

CTC Retail, LC

Application for Approval of Conditional Use No. _____

Clarksburg Town Center

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Exhibit 3
OZAH Case No: CU 25-02

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SUMMARY OF PROPOSAL

CTC Retail, LC and Weis Market's Inc. (the "Applicants") submit this Conditional Use Application to include gas pumps as part of the construction of a grocery-anchored retail core in the Clarksburg Town Center area of Clarksburg. The mixed-use center has been planned for this property for decades and the Applicants believe that current circumstances, at long last, now enable development of retail, including this grocery anchor and related facilities. These circumstances include two important events: the recently executed agreement between CTC Retail, LC ("CTC Retail") and Weis Markets, Inc. ("Weis") for Weis to purchase and build the grocery anchor in Town Center, and the recent Clarksburg Town Center development plan amendment approvals. This long-awaited retail core cannot be built quickly enough for most residents of the Clarksburg Town Center community. However, it is imperative to ensure that Weis, and the entire retail core, is set up for success for success. Weis has indicated that three gas pumps (six fueling positions), located in their parking lot, are critical to their operations in Clarksburg Town Center.

Montgomery County's zoning ordinance considers gas pumps to be conditional use in Clarksburg Town Center's current zone, Commercial Residential Town (CRT). Through this submittal, corresponding exhibits and testimony of witnesses, Applicants will demonstrate that the proposed gas station as a conditional use:

- (a) Is permitted in the CRT zone that currently applies to the property as well as in the RMX-2 zoning under which Clarksburg Town Center has been

developed.

- (b) Complies with the specific use standards as set forth in Division 59.3, the development standards set forth in Division 59.4 and the general requirements set forth in Division 59.6.
- (c) Satisfies the findings required for approval in Section 59.7.3.1 including that the use:
 - (1) Substantially conforms with the recommendations of the applicable master plan.
 - (2) Is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the master plan.
 - (3) Does 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 any area.
 - (4) Will be served by adequate public facilities and services.
 - (5) Will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or in the combination of an inherent and a non-inherent adverse effect on the categories defined in the Montgomery County Zoning Ordinance.
 - (6) Is compatible with the character of the neighborhood.

STATEMENT IN SUPPORT

I. Subject Property

Clarksburg Town Center is a vibrant 217-acre planned multi-use planned development built over the past 25 years. Today, Clarksburg Town Center consists of approximately 1,100 fee simple residential units that are built and occupied, an elementary school, and several amenities (two County owned and run public parks, master planned trails and road, a community “residents club” with annex building, pools, pocket parks, outdoor amphitheater, playgrounds, etc) The community is supported by several long time, active residents who enjoy many community planned social events every year.

The only remaining area of Clarksburg Town Center that remains unbuilt is approximately 14 acres comprising the retail core. 2024 development plan approvals permit the construction of approximately 106,000 square feet of retail (commercial) uses and 189 multi-family units in the retail core. This retail core is currently developed, but no buildings in the retail are built. The approximate five-acre site, the future Weis grocery store and parking lot, subject to this application (the “Site”, the “Property,” or the “retail core”) is currently identified as part of Parcel K and part of Parcel M, Block GG in Clarksburg Town Center as recorded in Plat Number 25584 (Exhibit 13). These parcels will be replatted to reflect the 2024 approvals. The property is located northwest of the intersection of Stringtown Road and St. Clair Road. It currently is zoned CRT – 0.75, C – 0.25, R – 0.5, H– 65T, but the overall development of Clarksburg Town Center, including the fee simple units that were approved and constructed under previously existing RMX-2 zoning. See Site Plan Number 820070220, Preliminary Plan Number 11995042, and Project Plan Number 91994004 and their related, applicable

amendments (Exhibit 12). Pursuant to Division 7.7 of the Zoning Ordinance, amendments to the previously approved development plans may be approved under the pre-existing zoning and CTC Retail, LC recently received amendment approvals under these provisions for the overall retail core area.

II. Proposed Uses & Description of Operational Features

This Conditional Use Application is related to recently approved applications for amendments to previously approved development plans, specifically, Project Plan Number 91994004E, Preliminary Plan Number 11995042E, and Site Plan Number 820070221.

Those applications recently received Planning Board approval for the 14.5 acre retail, mixed-use core of the overall Clarksburg Town Center (February 2024). Attached to this application as Exhibit 14, is a copy of the Statement of Justification submitted with those amendments. This Conditional Use Application is being submitted immediately subsequent to those amendments because of the interrelated nature of the overall development approvals and this Conditional Use. Applicants anticipate that the approved Project, Preliminary and Site Plan applications will be processed and implemented more or less simultaneously with this Conditional Use Application.

A grocery store was always envisioned as integral to the success of the retail core in Clarksburg Town Center and is required for the success of the retail core. Grocery stores attract many people to a shopping area. Unfortunately, the Clarksburg Town Center retail approved in the initial development plans in the late 1990s has been delayed for a considerable amount of time for a variety of reasons. The greater Clarksburg area initially

required construction of new homes to house residents who would support the retail services. Clarksburg Town Center faced years of stagnation when a previous developer was unable to proceed due to development triggers. Additionally, since the approval of the 1994 Clarksburg Master Plan, some large-format retailers like Wegmans and Walmart have constructed grocery facilities in the upper Montgomery County area, attracting Clarksburg shoppers who otherwise might frequent a grocery in the Clarksburg Town Center. More recently, the addition of grocery delivery services like Giant/Peapod and Amazon has created challenges to brick-and-mortar retailers and grocers. Despite this, the population growth of Clarksburg now supports the right grocery store in the Town Center and the amendments to the previous developer's development plans allow for construction to proceed.

A grocery anchored retail core is greatly desired by the Clarksburg Town Center residents, many of whom have lived in the community for a decade or more. Since 2015, CTC Retail has diligently worked to attract a grocer to anchor this retail core, and, as noted, recently signed an agreement with Weis to open and operate a grocery store in Clarksburg Town Center. As critical aspect of their business model, Weis has explained that the incorporation of three gas pumps (for a total of six fueling positions) in the parking area, designed to serve its primarily its grocery customers, is a necessary component for the overall feasibility of the grocery. The gas pumps will dispense less than 3.6 million gallons of gas annually. Initially, these pumps will be operated only when the store is open (typically between 7 am and 11 pm), can serve up to six customers at a time, and are monitored by one employee working in an approximate 500 square foot kiosk. If demand requires it, Weis may open the pumps and staff the kiosk earlier than the store to serve commuters. Typical retail sales from the kiosk

include motor oil, windshield wiper fluid, and similar automotive products, soft drinks, cigarettes, lottery tickets, snack items, etc. A canopy over the pumps is also provided. Weis finds that this configuration typically serves approximately 280 customers each day, and up to 45% of these customers are also likely to shop for groceries on the same trip. The Site Plan attached as Exhibit 11, identifies the proposed location for the gas pumps.

Current trends indicate that more and more grocery stores incorporate gas pumps as part of their core business model. The gas pumps are an important department critical to the financial health and vitality of their stores, akin to the pharmacy, produce department or floral department. Gas pumps help to attract customers, many of whom also shop at the same time. Traffic for Weis, the grocery anchor, is critical to the overall success of the Town Center retail core, as this traffic also draws Weis customers to other business that will comprise approximately 50,000 square feet of retailers in the retail core area that are not Weis.

CTC Retail, LC initially discussed the gas pump proposal with Park and Planning staff and the Department of Permitting Services with the belief that these gas pumps would be considered an accessory use to the grocery, capable of project, preliminary and site plans approval without the need for Conditional Use Application. CTC Retail, LC also pointed out that the underlying zoning under which the retail center has been approved (RMX-2) permitted approval of a filling station as part of the overall preliminary plan and site plan process, without the need for a special exception or conditional use. CTC Retail, LC further observed that Section 7.7.7.1.B.3 permits an applicant to amend any previously approved plan “under the development standards and procedures of the property’s

zoning on October 29, 2014” which, in this case, allowed the incorporation of a filling station without the need for conditional use approval. (Staff indicated that three gas pumps, even though they do not include any vehicle services or vehicle storage like a typical gas station, would be considered a “filling station” under the zoning ordinance.) Though the Applicants have concerns about these interpretations, in the interest of advancing construction of the shopping center and the grocery store and given the importance of the gas pumps to the grocer, Applicants have decided to seek Conditional Use approval immediately after the approval of the development plan amendments. The Applicants believe the proposal will meet all regulatory requirements, as noted below.

III. Findings

The Applicants will present exhibits and testimony showing that the proposal of three gas pumps and small attendant kiosk use meets the requirements for Conditional Use as a filling station as follows:

- Permitted Use. Filling stations are permitted under the pre-existing RMX-2 zone, and are allowed as conditional uses under the new CRT zone.

- Substantially conforms with the recommendations of the applicable master plan.

The 1994 Clarksburg Master Plan called for mixed-use with a shopping center in a Clarksburg Town Center. This Master Plan did not specify the nature of tenants, but it allowed up to 300,000 square feet of commercial uses noting that retail uses are critical to the vitality of the town center. It specifically noted that a “a grocery store is particularly important since this type of use can serve as a magnet for other

commercial operations (drycleaners and banks, for example).” That plan set a maximum square footage for the retail center of 150,000 square feet with other retail and offices to be located elsewhere.

- Harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the Master Plan. The location of the proposed pumps, the topography of the site and landscaping requirements, the proposed three pumps will be unobtrusive to the rest of the retail area. The gas pumps will be limited to a very small portion of the overall retail area (approximately 12,000square feet of a fourteen acre retail core) and will be located in the parking lot, away from any residential uses and the street oriented retail along Clarksburg Square Road and St. Clair Road.
- Will not increase the number, intensity or scope of conditional uses sufficiently to effect the area adversely. Given the contained nature of these gas pumps, as part of a much larger retail/mixed-use core area, and the limited number of any conditional uses nearby, the approval of this will not affect the area adversely.
- Will be served by adequate public facilities and services.

A retail center up to 150,000 square feet of retail uses already has been approved under the referenced Project Plan, Preliminary Plan and Site Plan which collectively reviewed the adequacy of public facilities. The addition of these gas pumps does not affect those conclusions.

(1) Public safety (Police and fire protection). The entire Clarksburg Town Center area has excellent police and fire protection, and a new fire house is under

construction very nearby. The addition of these gas pumps to the much larger retail center will not create any additional demand.

(2) Public Roads. The site is served by public roads, including Stringtown Road and Clarksburg Square Road, and the pumps themselves will be located on private property while the entire access and circulation system has been approved under the Preliminary Plan and Site Plan and will be reviewed again in the Site Plan Amendment.

(3) Electrical Infrastructure. The area is currently served by Potomac Edison's extensive electric infrastructure and this retail core has been planned for a long time. Current design confirms that electric services can be provided to the gas pumps.

(4) Water and Sanitary Sewer. Once again, the site is served by public water and sewer and the construction of retail has long been planned, mains installed, and planned to serve the gas pumps in this area.

- Will not cause undue harm to the neighborhood and any other necessary findings under Section 59.7.3.1.E. The Applicants believes that the use is entirely compatible with the commercial nature of the 14.5 acre site, and the location of the gas pumps were ideally located so as not to interfere with residential uses or pedestrian activities on or adjacent to the site.
- Is compatible with the character of the neighborhood. As noted, this retail site has been master-planned for a retail center for three decades. The incorporation of gas pumps will not change the propriety of that use, and will provide a service to support a grocery store.

Applicants expect to prove that three gas pumps (six fueling positions) complies with the current and previous zoning ordinances, and that there is a need for this type of use in the Clarksburg Town Center Community, as outlined in the Need Analysis, conducted by Ed Steere of Polestar Analysis.

IV. Witnesses/Scope of Testimony

1. Kathryn Kubit, Elm Street Development. Ms. Kubit will discuss the previous development plan approvals, including the most recent 2024 approval, community sentiment about completing the Clarksburg Town Center retail core, the need for a grocery store anchor to complete the rest of the Clarksburg Town Center retail.
2. Kevin Foster, Gutshick Little & Weber PA. Mr. Foster will talk about the planning and engineering necessary to support the conditional use at Clarksburg Town Center.
3. David Samba, Kimley-Horn. Mr. Samba will talk about traffic related to the conditional use in the Clarksburg Town Center Retail Core.
4. Jack O'Hara, Weis Markets. Mr. O'Hara will discuss the functioning and necessity of the gas pumps as an integral department of their grocery store.
5. Ed Steere, Polestar Analysis. Mr. Steere will discuss the gas station supply and demand in Clarksburg and the need of a strong anchor in the Clarksburg Town

Center retail core.

V. Estimated Time

The estimated time to present the facts and the testimony of listed witnesses will be approximately 4-6 hours (not including any cross examination).

VI. List of Exhibits

1. Certified Copy of the Zoning Map
2. List of Adjacent and confronting properties
3. List of Civic and Homeowner's Association
4. Traffic Statement
5. Existing Features Plan
6. Conditional Use Plan, including architecture and photometrics
7. Approved NRI/FSD No. 41994162
8. Forest Conservation Plan No. F20230380
9. Description of Operational Features
10. Plat No. 25584
11. Fire Access Plan
12. Open Space Exhibit
13. Circulation Exhibit
14. Utility Exhibit

15. Previous Approvals (820070220, 82007022D & 82007022I)

16. 2024 Statement of Justification (82007022I)