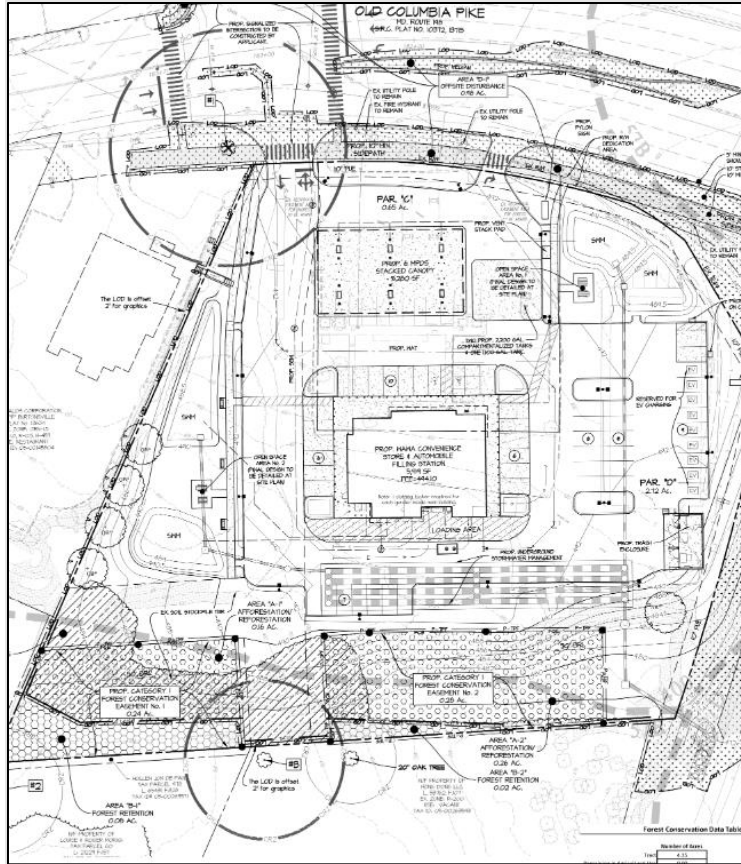


Figure 9: Variance Tree Exhibit

Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship results from the existing small refilling station and retail store, and the Sector Plan endorses infrastructure improvement by providing adaptive reuse of buildings and continuing to improve building facades. The project is carefully designed to balance protection of the natural resources and improving stormwater management with the site project. Such improvements recommended by the Sector Plan (which is a reasonable and significant use of the Property) would not be possible without impacts and removal of subject trees. Therefore, the Applicant has demonstrated a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

Table 3 Removed Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
1	White Oak	52	43%	Remove

Table 4: Impacted Protected Trees

Tree ID	Common Name	DBH	% Impact	Status
3	White Oak	35	39%	Save

Variance Findings

The following determinations are based on the required findings for granting of the requested variance:

1. Will not confer on the applicant a special privilege that would be denied to other applicants.

Granting the Variance to remove or disturb the Protected Trees listed in Tables 3 and 4 will not confer a special privilege on the Applicant as the impacts are due to necessary development requirements of the site, as outlined in the preceding paragraphs. Impacts have been minimized but cannot be avoided due to the required right-of-way improvements, utility work, and construction associated with the proposed development. Therefore, the granting of this Variance is not a special privilege that would be denied to other applicants.

2. Is not based on conditions or circumstances which are the result of the actions by the applicant.

The requested Variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested Variance is based on existing site conditions and the requirements to meet development standards, sector plan goals, and County Code requirements. The Applicant has designed the project to minimize the impacts to Protected Trees to the extent possible.

3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.

The requested Variance is a result of the existing conditions and the required improvements on the Property, and not as a result of land or building use on a neighboring property.

4. Will not violate State water quality standards or cause measurable degradation in water quality.

The Variance will not violate State water quality standards or cause measurable degradation

in water quality. The Protected Trees being removed are not located within a stream buffer, wetland, or a special protection area. Mitigation trees will be planted on the Subject Property to replace the lost form and function of Protected Trees being removed. Installation of mitigation trees and general site landscaping in line with sector plan goals will likely improve water quality through increased infiltration and uptake of runoff.

Mitigation for Trees Subject to the Variance Provisions

The Applicant proposes to impact tree #3 and remove tree #1 that are 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. Tree #1 to be removed is all located within the right way of the site, and the inability to remove and impact these trees would potentially render the site unlikely to be improved for this project. The Applicant will be required to mitigate the 52 diameter-inches of protected trees to be removed with mitigation plantings of at least 13 caliper-inches. In this case, the Applicant proposes to plant approximately 5 trees of 3-inch. Additionally, no mitigation is required for trees that are impacted, but retained.

Recommendation on the Variance

As a result of the above findings, Staff recommends that the Board approve, with conditions, the Applicant's request for a variance from the Forest Conservation Law to remove one protected tree and to impact but retain one other protected tree associated with the site (affecting a total of 2 protected trees). Additionally, periodic tree condition inspections of impacted tree #3 and mitigation trees are to be performed for five years post-construction to monitor potential construction-related issues.

SECTION 6: CONCLUSION

The proposed Special Exception Major Amendment complies with the general conditions and standards of an Automobile Filling Station, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 2012 *Burtonsville Crossroads Neighborhood Plan (Master Plan)*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Special Exception Major Modification with conditions and transmittal of comments to the Hearing Examiner and approval with conditions of the associated Forest Conservation Plan.

ATTACHMENTS

- Attachment A: Forest Conservation Plan
- Attachment B: Conditional Use Plans
- Attachment C: LMA Report