

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF: *

Dong Ya, LLC and Hong Cheng, LLC *

Applicants *

For the Petition *

OZAH Case No. CU 24-15

Patricia A. Harris, Esq. *

Attorney for the Applicants *

Before: Andrea LeWinter, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On April 30, 2024, the applicants, Dong Ya, LLC and Hong Cheng, LLC, filed for a conditional use for an Automobile Filling Station and Convenience/Retail Store at 15585 and 15595 Old Columbia Pike, Burtonsville, Maryland, pursuant to Section 59.3.5.13 of the Zoning Ordinance.¹ Exhibit 1. The Office of Zoning and Administrative Hearings (“OZAH”) held a public hearing on June 6, 2024. Exhibit 29.

On October 31, 2023, the applicants had filed an application for a major modification of a special exception on the same property intending the same development as proposed in this conditional use application. Exhibit 31. The existing Automobile Filing Station and Convenience/Retail Store use on the site has operated as a special exception since 1967, initially within the General Commercial “C-2” zone, with modifications granted in 1968, 1982, 1983, 1994, and 1995. Exhibit 3, p. 4-5 and Exhibit 34, p. 8. The property was rezoned in 2012 to the Commercial/Residential Neighborhood “CRN” Zone, a zone that did not permit the existing use as a special exception, Exhibit 3, p. 2-3 and Exhibit 34, p. 8, leading the applicants in 2019 to request through and be granted by Montgomery County Local Map Amendment H-134 a rezoning of the property to the floating Commercial/Residential Town “CRTF” zone, which permits automobile filing stations as conditional uses. *Id.* However, as of October 2023, the applicants had not applied for a conditional use designation for the Property and the use remains classified as a special exception. *Id.* Therefore, a conditional use application was necessary to request changes to the Property rather than an application for a modification of a special exception. Being informed of this requirement, the applicants chose to submit a conditional use application.

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

On February 29, 2024, Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued a report recommending grant of the application for special exception modification, Exhibit 31, and, on May 15, 2024, by memorandum from Zoning Planner Mark Beall to OZAH and issuance of a redlined Staff report, the Staff recommendation was extended to approval of the conditional use application. Exhibit 34. The Planning Board had recommended approval of the special exception application on March 20, 2024, Exhibit 30, and Staff chose not to submit the subsequent conditional use application to the Planning Board, as is their prerogative.²

A Natural Resources Inventory (420190900) was approved in 2019 in connection with the Local Map Amendment, Exhibit 10, and Staff determined that this Inventory remains valid. Exhibit 2. The Planning Board approved the Final Forest Conservation Plan (F20240210) on February 29, 2024. Exhibit 9 and 15.

At the hearing, the applicants presented five witnesses: Mr. Kuo-Chien Cheng, co-applicant and co-owner of the subject property, T. 13; Mr. Chris Hoffman, real estate project engineer for Wawa, Inc., which has an executed lease for the subject property, T. 16; Mr. Kevin Foster, landscape architect and land planner, T. 31-32; Mr. Tim Longfellow, civil engineer, T. 74-74; and Mr. Nick Driban, traffic engineer, T. 85-86. Misters Foster, Longfellow, and Driban were qualified as experts.

No communication opposing the application was received by OZAH and no one appeared in opposition at the hearing in person or online. T.109. One community comment was received by the applicants recommending changes to the proposed bikeway, but the recommendation was not feasible considering the circulation of traffic. T. 47-48. Both Planning Staff and Mr. Foster

² See Section 59.7.1.2 of the Zoning Ordinance.

discussed the bikeway limitations with the commenting community member. Exhibit 34, p. 13; T. 47-48.

Following the close of the hearing, the record was held open for ten days to receive the transcript. T. 108. The record closed on June 17, 2024.

For the following reasons, the Hearing Examiner approves the conditional use application with conditions.

II. FACTUAL BACKGROUND

A. The Subject Property

As set out in the Staff Report, the Subject Property consists of 3.37 acres located at 15585 and 15595 Old Columbia Pike, Burtonsville in the CRTF zone, identified as Parcel C and Parcel D on recorded Plat No. 12953. Exhibit 34, p. 5-6. The Property is improved with an Automobile Filing Station, a 7-Eleven convenience store, and a Mattress Barn retailer, for a total of 10,800 square feet of retail space. Exhibit 34, p. 6. The ariel photograph below, excerpted from the Staff Report, shows the location of the Property and the existing development. Exhibit 34, p. 7.



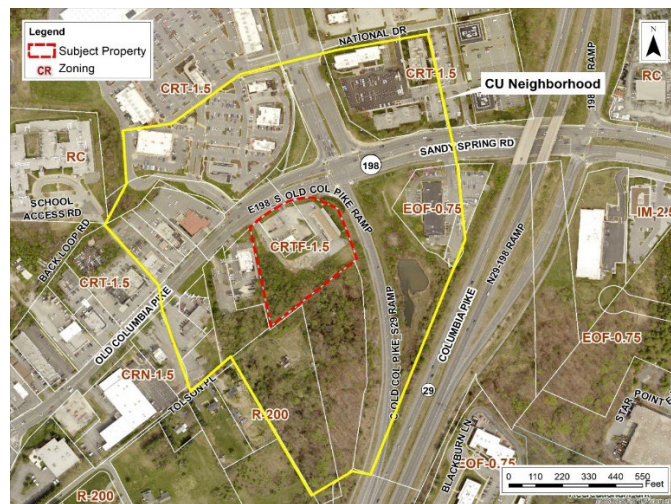
Ariel View of Subject Property with Subject Property outlined by dotted red line.

Presently, the Property may be accessed via two ingress/egress points along Old Columbia Pike (MD Rt. 198), with the more western access directly across from Burtonsville Town Square Shopping Center. *Id.*

The Property has some forested area along the south and southwest property lines. *Id.* It does not contain streams or stream buffers, wetlands or wetland buffers, 100 year floodplains, hydraulically-adjacent steep slopes, or known occurrences of Rare, Threatened, or Endangered Species. *Id.*

B. Surrounding Area

To determine the compatibility of the proposed conditional use, it is necessary to delineate and characterize the surrounding neighborhood. Staff defined the neighborhood in consideration of the surrounding properties most proximate and most impacted by the proposed conditional use. Exhibit 34, p. 5. The area to the north is zoned CRT and includes retail stores and restaurants; the area to the east is split zoned EOF and IM and is occupied by a hardware store; the area to the south is zoned R-200 and is occupied by a single-family home and vacant parcel; and the area to the west is zoned CRN and includes retail stores and restaurants. *Id.* A map of the Staff defined neighborhood is excerpted below. Exhibit 34, p. 6.



Staff defined neighborhood highlighted by solid yellow line

Staff identified three approved conditional uses/special exceptions within the defined neighborhood other than the Property, including: a Starbucks drive-thru at 15600 Old Columbia Pike (CU 2017-06), a Roy Rogers drive-thru at 15662 Old Columbia Pike (S-2839), and a McDonald's Corporation drive-thru at 15569 Old Columbia Pike (S-738, S-738A, S-738B, and S-738C). *Id.*

The Hearing Examiner agrees with Staff's definition of the neighborhood and Staff's characterization of the area as primarily commercial. The impact of the current and proposed use on the residential zone to the south and west is limited and mediated by the forested area surrounding the Property.

C. Proposed Use

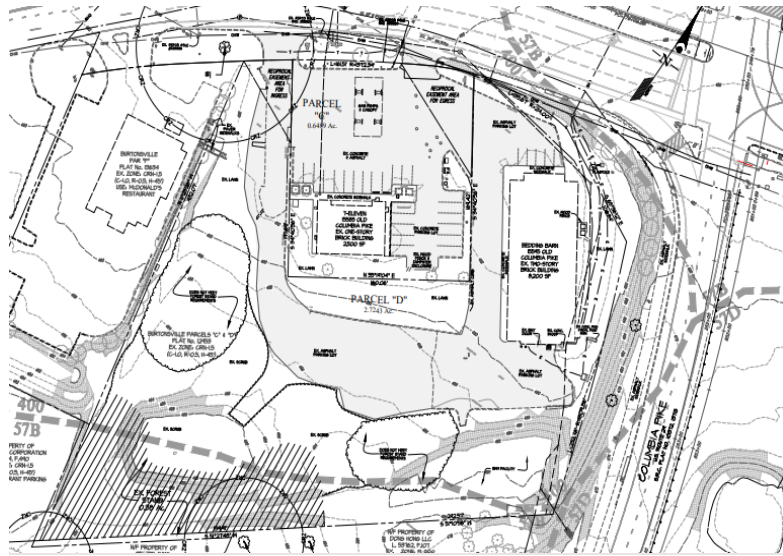
The applicants propose to demolish the existing gas station, 7-Eleven convenience store, and Mattress Barn and construct a new Wawa gas station with up to six sets of gas pumps and a Wawa convenience store of a maximum of 5,919 square feet along with associated parking, lighting, and landscaping. Exhibit 34, p. 9; Exhibit 3; T. 46.³ The proposal includes spaces for up to 9 electric vehicle ("EV") charging spaces as well as 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 of the Property. *Id.*

The applicants also propose to build a new signalized intersection at the western ingress/egress driveway on Old Columbia Pike across from the Burtonsville Town Center Shopping Center and to convert the eastern ingress/egress point to a right-out-only exit from the

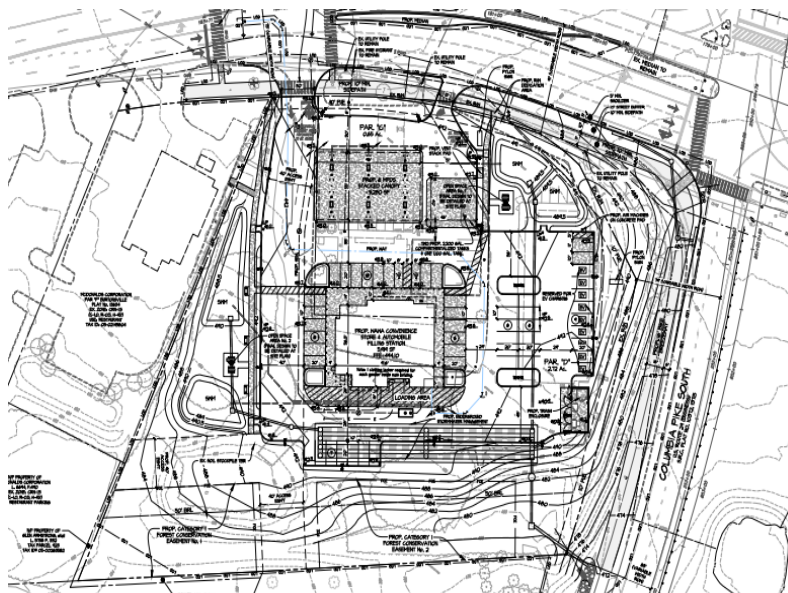
³ The Staff report cites the proposed size of the convenience store as both 5,919 and 5,000 square feet. The 5,000 figure is presumably a typographical error as applicants repeatedly affirmed in testimony that the proposed size is 5,919 square feet.

site. *Id.* Additionally, the applicants propose to install a new 10-foot wide sidepath along Old Columbia Pike and a 16-foot Bike Breezeway along the ramp to Route 29. *Id.*

The two figures below excerpted from the Staff Report show the existing and proposed site configuration. Exhibit 34, p. 9 and 10.



Existing Site Conditions



Proposed Site Conditions

The Property is located within the Little Paint Branch Watershed, which is classified as Class Use I. Exhibit 34, p. 13. There are no 100-year floodplains, stream valley buffers, or Special Protection Areas associated with the site. *Id.* The Property has some forested areas along its southern border and small sections with steep slopes. *Id.* The soils on the Property are classified as urban land and are not considered highly erodible or sensitive. *Id.* There are no known rare, threatened, or endangered species on the property. *Id.*

1. Site Plan, Access, On-Site Parking

a. Required Plans

Because new construction is proposed on the Property, the proposed redevelopment will need to be approved through the Preliminary Plan of Subdivision and Site Plan processes. Section 59.7.3.1.E.1.f.i-ii. The conditional use application is subject to the Forest Conservation Law and the Planning Board approved the Final Forest Conservation Plan (F20240210) on February 29, 2024. Exhibit 15. A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) is also required and was approved in 2019 (420190900) in connection with the petition for the Local Map Amendment rezoning the Property. Exhibit 10.

b. Buildings

As Staff reported and Mr. Hoffman and Mr. Foster testified, particularly Mr. Foster's review of Exhibit 7, the proposal is to raze the existing automobile service station, convenience store, and mattress store and build a Wawa six-pump gas dispensary and convenience store on the Property. Exhibit 34, p. 9; T. 17, 20-22, 34,45-46. The convenience store will be 5,919 square feet and of a new prototype Wawa design. T. 21-22; 46.

c. Access and Parking

As Staff reported and Mr. Foster and Mr. Driban testified, the current site has two points of ingress/egress that will be improved resulting in one point of ingress/egress to the west and one point of egress only to the east, and the western point will be signalized to better coordinate with US Rt. 29. Exhibit 34, p. 9; T. 55, 87-88. Mr. Foster and Mr. Driban also testified that there will be improvements to bikeways and pedestrian access. T. 46-47, 93.

Mr. Foster testified and the submitted site plan details that the redevelopment will result in 50 parking spaces on site as well as four racks for bicycle parking. T. 52-53; Exhibit 7. Mr. Foster stated that the parking will comply with all zoning landscaping and setback requirements. T. 53. Mr. Hoffman specified that nine of the parking spaces will be available for EV charging, including one that is Americans with Disabilities Act accessible, even though EV charging is not required under the current County Code. T. 22-23. Mr. Hoffman stated that these spaces will be available both for employee and customer parking and are sufficient to accommodate traffic even during peak demand for the proposed filling station and convenience store services. T. 28-30. With a maximum of 12 employees on site at any given time, this will leave a minimum of 38 parking spots for customers. *Id.*

In the Planning Board's approval of the identical plan proposed as a special exception modification, the Planning Board raised no objection related to access or parking. Exhibit 30.

2. Site Landscaping/Screening, Lighting, and Signage

a. Site Landscaping/Screening

Mr. Foster, referring to the admitted landscaping plans, testified as to compliance with the landscaping and screening requirements for the portions of the Property where the parking lot will abut the street and adjacent properties. T. 53-54. With respect to the two street frontage areas, Mr.

Foster stated that the plan will meet the landscape, tree canopy, and perimeter planting requirements, specifically the six-foot setback, hedge, and tree requirements for both the frontage along Rt. 198 and Old Columbia Pike. T. 53. In terms of the residential boundary to the south, the proposal will meet the screening required to account for the difference between commercial and residential use in accord with Option B of Section 59.6.5.3.C.7, which specifies a 12-foot minimum landscape width including two canopy trees, four understory trees for every hundred linear feet, and eight large shrubs and twelve medium shrubs for every hundred linear feet of frontage. T. 54. Mr. Foster testified that this standard is not relevant to the western property line because it abuts the non-residential CRN zone. *Id.*

Mr. Foster also testified that the gas pumps will comply with applicable setbacks and that the two points of ingress/egress will be 109 feet apart, which is far greater than the required 20 feet for a gas station occupying a corner lot. T. 56-57.

b. Lighting

Referring to the submitted lighting plan, Mr. Foster testified that the proposed conditional use will comply with all regulatory lighting requirements and will not exceed a tenth of a footcandle along the southern property line or half of a footcandle along the other property lines. T. 55-56; Exhibit 33.

c. Signage

Mr. Foster stated that there will be two pylon signs set sufficiently back from the road to avoid any blockage of vehicle sight distance. T. 56.

3. Binding Elements

Because the proposed conditional use is in a floating zone (CRTF), a type of zoning designation that delineates specific zoning conditions/uses that an area of land must conform to

before receiving the designation as opposed to a zone that is designated and then the proposed uses within the zone must prospectively conform to the zone standards, the proposed use must conform to the floating zone's binding elements imposed on the Property by the approval of LMA H-134 on November 12, 2019. The floating zone designation is CRTF-1.5 C-1.0 R-0.5 H-45' and the corresponding Floating Zone Plan, required pursuant to Section 59.5.3.5, was approved following a Zoning Hearing on November 26, 2019. Exhibit 3; Exhibit 34, p. 8.

Mr. Foster testified to the existence of six binding elements and stated that the proposed use will conform with all six, specifically, the use: 1) is not a prohibited use; 2) provides for a 50-foot buffer between the Property and the abutting residential zone; 3) will result in frontage improvements including a shared-use path and street trees; 4) will control access to the Property; 5) will observe the required reservation of 40 feet for a future private access road on the west side of the Property; and 6) will provide the requisite public open space on site and meet the design requirements of Section 6.3.6.B.1. T. 42-43; Exhibit 3.

4. Operations

a. General Operations

Mr. Hoffman testified that the proposed conditional use will house a "typical" Wawa gas station and convenience store with 24 hour, 365 day per year operation. T. 17.

b. Staffing

Mr. Hoffman stated that the proposed Wawa gas station and convenience store will employ approximately 50 employees in total, a figure that may be adjusted up or down by about ten employees depending on store activity. *Id.* Staff will work in three shifts, from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m., although these times may be adjusted

slightly to best fit site needs. *Id.* During peak hours, Mr. Hoffman estimated maximum staffing on site to be 12 employees, with only three-to-four employees on site during the overnight shift. T. 25.

c. Deliveries

Based on experience with similar sized and placed Wawa gas stations and convenience stores, Mr. Hoffman testified that he anticipates the Property will have between one-and-three tankers of fuel delivery daily to service the three fuel products the station will dispense and store underground: regular, premium, and diesel gasoline. T. 17-18. He acknowledged that while it is most efficient to get a full truckload of gasoline delivered at a time, sometimes this is not possible and there may be multiple partial load deliveries from multiple trucks. T. 19. Mr. Hoffman also anticipates two daily large truck deliveries to the convenience store, as every day a load of perishable items will be delivered and every other day one general or one Wawa-specific load of items will be needed. T. 18. He noted that these deliveries are not specifically timed but are anticipated to occur before the morning customer rush, as that is ideal for supply. *Id.* He testified that twice weekly garbage pick-up is anticipated, but this may be increased if needed. T. 19.

d. Gasoline Dispensing

Staff reported and Mr. Hoffman testified that the conditional use will include a six-pump gas dispensary. Exhibit 34, p. 9; T. 17, 20-22. Staff set out that the original 1967 special exception (S-2173) allowed for two gasoline pump islands, but a major modification approved in 1982 (S-847) expanded the number of fueling dispensers to six, although this number was reduced down to four after approval of another modification petition in 1995 (S-847-A). Exhibit 34, p. 8. Staff concluded that while almost thirty years have passed, the more intensive use of six-pumps was previously approved and did not appear inharmonious with the neighborhood for the 13 years it

existed and endorsed the market study completed by the Applicants demonstrating demand for six gas pumps. Exhibit 34, Memorandum from Mark Beall to OZAH.

Mr. Hoffman testified that the six pumps will pump under 3.6 million gallons a year, most likely around 2.9 million gallons, which aligns with other similarly sized Wawa automobile service stations. T. 20-21. Mr. Hoffman stated that Maryland is Wawa's lowest pumping gas state and that Wawa projects a seven percent reduction in gasoline sales and understands gasoline sales to be a "shrinking" business. T. 20. As detailed, Mr. Hoffman predicted that approximately one tanker truck will deliver gasoline to site daily. T. 17.

D. Community Response

As stated, Staff and the applicants received one comment regarding the connectivity of the bikeway and Mr. Foster discussed the bikeway with the commenting community member. Exhibit 34, p. 13; T. 47-48. No other comments, inquiries, or objections were received.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW⁴

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both general and specific. General standards are those findings that must be made for all conditional uses. *Zoning Ordinance*, §7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a Automobile Filing Station and Convenience Store. *Id.*, §59.3.5.13.

Weighing all the testimony and evidence in the record under a "preponderance of the evidence" standard (*see Zoning Ordinance* §7.1.1), the Hearing Examiner concludes that the conditional use proposed in this application satisfies all of the general and specific requirements for the use.

⁴ All findings of fact are based on a preponderance of the evidence. *Zoning Ordinance*, §7.1.1.

A. Necessary Findings (Article 59.7)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's determination for each finding, are set forth below.⁵

1. *To approve a conditional use application, 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 detailed, the current development was approved pursuant to a special exception originally granted in 1967 and modified six times until the Property was redistricted to a zone that did not permit automobile filling stations, leading the owners to request and receive LMA H-134 rezoning the property to CRTF with six binding elements. Staff did not conclude, and no evidence was presented at the hearing, that the current use does not conform to the special exception and testimony and documentary evidence established that the proposed redeveloped use complies with the CRTF and binding elements and Floating Zone Plan. T. 42-43; Exhibits 3, 7, and 11. Staff also pointed out that the applicable Master Plan, the *Burtonsville Crossroads Neighborhood Plan*, states that, "special exceptions may continue [on the south side of MD 198] if lawfully existing before the new zoning," thus grandfathering in the existing development.

Conclusion: Considering no evidence to the contrary and the fifty years of successful operation at the existing site, the Hearing Examiner finds that the proposed development satisfies all previous approvals.

- 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;*

⁵Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2., E.3., and E.5. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: This subsection requires an analysis of the standards of the CRT Zone contained in Article 59-4; the use standards for Automobile Filling Stations contained in Article 59-3; and the applicable development standards in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III. B, C, and D, respectively).

c) substantially conforms with the recommendations of the applicable master plan;

The subject property is located within the area subject to the *2012 Burtonsville Crossroads Neighborhood Plan* (“BCNP”). Exhibit 34, p. 23; T. 58. Specifically, the Property is located within an area designated as a gateway leading to the Main Street corridor along MD 198, located west of the Subject Property. BCNP, p. 5.

Because MD 198 is the main street for the Burtonsville community, the BCNP recommends improvement of the route’s character and design through the improvement of traffic function, specifically reducing curb cut and left turns, and enhancement of streetscape elements. BCNP, p. 36. The proposed conditional use is consistent with these recommendations as, according to Staff and traffic expert Mr. Driban, restructuring the eastern access to be egress only and aligning the western access to a future signalized intersection on Old Columbia Pike will positively impact traffic function, Exhibit 34, p. 23; T. 87-89, and, according to Staff and Mr. Foster, adding trees, landscaping, and bike and walking paths along the Property’s frontages will enhance the streetscape, Exhibit 34, p. 23; T. 58-59. Staff highlight that BCNP recommends an expanded bikeway system in the plan area, including a bikeway along the southern side of MD 198 and the proposed redevelopment includes such a bikeway with addition of an eleven-foot sidepath and a six-foot buffered bike lane along the northern property frontage and a sixteen-foot bike breezeway along the eastern property frontage. Exhibit 34, p. 23 (citing BCNP p. 37.)

Mr. Foster detailed that the goal of the BCNP is “to foster ... community designed and scaled ... small businesses, retail local services, and office with open spaces for local events, conservation and recreation” and that the new gas station and convenience store will “definitely fill” this goal. T. 58. He also identified four themes as the focus of the BCNP: “economy, connectivity, design, and the environment” and stated that the proposal promotes retail, improves streetscapes with sidewalks on the perimeter and internally to the site, elevates design within the community by providing a “very high level of architecture” and visual “upgrade” and replacing the outdated retail space, and “dramatically increase[s]” environmental benefits by providing forest conservation and storm water management, which currently do not exist on site, as well as adding a significant amount of landscaping. T. 58-59. Staff concur that the proposal will modernize and improve the building design and state that the use is consistent with BCNP limitations on floor area expansion as the redevelopment will decrease total existing floor area from 10,800 square feet to 5,919 square feet. Exhibit 34, p. 23.

Conclusion: The Hearing Examiner finds that as the proposed conditional use represents a significant environment, design, connectivity, and economic improvement to the area as it will replace an aging commercial site that lacks any environmental protections and offers minimal pedestrian and bike accessibility with an environmentally-conscious, visually attractive development that improves safety and promotes access and contributes significantly to the achievement of the *BCNP Master Plan*. There is no evidence in the record that the use will adversely affect the existing natural environment. Thus, the Hearing Examiner determines that this standard is met.

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

Staff determined this finding to be satisfied because the proposed use is a redevelopment and enhancement of an existing use that has served the community for more than 50 years and includes improvements to the streetscapes and landscapes that will benefit the community. Exhibit 34, p. 24. Staff note that the Property is located within the commercial enclave of Burtonsville and surrounded by commercial uses to the north, east, and west, which means the use continues to be consistent with the surrounding neighborhood. *Id.*

Conclusion: The Hearing Examiner agrees with Staff and finds that the proposed use will not alter the character of the neighborhood in a manner inconsistent with the *BCNP Master Plan*.

- 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;*

As detailed previously under Section 59.7.3.1.E.1.c, the conditional use will substantially conform with the recommendations of the applicable master plan. The proposal is to redevelop an existing automobile filling station and convenience store, so the conditional use will not create a new use or increase the number of uses with potentially adverse impacts (conditional and special exception uses) in the area. If anything, the redevelopment will lessen the adverse impact of the existing use as it will result in improvements to screening, environmental impact, accessibility and safety.

Conclusion: Because the proposed project conforms with the recommendations of *BCNP Master Plan* and will not increase the number, intensity, or scope of conditional uses in the area and will actually mitigate adverse effects, the Hearing Examiner finds that the proposed use satisfies this standard.

- 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. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*
- ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

Staff report that the Property is on public sewer and water service with the Burtonsville Fire Station located approximately two miles distance at the intersection of Old Columbia Pike and Briggs Chaney Road. Exhibit 34, p. 25. The applicants submitted an approved Fire Department Access Plan. Exhibit 21. Mr. Longfellow testified that he had evaluated the availability of water, sewer, gas and other utilities at the site and found all to be available and adequate for the proposed use. T. 77. He stated that electric and gas power access runs parallel to the site frontage along Rt. 198 along and that the redevelopment will provide a new connection to a northern running public water line located at the intersection of Rt. 198 where the new traffic signal installation is planned. T. 77-78. He said that the project will utilize much of the existing sewer lines, which run along the east side of the property. then north and west, jettisoning unneeded connections. *Id.*

Staff found no issue and no testimony was presented raising concerns regarding the adequate public facilities of schools, as there is no residential impact, or regarding police or fire protection or water supply.

Mr. Driban testified that the traffic analysis considered the adequacy of public roads in terms of vehicular traffic, bicycles, pedestrians, transit, and general safety and concluded that the site meets all standards and that there is sufficient infrastructure and growth capacity available to service the proposed use with no adverse impact. T. 86-87, 89-90, 94. He testified that he had performed the requisite Local Area Transit Review (LATR) study, which required the study of

nine surrounding intersections, and that the study has been reviewed and approved by the Maryland State Highway Administration, Montgomery County Department of Transportation, and Maryland National Capital Park and Planning Commission. T. 90, 92, 94; Exhibit 6. He stated that the number of new vehicle trips anticipated as a result of the conditional use are minimal, as the use is replacing an existing identical use, and that the majority of the traffic to the site is considered “passby traffic,” meaning traffic that is already in the vicinity of the site and stops at the Property because it is *en route* and does not travel to the Property as a destination. T. 90-92. He acknowledged that the increased number of fueling positions and size of the convenience store will increase overall traffic to the Property, even if the draw is from passby traffic. T. 91-92. He testified the site meets adequacy standards for vehicular traffic, pedestrian, bicycle, transit, and overall safety and would meet the requirements for offsite improvements. T. 92-93.

As set out in the *Trip Generation-Person Trips* table excerpted from the Staff report below and on the following page, Staff’s review of the LATR (Exhibit 6) concluded that as the redevelopment will result in 342 net new AM person trips and 238 net new PM person trips, which exceeds 50 peak-hour person trips, thus requiring the applicants’ to submit the full multimodal LATR study Mr. Driban authored and referenced. Exhibit 34, p. 27. Staff found that of the nine local intersections studied using Critical Lane Volume (CLV) methodology, none exceeded the 1,550 CLV limit, thus no congestion mitigation was required, as referenced on the next page in the CLV table excerpted from the Staff report. Exhibit 24, p. 27-28.

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
Existing Use		AM Peak Hour			PM Peak Hour		
		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	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

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
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Staff also state that the notable absence of bike and pedestrian infrastructure in the project vicinity combined with traffic on Old Columbia Pike results in the lowest acceptability ratings (Level 4/4) for the existing bicycle and pedestrian networks. Exhibit 34, p. 28. Staff concluded that the improvements proposed by the applicants should mitigate these issues by improving bicycle and pedestrian accessibility, specifically: installation of a sidepath along the Property frontage on Old Columbia Pike/MD198; construction of a breezeway on the Property frontage near the intersection of MD 198 and the southbound ramps of Columbia Pike/US 29; removal of the existing “hot right” turning lanes at MD 198 and US 29 southbound; and construction of an additional breezeway along the Site’s frontage on MD 198. *Id.*

Conclusion: The Hearing Examiner agrees with Staff with respect to the adequacy of water and sewer as well as police and fire services; public school adequacy is irrelevant for this analysis. The Hearing Examiner finds the expertise of Mr. Driban and thoroughness of his analysis compelling and relies on the review and approval of the LATR by Staff and the requisite State and Local agencies and concludes that this application meets the adequate public facilities standard.

- 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.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects alone are not a sufficient basis

for denial of a special exception. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects alone, or in conjunction with inherent effects, are a sufficient basis to deny a conditional use.

As detailed, the proposal does not create a new use but redevelops an existing use. Thus, there are no new adverse effects, either inherent or noninherent. Staff concluded that because the redevelopment will improve the Property with stormwater management, a forest conservation area, and an improved streetscape, it will actually provide a benefit to the residents, visitors, and workers in the area. Exhibit 34, p. 24. Testimony from Mr. Foster and Mr. Driban concurred, stating that there will be no noninherent effects and the result of the redevelopment of an older use will be to lessen negative impact. T. 60-61, 103.

Conclusion: The Hearing Examiner found no evidence of any new noninherent effects and agrees with Staff and the testifying expert witnesses that the conditional use will create a net benefit for the surrounding community given the mediation of the current use’s inherent adverse effects. Therefore, the Hearing Examiner finds that this standard is met and the conditional use will not cause undue harm to the neighborhood.

2. *Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

Conclusion: Because the proposed use is in the CRTF zone, this provision is not applicable.

3. *The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.*

Conclusion: The appropriateness of application approval is not reliant on whether the application satisfies all specific requirements for the conditional use, but on the substantial factual

support for the proposed use having no known adverse impact on the surrounding area. As stated, the proposed use will not create any non-inherent adverse impacts on the surrounding area.

4. *In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.*

Conclusion: This finding is not applicable as the proposal is not for an agricultural conditional use.

5. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:*
 - i. *Filling Station;*

The record establishes that a filling station has existed on the Property for over 50 years and testimony from Mr. Hoffman on behalf of Wawa and Mr. Driban analyzing the traffic supported that the existing filling station is well-utilized and provides a needed community service. T. 23-24, 91. Mr. Hoffman stated that the need is established by the operation of the current gas convenience operation which continues to generate enough business to sustain itself. T. 23. He cited data that the local trade area has 42,000 residents with 14,000 homes and the traffic count on Route 198 is 31,000 cars per day and Route 29 is 63,000 cars per day, numbers that Wawa considers healthy and supportive of its business model. T. 23-24. Staff concurred stating that the existence of an identical or similar use on the Property and in the neighborhood (the existing 7-Eleven filling station and convenience store) that has conducted a healthy business for a prolonged period establishes need. Memorandum from Zoning Planner Mark Beall to OZAH. Staff also endorsed the commissioned IMST Corporation market report provided by the applicants based on a trade area encompassing a 1.5-mile radius from the Property assessing traffic volumes and consumer activity and the existence of eight competing gas stations with convenience stores that supported

a need for a gas station with six pumps. Memorandum from Zoning Planner Mark Beall to OZAH; Exhibit 17.

No opposition to the functioning of the existing filling station or the prospect of modernizing and improving the site were noted by Staff or presented at the hearing. The property is at a busy vehicular intersection of Rt. 198 and Old Columbia Pike and close to Rt. 29 and there are no other automobile filling stations in the immediate vicinity.

Conclusion: The Hearing Examiner finds that this standard is met as a preponderance of the evidence establishes that the existing use has successfully served a community need for more than 50 years and testimony and the market report has only adduced that redeveloping to expand and improve the services will continue to fulfill the need and provide additional benefits to the community.

6. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:*
- i. *Funeral Home; Undertaker;*
 - ii. *Hotel, Motel;*
 - iii. *Shooting Range (Outdoor);*
 - iv. *Drive-Thru*
 - v. *Landfill, Incinerator, or Transfer Station; and,*
 - vi. *a Public Use Helipad, Heliport or a Public Use Helistop.*

Conclusion: This finding is not applicable as the application does not include a request for the uses listed.

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the CRT Zone. Section 4.5.1.C defines the CRT zone as “intended for small downtown, mixed-use, pedestrian-

oriented centers and edges of larger, more intense downtowns. Retail tenant ground floor footprints are limited to preserve the town center scale.” Density and height limits are calculated as an allowed floor area ratio (FAR) and set out in Section 4.5.2.A.3:

Zone	Total FAR (max)	C FAR (max)	R FAR (max)	Height (max)
CRT	0.25 to 4.0	0.25 to 3.5	0.25 to 3.5	35' to 150'

The applicant submitted Exhibit 7a and adduced testimony to establish the conditional use will comply with the FAR limitations. The following specifications are excerpted from Exhibit 7a and were affirmed by Mr. Foster. Exhibit 7a; T. 36.

	Allowed	Proposed
FAR NonResidential	1.0 FAR	0.04 FAR (5,919 SF)
		Existing 10,700 SF
		Removing 10,700 SF
		Replace with 5,919 SF
Residential	0.5 FAR	0.0 FAR
Total	1.5 FAR	0.04 FAR
Building Height	45’ max	± 30’
Open Space	10% min (Public 0.5)	10% min (14,670 SF)
Lot Coverage	None required	7.6% (±11,194 SF)
Minimum Lot Area	None required	3.37 acre

As set forth in Section IIC (p.11) and IIIA (p.14), a floating zone also proscribes binding elements to zone uses and there are six binding elements for the Subject Property including: 1) does not propose a prohibited use; 2) provides for a 50-foot buffer between the Property and the abutting residential zone; 3) will result in frontage improvements including a shared-use path and street trees; 4) will control access to the Property; 5) will observe the required reservation of 40 feet for a future private access road on the west side of the Property; and 6) will provide the requisite Public Open Space on site and meet the design requirements of Section 6.3.6.B.1. Mr. Foster testified to the conditional use complying with all six elements. T. 42-43; Exhibit 3.

Conclusion: Based upon the above information, and having no evidence to the contrary, the Hearing Examiner concludes that the application meets the development standards of the CRTF Zone.

C. Use Standards for a Vehicle Service/Filling Station (59.3.5.13)

The specific use standards for approval of a Vehicle Service/Filling Station are set out in Section 59.3.5.13.C.2 of the Zoning Ordinance. Standards applicable to this use are set forth below, along with the Hearing Examiner's findings of fact and conclusions of law on each standard.

- 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.*

Conclusion: The Hearing Examiner finds that this standard is not applicable as access to the site is not from a street with a residential classification.

- 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.*

As testified to by Mr. Foster and outlined on applicants' Lighting Plan, the site lighting will not exceed the maximums allowed. T. 55-56; Exhibit 33. Staff concurred that the lighting will be less than 0.1 footcandle at the southern property boundary where the Property abuts the R-200 zone.

Conclusion: The Hearing Examiner finds that the proposed lighting plan will fully comply with this standard.

- 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.

Testimony from Mr. Hoffman detailed that the proposed filling station will dispense approximately 2.9 million gallons per year, far below the 3.6 million required to invoke this standard. T. 20. Mr. Hoffman also described the sale of gasoline as a “shrinking business” in Maryland and stated that EV charging stations will be installed as an attraction even though they are not required by County regulations. T. 20-23. His testimony established the importance of the convenience store for the economic viability of the development. T. 21-24. Staff noted that the proposed conditional use will add only two fueling dispensers to the existing use, a design not intended or expected to dispense 3.6 million gallons of gas annually. Exhibit 34, 15.

Regardless, even if demand were to rise to 3.6 million gallons and the proposed station could meet it, as Staff report, the closest school, park, playground, day care center, outdoor civic and institutional use, or recreation and entertainment use -- the Burtonsville Elementary School -- is 580 feet away “as a crow flies,” which exceeds the required distance. *Id.*

Conclusion: The Hearing Examiner finds that this standard is met because the use will not exceed the threshold minimum for dispensing gasoline and so will not require a greater than 500 foot distance from critical uses. Regardless, even if the minimum is exceeded, the requisite distance from critical infrastructure is exceed.

d. Product displays, parked vehicles, and other obstructions that adversely affect visibility at intersections or to station driveways are prohibited.

Mr. Foster testified that the application includes two pylon signs, but they will be set sufficiently back from the points of ingress and egress so as not to compromise visibility. T. 56. Staff report that there will not be display obstructions: one of the new signs proposed will be “in

essentially the same general location as the existing sign” and the other will be located further north in an area that will not create a visual obstruction. Exhibit 34, p. 16.

In the site plans exhibited by the applicant, the gas dispensing pumps are closest to the street and site ingress/egress, with the convenience store located behind, to the south. Exhibit 7. All of the parking surrounds the convenience store or is to its immediate west, sufficiently removed from intersections so as to be unable to impact visibility or access. *Id.* Mr. Foster confirmed that no vehicles will overhang a public right-of-way. T. 57.

No evidence or information pertaining to any other possible obstructions was presented or produced.

Conclusion: The Hearing Examiner finds that this standard is met as the proposed signage and parking are appropriately set back and designed so as not to interfere with visibility or access.

- 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.*

Mr. Foster acknowledged that the filling station occupies a corner and testified that it will be at least 20 feet from the intersection of rights-of-way and that the driveways will not exceed 30 feet in width. T. 56; Exhibit 7.

Conclusion: The Hearing Examiner finds that this standard as met as the testimony and submitted site plans clearly establish that redevelopment will not violate the minimum and maximum distances required to promote safe functioning of a corner site.

- 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.*

Mr. Foster testified that the six gas dispensers are approximately 46 feet from the property line along MD 198. T. 57. The submitted plans do not anticipate any service, storage, or other

activities associated with gas dispensation being conducted outside of the allotted building area. Exhibit 7.

Conclusion: The Hearing Examiner finds that this standard is met as the distance of the gas dispensers from the setback line exceeds the 10-foot minimum and no activities are contemplated that would violate the requirements of the standard.

- 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. The Hearing Examiner may waive the perpendicular driveway requirement if the Department of Transportation deems the alternative safe.*

Mr. Foster testified that the two driveways are 109 feet apart and the site plan submitted indicates that they will be perpendicular to the curb/street line. T. 57.

Conclusion: The Hearing Examiner finds that this standard is met as 109 is far greater than the 20 feet required and the driveways conform to the perpendicularity requirement.

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

The site plan shows that the parking will be internal to the site and this was affirmed by the testimony of Mr. Foster and the Staff Report. Exhibit 7; T. 57; Exhibit 34, p. 15.

Conclusion: The Hearing Examiner finds that this standard is met as the parking will be internal and not overhang the public right-of-way.

- 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.**

Conclusion: The Hearing Examiner finds that this standard is not applicable as the conditional use will not include a car wash.

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

The proposal is for an automobile filling station and a convenience store, so the parking must be sufficient to accommodate both uses. The Staff Report provides the following table of parking compliance:

Vehicle Parking Requirement		
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

Exhibit 34, p. 18. Mr. Hoffman testified that based on Wawa stores of similar size and location, Wawa expects the 50 spaces, 9 EV spaces, and bicycle parking to be sufficient for customer and employee parking. T. 22-24.

Conclusion: The Hearing Examiner finds that this standard is met as the parking provided is more than double what is mandated, and the future operator reports comparable sites function effectively with a similar number of allotted spaces.

D. General Development Standards (Article 59.6)

Article 59.6 sets requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the proposed use meets these requirements, are discussed below.

1. Site Access Standards

Section 59.6.1 of the Zoning Ordinance imposes site access standards on conditional uses in Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones, with the intent of “to ensure safe and convenient vehicular, bicycle, and pedestrian circulation within and between lots on the same block face and to reduce traffic congestion.”

Section 6.1.3.A requires that any development:

1. *allow a vehicle, pedestrian, or bicycle to enter and exit the property to and from a street or an abutting site safely;*

Mr. Driban testified to site access and stated that there are currently two unsignalized access points, and the proposed redevelopment will result in a number of improvements including signalizing the western intersection to coordinate with US 29 ramps and limiting the eastern access to a right turn exit only. T. 87-88. He testified that these improvements will increase safety and ease of operations by restricting unsignalized traffic crossing and ensuring traffic will go to an intersection; creating gaps in traffic that will allow easier integration of vehicles onto Rt. 198; and facilitating connection with the Burtonsville shopping center and elementary school. T. 88-89. He stated that all of the coordinating traffic-related state and county agencies are in support of the improvements because of the positive safety impacts and that there will be no adverse impact on traffic. T. 89-90. He testified that the site meets all guidelines for pedestrian, bicycle, and transit traffic. T. 92-93. Mr. Foster also described sidewalk and bikeway improvements that will benefit pedestrians and cyclists. T. 46-47.

Conclusion: The Hearing Examiner finds that this standard is met as the conditional use will only improve the safety of access to the site.

2. *limit vehicle access across a primary pedestrian, bicycle, or transit route wherever feasible;*

Conclusion: As referenced in the paragraph above, the improvements to site access will improve safety by restricting vehicle access and traffic patterns and creating dedicated areas for pedestrians and bicycling. Thus, the Hearing Examiner finds that this standard is met.

3. *allow a vehicle to enter and exit any on-site parking area in a forward motion;*

As referenced in the paragraph addressing Section 59.3.5.13.C.2.d and h, all of the parking surrounds the convenience store or is to its immediate west but internal to the site. Exhibit 7.

Additionally, the circulation plan admitted shows no barriers to vehicles entering and exiting the on-site parking in a forward motion. Exhibit 25.

Conclusion: The Hearing Examiner finds that this standard is met as the site plans submitted by the applicants establish that vehicles will have unrestricted ability to enter and exit the on-site parking in a forward motion.

4. *allow a vehicle to access any pad site from within the site.*

Conclusion: The Hearing Examiner finds that this standard is not applicable as no pad sites are proposed.

Section 6.1.4. sets out criteria for driveway access and the driveway dimensions under subsection A for the CRT Zone are as follows on the following page:

Zone	Width (min)	Width (max)	Radius (max)
One-way	12'	18'	10'
Two-way	20'	32'	15'

Subsection B allows the Hearing Examiner to require a wider driveway if site conditions are unusual and subsection D permits a maximum of 2 driveways for every 300 feet of site frontage along any street. Subsections C, which pertains to alleyway access, and E, which pertains to sites with only one driveway, are not applicable to the Subject Property.

Mr. Foster testified that the two driveways, the two-way proposed to the west and the one-way exit only to the east, comply with the zone standards and are 109 feet apart, which is consistent with the admitted site plan. T. 57; Exhibit 7.

Conclusion: The Hearing Examiner finds that this standard is met as only two driveways are proposed and they are sufficiently wide and separated. No evidence of safety concerns were presented; thus, there is no rationale to support imposing a more restrictive standard.

2. Parking and Site Landscaping and Screening

The standards for the number of parking spaces required, parking setbacks, and site screening are governed by 59.6.2.9, 59.6.4.4, and 59.6.5.3.C.7 of the Zoning Ordinance. The stated intent of 59.6.4 is *“to preserve property values, preserve and strengthen the character of communities, and improve water and air quality.”* §59.6.4.1. The stated intent of 59.6.5 is *“to ensure appropriate screening between different building types and uses.”* Zoning Ordinance §59.6.5.1

As cited on page 27 and 28, Staff determined these standards are met and provided a table, excerpted on the following page that also includes the setback and screening requirements. Exhibit 34, p. 18-19.

Vehicle Parking Requirement		
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 as per Exhibit 7g
Perimeter Landscaping	4 ft.	Provided as per Exhibit 7g
Shading of Paved Areas	30%	(34.6%)

a. Parking Lot Requirements of 10 or More Spaces under Section 59.6.2.9.C

The proposed use includes a parking lot of 50 spaces for employee and customer vehicles, Id.; T. 28-30, and, therefore, must comply with the following standards:

1. Landscaped Area

- a. A surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5% of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot.*

- b. *A maximum of 20 parking spaces may be located between islands.*
 - c. *A landscaped area may be used for a stormwater management ESD facility.*
- 2. *Tree Canopy*
Each parking lot must maintain a minimum tree canopy of 25% coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended.
- 3. *Perimeter Planting*
 - a. *The perimeter planting area for a property that abuts an Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use must:*
 - i. *be a minimum of 10 feet wide;*
 - ii. *contain a hedge, fence, or wall a minimum of 6 feet high;*
 - iii. *have a canopy tree planted every 30 feet on center; and*
 - iv. *have a minimum of 2 understory trees planted for every canopy tree.*
 - b. *The perimeter planting area for a property that abuts any other zoned property, right-of-way, or an Agricultural, Rural Residential, or Residential Detached zoned property that is improved with a civic and institutional, commercial, industrial, or miscellaneous use must:*
 - i. *be a minimum of 6 feet wide;*
 - ii. *contain a hedge or low wall a minimum of 3 feet high; and*
 - iii. *have a canopy tree planted every 30 feet on center; unless*
 - iv. *the property abuts another parking lot, in which case a perimeter planting area is not required.*

Mr. Foster testified as to the compliance of applicants' landscape plan to all the criteria of this subsection. T. 53-54; Exhibit 7g. Staff also concluded that the use will meet the requirements as 12% of the landscaping is devoted to the internal parking area with islands that provide groundcover and shade tree plantings, while the planting islands parallel to the sides of parking spaces are a minimum of 8 ½ feet wide and the planting areas at the heads of parking spaces are a minimum of 8 feet wide. Exhibit 34, p. 20. Staff also state that all shade trees and shrubs are placed approximately five feet away from the parking stalls to prevent contact with swinging car doors and bumper overhangs and that shade trees, shrubs, and ground cover will be planted throughout the property, with shrubs growing up to 24 inches high. Exhibit 34, p. 20-21.

Conclusion: The Hearing Examiner agrees with Staff that the landscape plan demonstrates full compliance with the 10 or more spaces parking lot screening standards.

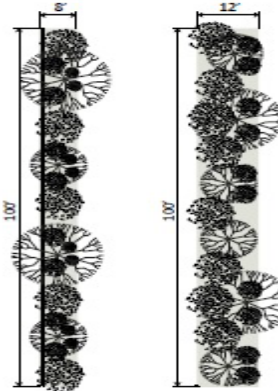
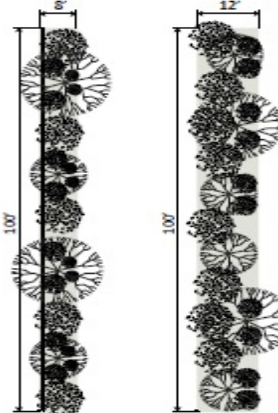
a. Parking Lot Screening under Section 59.6.5.3A and 59.6.5.3.C.7

A. Location

- 1. Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.*
- 2. Screening may be placed within any required setback. If the required setback is less than the screening width required for the building type in Section [6.5.3](#), the property must satisfy the required screening width in Section [6.5.3](#).*
- 3. Screening must be placed between the lot line and the subject structure or use and extend along the lot line. The screening must extend along the full length of the subject structure or use plus an additional 50% in length in each direction or to the end of the shared lot line, whichever is less.*

C. Screening Requirements by Building Type

- 1. Screening is determined by the proposed building type, unless otherwise stated.*
 - 2. Plant materials are specified for each 100 linear feet of screening area. Any fractional requirement must be rounded up to the next higher whole number.*
 - 3. The applicant may choose any option for the applicable building type or use.*
- 7. General Building with a Non-Industrial Use;*

		
	Option A	Option B
		
	Option A	Option B
Dimensions (min)		
Depth	8'	12'
Planting and Screening Requirements		
Trees (minimum per 100')		
Canopy	2	2
Understory or Evergreen	2	4
Shrubs (minimum per 100')		
Large	6	8
Medium	8	12
Small	8	--
Wall, Fence or Berm (min)	4' fence or wall	--

Mr. Foster also testified that the proposed conditional use will comply with the standards set forth in Section 59.6.5.3 and that the applicants' plan conforms to 59.6.5.3.C.7 Option B, and Staff agreed. T. 54; Exhibit 7g; Exhibit 34, p. 20-22.

Conclusion: The Hearing Examiner finds that, consistent with the other findings of sufficient screening, the applicants' landscape plan complies with the standards set forth in Section 59.6.5.

d. Parking Lot Lighting

Parking lot lighting must satisfy Section 6.4.4, General Outdoor Lighting Requirements.

Section 59.6.4.4.E requires the outdoor lighting of conditional uses to be “directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.” As discussed in the Use Section 59.3.5.13, Mr. Foster testified that the site lighting will not exceed 0.1 footcandles at the southern property boundary where the Property abuts the R-200 zone and will not exceed 0.5 footcandles at the lot lines abutting other zones and Staff concurred. T. 55-56, Exhibit 34, p. 16. Section 6.4.4 additionally requires lighting to be directed downward, fixtures not to exceed 30 feet in a parking lot of less than one hundred cars and 15 feet in a pedestrian area, and limits light sourcing. Section 59.6.4.4.B. 1-3. Canopy lighting over filling station pumps must be flush or recessed and not exceed 30 footcandles. Section 59.6.4.4.C.3.

Conclusion: The lighting plan submitted by the applicants is consistent with the testimony and Staff conclusions and additional provisions of the Zoning Code. The Hearing Examiner finds that the proposed lighting will comply with the applicable standard.

3. Signage

Section 59.6.7.12 controls permitted signage in Commercial/Residential, Employment, or Industrial zones. The Applicants propose two freestanding signs, which are addressed in Subsection A.1

1. Freestanding Sign

- a. One sign is allowed at each customer entrance to the building or drive-way.*
- b. The maximum sign area for a lot or parcel is 2 square feet for each linear foot of frontage.*
 - i. Where a lot or parcel has frontage on more than one street, signs may be erected facing each street, or may be erected at a location which allows it to be seen along each street on which the site has frontage.*

- ii. *For a lot that has less than 50 feet of frontage, the sign area is based on the length of the lot line closest to the street toward which the sign is to be oriented. The applicant is restricted to using only one street and the property line closest to that street.*
- c. *A sign must be set back at least $\frac{1}{4}$ of the distance required for the building setback for the zone.*
- d. *The maximum height of the sign is the height of the tallest building on the same premises as the sign or 26 feet above the ground, whichever is less.*
- e. *The sign may be illuminated (see Section [6.7.9.E](#)).*

Mr. Foster testified that the Property includes more than 50 feet of frontage and two points of ingress/egress and the application proposes two pylon signs set sufficiently back from the ingress/egress so as not to compromise visibility. T. 56-57. Applicants submitted a scale drawing of the proposed signs, which shows compliance with the parameters of this standard, including not exceeding 26 feet in height. Exhibit 8d. The site plan submitted shows the pylon signs located beyond the distance required for the building set back. Exhibit 7c. Staff report that there will not be display obstructions: one of the new signs proposed will be “in essentially the same general location as the existing sign” and the other will be located further north in an area that will not create a visual obstruction. Exhibit 34, p. 16.

Conclusion: Based on the plan drawing submitted, the Hearing Examiner finds that signage proposed by the Applicants meets the standard.

IV. Conclusion and Decision

Based on the foregoing findings and conclusions and a thorough review of the record, the application of Dong Ya, LLC and Hong Cheng, LLC for the conditional use for an Automobile Filling Station and Convenience/Retail Store at 15585 and 15595 Old Columbia Pike, Burtonsville, Maryland is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Applicant’s Conditional Use Site Plans, Circulation Plan, Open Space Plan, and Lighting Plan (Exhibits 7a-g, 25, 26, and 33).

2. The Conditional Use must comply with all six Binding Elements and the parameters of the governing CRTF Zone.
3. The maximum number of employees on-site at any one time must not exceed 15.
4. The Applicant must maintain 50 parking spaces as shown on the Conditional Use Plan and may not expand or reduce the parking facility without explicit permission from the Hearing Examiner through modification of this Conditional Use.
5. The Applicant must provide a minimum of four (4) bicycle parking spots.
6. Before issuance of any building permit for the subject Conditional Use, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat pursuant to Chapter 50 of the Montgomery County Code. If changes to the approved Conditional Use site plan or other plans filed in this case are required at Subdivision, the Applicant must file a copy of the revised site and related plans with OZAH.
7. Before approval of the Preliminary Plan of Subdivision, the Applicant must obtain approval of the Final Water Quality Plan from the Montgomery County Department of Permitting Services (MCDPS).
8. The Applicant must obtain a permit for the proposed pylon signs from the Department of Permitting Services, or if required, the Sign Review Board, and a copy of the permit for the approved sign must be submitted to the Hearing Examiner before the signs are constructed.
9. The Applicant must obtain and satisfy the requirements of all licenses including a use and occupancy permit.
10. The Applicant and any successors in interest must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code.
11. The Applicant must obtain approval of a Final Forest Conservation Plan and comply with all conditions of that Plan.
12. The facility must be operated in accordance with all applicable County noise regulations.
13. Transfers to successor conditional use holders must follow the procedures in Rule 27.0 of OZAH's Amended Land Use Rules of Procedure.
14. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements,

including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 17th day of July, 2024.

A handwritten signature in black ink, appearing to read 'ALW', is written over a light gray rectangular background.

Andrea LeWinter
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

Any party wishing to appeal this decision should visit the [Board of Appeals'](#) website, review the [Notice of Re-Opening](#) or contact Board of Appeals Staff for office hours and filing instructions, as these may change.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website.

NOTIFICATIONS SENT TO:

Patricia Harris, Esquire
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Patrick Butler, Planning Department
Mark Beall, Planning Department
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director of Finance