

**Land Use Report  
Conditional Use Application  
15585 and 15595 Old Columbia Pike  
Burtonsville, MD  
April 16, 2024**

Dong Ya, LLC and Hong Cheng LLC (collectively, the “Petitioner”), respectfully submit this request to the Office of Zoning and Administrative Hearings (“OZAH”) for Conditional Use approval to permit an automobile filling station (that includes a convenience store) located at 15585 and 15595 Old Columbia Pike in the southwest corner of the intersection of Maryland Route 198 (hereinafter referred to as “Old Columbia Pike”) and U.S. 29A (“Business 29”) in Burtonsville, Maryland (hereinafter the “Property”). The Property is currently improved with a gas station and convenience store subject to Special Exception Approval (S-847-A) and the Petitioner is seeking to modernize the filling station use and add two fueling dispensers and increase the size of the convenience store (“C-Store”) (the “Application”). Given the zoning history of the Property and the complicated Zoning Ordinance provisions governing modifications, the Applicant has elected to file a new Conditional Use under the current Zoning Ordinance, instead of seeking a modification of the existing Special Exception. As discussed below, the proposed automobile filling station and C-store will be compatible with the surrounding neighborhood. Additionally, the proposed use satisfies the applicable standards of the CRTF Zone and substantially conforms with the *2012 Approved and Adopted Burtonsville Crossroads Neighborhood Plan* (the “Master Plan”).

**I. Description of Property, Surrounding Area and Zoning**

**A. Property Location, Characteristics, and Existing Conditions**

The Property is located at an extremely busy intersection in the southwest intersection of Business 29 and Old Columbia Pike and is less than 1,000 feet from newly constructed Columbia Pike through which approximately 110,000 vehicles pass on a daily basis. As a result, many vehicles rely on the conveniently located filling station and C-Store on the Property which do a robust business.

The Property is comprised of two individual parcels: 15585 Old Columbia Pike, known as Parcel C (N913), and 15595 Old Columbia Pike, known as Parcel D (N924) in the “Parcels C & D Burtonsville” Subdivision, as per the plat of subdivision recorded among the Land Records of Montgomery County, Maryland in Plat Book 111 at Plat 12953. The Property is generally bounded by Old Columbia Pike to the north, Business 29 to the east, a property with a McDonald's restaurant to the west, and two residentially zoned parcels (R-200) to the south, Parcel P60 and a 3.3 acre Parcel P47 owned by the Applicant. There is a substantial tree buffer to the south of the Property.

The two parcels that comprise the Property total approximately 146,936.59 square feet (or 3.37 acres) of net lot area. Including prior dedications, the Property has a gross tract area of approximately 150,788 square feet (or 3.4614 acres).

The Property currently is improved with a 7-Eleven C-Store and corresponding filling station with four fueling dispensers covered by a canopy and a separate retail building occupied by the Mattress Store. According to the Maryland State Department of Assessments and Taxation (“SDAT”) records, the existing Mattress Store building was constructed in 1981 and contains approximately 8,208 square feet of floor area. According to SDAT records, the existing C-Store was built in 1983 and has approximately 2,496 square feet of floor area. A significant portion of the southwest corner of the Property, approximately 0.38 acres is forested.

The Property has frontage along two public right-of-ways: Old Columbia Pike to the north and Business 29 to the east, with no access permitted from Business 29. Currently, vehicular access is made possible via two access points (with sufficient width for both ingress and egress) along the Old Columbia Pike frontage.

There is a shared use path along the Business 29 frontage for both pedestrians and cyclists.

### **B. Zoning and Permitted Uses**

As shown on the Certified Zoning Map, submitted with this Statement, the Property is currently zoned Commercial/Residential Town Floating Zone (“CRTF”). An automobile filling station is permitted in the CRTF Zone under the Zoning Ordinance by conditional use and is subject to the requirements of Zoning Ordinance 59.3.5.13.C. The Conditional Use seeks to continue the approved, Automobile Filling Station use with the C-store on the Property with the revision identified herein.

## **II. Prior Approvals**

### **A. Zoning and Entitlement History**

On 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”).<sup>1</sup>

### **B. Local Map Amendment**

Because the zoning change from C-2 to CRN effectively downzoned the Property and failed to take into account the Property’s location and existing uses, the Property owner filed a floating zone local map amendment in 2019 to rezone the Property to CRTF. The Montgomery County Council, sitting as the District Council, approved Local Map Amendment (“LMA”) H-134 on November 12, 2019 to rezone the Property from CRN-1.5 C-1.0 R-0.5 H-45’ to CRTF-1.5 C-1.0 R-0.5 H-45’. Relatedly, the corresponding floating zone plan, that pursuant to 59.5.3.5

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<sup>1</sup> See Resolution No. 17-628, which implemented the zoning recommendations of the *2012 Burtonsville Crossroads Master Plan*.

controls setbacks from the Property lines and maximum height, was certified by the Zoning Hearing on November 26, 2019 (the “Floating Zone Plan”).

The rezoning was approved subject to the following six Binding Elements:

1. **Limitation on Uses.** The following uses, otherwise permitted In the CRT zone, are prohibited:
  - a. Nursery (retail)
  - b. Ambulance, rescue squad (private)
  - c. Hospital
  - d. Funeral home
  - e. Hotel
  - f. Research and development
  - g. Structured parking
  - h. Conference center
  - I. Recreation and Entertainment facility major (over 1,000 person capacity)
  - J. Combination retail store (a department store with more than 85,000 sf)
  - k. Retail service establishment greater than 50,001 square feet
  - I. Light vehicle sales and rental (Indoor)
  - m. Light vehicle sales and rental (outdoor)
  - n. Car wash
  - o. Vehicle service repair (major).
  - p. Dry cleaning
  - q. Medical scientific manufacturing and production
  - r. Bus, rail terminal/ station
  - s. Taxi/ limo facility
  - t. Utility distribution line
  - u. Self-storage facility
  - v. Warehouse storage facility
2. **Buffer zone.** 50' buffer zone abutting R-200 property. (May include SWM facilities).
3. **Frontage Improvements.** Project frontage improvements shall include the following, 10' shared-use path and street trees.
4. **Controlled Access.** Eastern access will prohibit left turns; i.e., motor vehicles can only make right turns into the Property and right turns to exit the Property.
5. **Future Access Road.** The Floating Zone Plan shall include a reservation for 40 foot wide future private access road on the west side of the Property. No development shall be permitted within the reservation area. Final location to be determined at Site Plan.
6. The required Public Open Space shall be provided on-site and meet the design requirements of zoning code Section 6.3.6.B.1. Final location to be determined at Site Plan.

As discussed throughout the Land Use Report, the proposed Conditional Use complies with all of the Binding Elements.

### C. Prior Special Exception Approvals

The Property has operated as an automobile filling station since 1967. The following provides a summary of the Special Exception approvals:

- March 23, 1967 (Case No. S-2173)

Approved for three-bay “standard Cities Service Station”, 14 parking spaces (2 for each bay, 1 for each of the 6 employees, and two extra), the two driveways from Maryland Route 198, two (2) 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.

- February 1, 1968, the first Special Exception amendment

Provided for a one-year extension to establish the automobile filling station use to allow for a connection to the Burtonsville sewer line.

- December 2, 1982 (Case No. S-847)

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, replacement of four old storage tanks with three 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.

- May 26, 1983, the Board of Appeals approved a minor modification to Special Exception S-847.

The minor modification was limited to a reconfiguration of the curb and landscape area on the east side of the Property adjoining the abutting property.

- September 20, 1994 minor modification

The Board approved the minor modification to allow for necessary mechanical changes to meet the Environmental Protection Agency Stage II Vapor Recovery requirements. The 1994 approval included no other modifications.

- March 29, 1995 (Case No. S-847-A)

The modification 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.

### **III. Conditional Use Request**

Petitioner respectfully seeks approval from OZAH to accommodate a Wawa convenience store and gas station on the Property. These uses comply with Binding Element 1. The proposed Conditional Use will modify the existing improvements on the Property, as follows: 1) increase the number of gasoline dispensers from four to six in total<sup>2</sup> 2) replace the existing canopy and reconfigure the site layout by moving the pumps and canopy further away from the street; and 3) raze the Mattress Store and the existing C-Store and replace it with a 5,919 square foot store and provide a total of 50 parking spaces on the Property. In accordance with Binding Element No. 5 of the LMA, the Application will include a 40 foot wide reserved land area for a potential private access roadway along the western side of the Property. This roadway will also provide access to the site located to the south of the Property (owned by an affiliate of Petitioner) that would otherwise be landlocked. Additional changes include designation of a 50 to 70 foot wide forest conservation easement along the southern boundary of the Property (in compliance with Binding Element 2); inclusion of a stormwater management via an underground piping system and four micro-bio “Environmental Site Design” stormwater management facilities; and the addition of two public use space areas, one located along the Old Columbia Pike frontage of the Property and the other to the west of the proposed future access drive (in compliance with Binding Element 6).

Pursuant to discussions with the staff of Montgomery County Department of Transportation; Maryland-National Capital Park and Planning Commission (“M-NCPPC”); and State Highway Administration and in compliance with Binding Element 3, the Petitioner proposes the following improvements along the frontage of the Property in connection with the Application:

- Old Columbia Pike – Construction of a 6-foot wide traffic buffer, 6-foot wide east-bound separated bike lane; a 6-foot wide landscape buffer and a 11-foot wide sidewalk.
- Business 29 – Replacement of the existing 8-foot wide bike path with a 6-foot wide landscape buffer and a 16-foot wide “Breezeway” (combined bike path and side path).

The improvements are shown on the Conditional Use plan submitted concurrently with this Statement. Assuming approval of the Conditional Use, the Petitioner will seek Preliminary Plan approval to consolidate the two parcels comprising the Property into a single record lot and at the same time will also seek Site Plan approval as required by the Floating Zone requirements.

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<sup>2</sup> Special Exception Case No. S-847 previously approved 6 pumps on the Property.

#### **IV. Proposed Operations**

The Automobile Filling Station will continue to operate 24 hours a day, seven days a week in essentially the same manner as the existing 7-Eleven gas station and convenience store. Additional operational aspects of the Application include the following:

- Maximum total number of employees 40-60. Maximum number of employees at one time: 12 during morning and lunch peak hours; as few as 3 during overnight shift.
- Shift hours 7 AM – 3 PM; 3 PM – 11 PM; 11 PM – 7 AM but subject to change depending on store level activity.
- Fuel deliveries: on average, 1 to 3 per day; delivery takes approximately 30 minutes; station offers three types of fuel (diesel, high-test and regular).
- Deliveries are not always full load; can be a “top-off”
- C-Store deliveries: provisioning and dairy deliveries, each every other day typically coordinated to occur on alternative days; fresh channel delivery every day; specific brand truck deliveries (e.g. sodas, potato chips) occur from trucks that park in standard parking spaces, daily.
- Deliveries generally not timed, but to extent possible try to limit larger truck deliveries to overnight.
- Trash removal: twice per week.
- Landscaping/upkeep of Property: landscape contract with once a week maintenance; grass areas will be watered with sprinklers; litter pick-up and trash cans emptied once every shift.

#### **V. Master Plan Conformance**

The Property is subject to the objectives and recommendations outlined in the *2012 Approved and Adopted Burtonsville Crossroads Neighborhood Plan* (the “Master Plan”). In connection with the approval of the LMA, the Planning Board, Hearing Examiner and County Council determined that the use of the Property with an automobile filling station with six dispensers and corresponding retail development on the Property was consistent with the Master Plan.

##### **A. Main Street MD 198 and the Public Green**

The Master Plan divides the Burtonsville Planning Area into three distinct neighborhoods: 1) Main Street MD 198 and the Public Green; 2) Village Center Business 29; and 3) the Rural Edge. The Property is located within Main Street MD 198 and the Public Green neighborhood (hereinafter the “Neighborhood”), which is envisioned as a “pedestrian-oriented place” that supports a variety of retail uses. (Master Plan, pg. 34-35). Notably, the Application will further this vision with improved streetscapes along both Old Columbia Pike and Business 29 and demolition of the Mattress Store. Oriented at the southwest corner of the Old Columbia Pike/Business 29 intersection, the Property is highly visible and accessible to motorists. In

addition, a substantial tree buffer to the south/southwest creates a significant barrier between the Property and the residential neighborhood along Tolson Place, located approximately 625 feet east of the Property.

As determined in connection with the LMA, the Property is similar to the properties located along the north side of Old Columbia Pike. Like the Burtonsville Town Shopping Center (“Shopping Center”), the property that confronts the Property to the north across Old Columbia Pike, the Property is intersection-oriented with high visibility.<sup>3</sup> As the Master Plan recognizes, the CRT zone provides “the opportunity to expand the range of land uses.” Recommendations in the Master Plan are framed around the following four themes: 1) economy; 2) connectivity; 3) design; and 4) environment.

- **Economy**

*Serve local and regional markets.*

The Application upgrades an essential community service by providing a larger C-store with a greater variety of products and a more significant food offering than the current use. The Application will ensure that the use also continues to serve the regional market as does the existing Special Exception use. The Property is located at an extremely busy intersection and is less than 1,000 feet from Columbia Pike through which approximately 110,000 vehicles pass on a daily basis. The improved use will help attract Burtonsville residents and visitors into the Main Street, given that the Property is highly visible from Business 29. The Application will help support a major intersection that is anchored by a strong mix of uses.

- **Connectivity**

*Improve street character*  
*Provide bikeways*

The Application includes significant frontage improvements that will enhance the bike and pedestrian routes. A 6-foot wide traffic buffer, a separated 6-foot wide east-bound bike path and a 11-foot wide pedestrian side path will be provided along the Old Columbia Pike frontage of the Property. Along the Business 29 frontage, the existing 8-foot wide bike path will be replaced with a new 6-foot wide landscape buffer and a 16-foot wide bike path/side path which is part of the “Breezeway” that will ultimately extend from Silver Spring to Howard County.

- **Design**

*Improve the design of pedestrian infrastructure.*  
*Improve building character*

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<sup>3</sup> The Burtonsville Town Square Shopping Center (“Shopping Center”) is located within a different Master Plan neighborhood, the Village Center Business 29 Neighborhood. However, the Applicant draws upon this property for comparison given its intersection-orientation and CRT zoning.

The Application will greatly improve the pedestrian infrastructure along the Old Columbia Pike frontage of the Property, as well as along Business 29. Whereas currently there is no sidewalk along the frontage of the Property, the Application will provide a 6-foot wide separated bike path, an 11-foot wide sidepath and associated landscaping. The existing bike path along the eastern frontage of the building parallel to the Business 29 entrance ramp will be widened. In addition, the obtrusive Mattress Store building, with excessive signage, will be demolished and a new more appropriately scaled single building will be located in the center of the Property. The Application represents a significant aesthetic improvement over the existing conditions.

- **Environment**

*Infill or redevelopment will meet the most current environmental site design requirements*

The Application will impose stormwater management controls on the Property where currently there are no such on-site environmental protections. Approximately 26,000 square feet of the Property will be subject to a forest conservation easement thus ensuring the preservation of this treed area, where again, currently no tree protections on the Property exist. The automobile filling station itself will represent an upgrade with current state of the art equipment including double walled underground storage tanks, double walled piping, flex piping, tank monitoring and containment sump monitoring. In addition, the redevelopment of the Property will result in an upgraded streetscape, including street trees along Old Columbia Pike and Business 29.

## **VI. Zoning Ordinance Requirements**

As described herein below, the Application will satisfy the following applicable Zoning Ordinance requirements:

- Section 59.3.5.13.C. -- the Conditional Use standards specific to an automobile filling station
- Section 59.5.3.5 -- the development standards governing the CRTF Zone
- Section 59.7.3.1.E. -- the general Conditional Use standards

### **A. Compliance with Conditional Use Standards for an Automobile Filling Station -- Section 59.3.5.13.C.**

The Application complies with the Conditional Use standards for an Automobile filling stations contained in Section 59.3.5.13.C. of the Zoning Ordinance, as follows:

*Where Filling Station is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*

- a. Access to the site from a street with a residential classification is prohibited if:
  - i. it is the only access to the Filling Station, or*
  - ii. it is the primary entrance to a Filling Station with more than 1 entrance.**



*The Hearing Examiner may allow a Filling Station with access on a residential street as a secondary entrance if it finds that the access will not have an adverse impact on neighboring residential houses.*

There is no access to the Property from a residentially classified street. The only access to the Property is from Burtonsville Road which the State classifies as a principal arterial and Montgomery County classifies as a Town Center Boulevard.

*b. Site lighting is a maximum of 0.1 footcandles at the lot line when the subject lot abuts a Residential zone. Site lighting is a maximum of 0.5 footcandles at the lot line when the subject lot abuts all other zones.*

The Property borders residentially zoned property only along its southern Property line and the 70-foot wide forested buffer will ensure that the light levels at the Property line will not exceed 0.1 footcandle as indicated by the photometric plan. The footcandles along the other Property lines will not exceed .5 footcandles as indicated by the photometric plan.

*c. Any Filling Station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.*

The Application will add only two fueling dispensers to the Property allowing the Automobile Filling Station to provide a total of six dispensers – a comparable number to most present day filling stations. The Application is not designed to dispense 3.6 million gallons of gas annual and there is no expectation that it will approach this figure. Wawa gas stations with 6 pumps pump an average of only 2.9 million gallons annually, well below the 3.6 million gallon limit. Further support that the Property will not exceed the 3.6 million gallon limit include the fact that Wawa's pumping averages in Maryland are lower than in any other state in which they do business and nationally, overall gas sales are expected to decrease by 7 percent.

*d. 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 Conditional Use 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.

*e. When such use occupies a corner lot, the driveways must be located a minimum of 20 feet from the intersection of the rights-of-way and must not exceed 30 feet in width.*

The eastern ingress/egress driveway is located 200 feet from the intersection of Old Columbia Pike and the ramp to Business 29. The eastern driveway is 17.5 feet in width and the western driveway is 30 feet in width, thus complying with this requirement.

*f. Each gasoline pump or other service appliance must be located on the lot a minimum of 10 feet behind the setback line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building, except for car-share space.*

There is no relevant building line setback requirement in the CRTF Zone and the Floating Zone Plan does not indicate a front setback line. The gasoline pumps are set back 50 feet from the Property line and the Automobile Filling Station does not include any activities other than the dispensing of fuel.

*g. There must be a minimum of 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line.*

There is 100 feet between the Property's western and eastern driveways and both driveways are perpendicular to the street line.

*h. Vehicle parking that overhangs the public right-of-way is prohibited.*

There are no parking spaces located near the public right-of-way and thus the Application will adhere to this condition.

*i. If the Filling Station facility includes a car wash, it must:*  
*i. provide vehicle stacking space equivalent to 5 times the vehicle capacity of the automatic car wash and 3 times the vehicle capacity of the manual car wash bays; and*  
*ii. demonstrate that the vehicles using the car wash will not queue off-site.*

The Application does not include a car wash and thus this section is not applicable.

*j. The Hearing Examiner must find there is adequate parking for all accessory uses.*

A total of 50 parking spaces are provided in connection with the Application to serve the proposed convenience store.

## **B. Compliance with General Requirements of Section 5.25, Development Standards of the CRTF Zone**

The CRTF Zone development standards for the Project are governed by the Floating Zone procedures set forth in Zoning Ordinance Section 5.3.5. More specifically, Section 5.3.5.B.2. provides that "setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process under Section

7.3.4.” Further, Section 5.3.5.D. provides that “parking recreation facilities, screening and landscaping must be provided under Article 59-6” and that the open space requirements for a standard method project, such as the project, must be provided pursuant to Section 4.5.3.C.1. The development chart below sets forth these relevant standards and the project’s compliance with these standards. Given that the Project involves less than 1.0 FAR, no public benefits are required, as indicted by Section 5.3.5.E.1.a.

<b>Development Standards – CRTF Zone (Section 5.3.5 Commercial/Residential Floating Zone)</b>		
	Allowed/Required	Proposed
FAR (Floor Area Ratio)	1.0 FAR (147,797 SF)	0.04 FAR (5,919 SF)
Building Height:	45’ maximum	+/- 30’*
Open Space:	10% minimum (Public 0.5) **	10% minimum (14,670 SF)
Lot Coverage:	No Requirement	7.6% (+/- 11,194 SF)
Minimum Lot Area:	No Requirement	3.37 Acres
* Height must satisfy the compatibility standards under Section 4.1.8.B.		
** For Floating zones, open space is required under the equivalent Euclidean zone that determines uses.		
Setbacks ***	Allowed/Required	Proposed
Principal Building Setbacks	(per Floating Zone Plan)	
<u>Retail/Restaurant</u>		
Front: (MD Route 198)	0’ min.	+/- 159’
Side Street: (MD Route 29)	0’ min.	+/- 159’
Side: (West–abutting CRN)	0’ min.	+/- 129’
Rear: (South–abutting R-200)	50’ min.	+/- 144’
<u>Gas Canopy</u>		
Front: (MD Route 198)	0’ min.	+/- 41’
Side Street: (MD Route 29)	0’ min.	+/- 206’
Side: (West–abutting CRN)	0’ min.	+/- 55’
Rear: (South–abutting R-200)	50’ min.	+/- 278’

<u>Accessory Structures</u>		
Front: (MD Route 198)	0' min.	10' min.
Side Street: (MD Route 29)	0' min.	10' min.
Side: (West–abutting CRN)	0' min.	10' min.
Rear: (South–abutting R-200)	50' min.	50' min.
*** Setbacks from the site boundary and maximum height are established by the floating zone plan. All other setbacks are established by the site plan approval process.		
<b>Parking Standards (Section 6.2.4)</b>		
	Required	Proposed
Total Vehicular Parking:	22 spaces min. – 52 spaces max.	50 spaces
Total Bike Spaces:	4	4
<b>Section 6.2.9 Parking Lot Landscaping &amp; Outdoor Lighting</b>		
C. Parking Lot Requirements for 10 or more spaces		
	Allowed/Required	Proposed
1. Landscaped Area	5% of parking lot landscaped. Islands a min. of 100 SF. Max. 20 spaces between islands. (1,470 SF required)	12.3% (3,632 SF)
2. Tree Canopy	25% Min. at 20 years growth. (7,354 SF required)	30% (10,079 SF)
3. Perimeter Planting		
(a) Property that abuts a residential Detached Zone:	10' wide planting area. 6' ht. hedge, fence or wall. 1 canopy tree per 30 feet, and 2 understory trees per canopy tree.	10' min. planting area & required plantings.
(b) Property abuts any other zone or right-of-way. (Unless abutting another parking lot)	6' wide planting area. 3' ht. hedge or wall. 1 tree per 30 feet.	6' min. planting area & required plantings.

4. Lighting	Parking lot lighting must satisfy Section 6.4.4, General Outdoor Lighting Requirements.	Complies with Section 6.4.4 (See Conditional Use cover sheet with details regarding project's compliance with Section 6.4.4.)
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**C. Compliance with Conditional Use Findings – Section 59.7.3.1.E**

1. Section 59.7.3.1.E.1

To approve a Conditional Use, the Hearing Examiner must find that the proposed development:

*a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

As discussed, the Application complies with the Floating Zone Plan.

*b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;*

As discussed in Susection A. and B. respectively above, the Automobile Filling Station use will comply with the requirements set forth in Section 59-3 governing the use and the general requirements of 59-6 to the extent not controlled by the Floating Zone Plan as set forth in Section 59.5.3.5

*c. substantially conforms with the recommendations of the applicable master plan;*

As discussed in Section VI above, the proposed Automobile Filling Station use is in conformance with the Master Plan. The existing Automobile Filling Station serves an important function at this very busy intersection and the proposed use under the Application will continue to do so. The County Council approved the LMA with the knowledge that the rezoning would accommodate an Automobile Filling Station.

*d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*

The Property is located within the commercial enclave of Burtonsville and is surrounded to its north, east and west by other commercial uses. The overall 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 Application represents a continuation of the current use and general operations of the Property.

The overall surrounding area will benefit from the installation of the traffic signal proposed as part of the Application.

*e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

The Application represents a Conditional Use in place of the existing Special Exception use. Therefore, the requested Application will not increase the number of Conditional Uses in the area in such a manner to affect the surrounding area. Moreover, the Property is located in a commercial area.

*f. 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 Property will be served by adequate public facilities. The Petitioner is submitting a Local Area Transportation Review (“LATR”) traffic impact analysis prepared by Lenhart Traffic Consulting, Inc., the Petitioner’s transportation consultant, which addresses the project’s projected transportation impacts. Pursuant to the 2021-2024 Growth and Infrastructure Policy (GIP), the adequacy of transportation facilities is based upon an analysis of vehicular, transit, pedestrian and bike conditions. In brief, the LATR has determined the following:

- The original Automobile Filling Station use generates 130 AM peak hour vehicular trips, consisting of 53 primary trips and 77 pass-by trips and 150 PM peak hour vehicular trips, consisting of 68 primary trips and 82 pass-by trips.
- The Application will generate 375 AM peak hour vehicular trips, consisting of 87 primary trips and 288 pass-by trips and 320 PM peak hour vehicular trips, consisting of 78 primary trips and 242 pass-by trips. The Application results in a net increase of 34 primary vehicular trips during the AM peak hour and 10 primary trips during the PM peak hour.
- The pedestrian, bicycle and transit systems surrounding the Property will operate within the M-NCPPC standards.

There is no residential component to the proposed Project and, therefore, schools will not be impacted.

Other public facilities and services – including police stations, firehouses and health care facilities – will continue to be more than adequate to support and service the existing/proposed Automobile Filling Station use. The nearest police district station serving the Property is located at 1002 Milestone Road in Colesville, Maryland. The nearest firehouse is the Burtonsville Volunteer Fire Department located at 13900 Old Columbia Road in Burtonsville, Maryland.

The Property will continue to be served by existing water and sewer. Electric, gas and telecommunications services will also continue to be available.

*g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

There are no non-inherent adverse effects associated with the Application. The existing 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 C-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 Application will add only two fueling dispensers for a total of six, which was the maximum number of fueling dispensers on the Property previously.

The Application 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 Application 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.

Approval of the Application will significantly improve the existing traffic patterns of the Property. The western entrance will remain essentially as is while the eastern entrance will only allow right turns out of the Property (comply with Binding Element 4) and the installation of a traffic signal at the intersection of Old Columbia Pike and the western driveway, will better control the traffic movements surrounding the Property. 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.

The Automobile Filling Station will not cause objectionable noise, fumes, odors, dust, illumination, 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 Application is intended to accommodate the continuation of this use in an improved manner. As such, the Application herein requested will have no adverse impacts on the surrounding community. As the photometric plan indicates, the proposed lighting on the Property will comply with the lighting standards and will not adversely impact the surrounding area. The Application includes 50 parking spaces to serve the needs of the convenience store without in any way impacting the surrounding properties or uses.

The proposed Application will not adversely affect the health, safety or welfare of residents, visitors, or employees in the area of the Property. Because the Application will improve the Property with stormwater management, public space, a forest conservation area, and an improved streetscape, it will provide an overall benefit to the “residents, visitors and employees” in the area.

## 2. Section 59.7.3.1.E.5

Section 59.7.3.1.E.5 requires that the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed gas station use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood.

The best evidence of the need for the proposed gas station is the fact that there is an existing gas station on the Property that has conducted a healthy business for more than five decades. While the current gas station has only four pumps, in the past it operated with six pumps. The Applicant nonetheless conducted their own due diligence regarding the need for the six pump gas station and commissioned IMST Corp. to prepare a market report (the “Report”) for the Property to assess demand/need. The Report is submitted as part of the Application and is based on a trade area encompassing a 1.5 mile radius from the Property. The Report assesses the traffic volumes and consumer activity within the trade area, taking into account eight competing gas stations with convenience stores. The Report finds that there is a need for a gas station with six pumps on the Property as proposed by the Application. As follows, the Report concludes that anticipated sales, based on low, average and high scenarios all support the Application:

- Anticipated low volume and sales – 1.7 million gallons/year
- Anticipated average volume and sales – 1.9 million gallons/year
- Anticipated high volume and sales – 2.1 million gallons/year

In addition to the Report commissioned by the Applicant, Wawa relied on data prepared by Esri Market Potential to conclude that there is a need for the proposed station with six pumps. The Esri report noted that there are 42,774 with over 14,000 households. The daily traffic volumes in vicinity of the Property with 31,412 vehicles on Route 198 (Burtonsville Road) and 63,693 vehicles on Route 29 also support the need for the Application.

## **VII. Environmental**

A Natural Resources Inventory “NRI” (420190900) was approved in 2019 in connection with the LMA and M-NCPPC Staff has determined that the NRI remains valid and does not require updating. In connection with the LMA, the Planning Board approved a Preliminary Forest Conservation Plan and approved the Final Forest Conservation Plan F20240210 on February 29, 2024.



The Property is not in a Special Protection Area, so no separate water quality monitoring plan is required.

**VIII. Conclusion**

As explained above, the Project meets or exceeds all of the criteria and standards for an Automobile Filling Station in the CRTF Zone, as set forth in the Zoning Ordinance. For the foregoing reasons, the Petitioner respectfully requests approval of this Conditional Use Application to permit the continued operation of the long-standing Automobile Filling Station use on the Property.