



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item #
11/29/2007

MEMORANDUM: SPECIAL EXCEPTION

DATE: November 16, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief, Development Review Division *RK*
Ralph Wilson, Zoning Supervisor, Development Review Division *RW*

FROM: Damon B. Orobona, Zoning Analyst, Development Review Division *D.B.O.*

SUBJECT: Special Exception No. 2699: ExxonMobil Corporation.
Request for a special exception to permit an automobile filling station, C-1 zone, located at 16201 New Hampshire Avenue, Silver Spring, Maryland.

MASTER PLAN: 1997 Approved and Adopted Cloverly Master Plan

FILING DATE: March 08, 2007

PLANNING BOARD: November 29, 2007

PUBLIC HEARING: December 10, 2007

STAFF RECOMMENDATION: Denial for the Following Reasons:

The application fails to satisfy the required setback standard. Under § 59-C-4.343(a)(3) of the Montgomery County Zoning Ordinance, if there is no master plan showing the street right-of-way line, all buildings must be set back 60 feet from the center line of a non-master planned street. Staff has carefully reviewed the applicable master plan and development standards and finds that the right-of-way line for Old Spencerville Road is not shown; that 59-C-4.343(a)(3) is the proper building setback standard to apply, and that the center line established by the applicant fails to satisfy the required 60 foot setback requirement.

The proposed right-out from the site onto New Hampshire Avenue (MD 650) is unnecessary and creates unsafe traffic movements. All traffic movements facilitated by this driveway can be easily accommodated via the Old Spencerville Road connection to New Hampshire, which is located approximately 160 feet north. The proposed right-out exit could create too many conflicts between vehicles exiting the site, vehicles accelerating to precede north on New Hampshire, and vehicles decelerating/weaving to turn right onto Old Spencerville Road to access the site.

SUMMARY OF REPORT:

Site Size and Location:	Site size is 1.25 acres. The site is located in the northeast corner of the intersection of New Hampshire Avenue (MD 650) and Spencerville Road (MD 198). The site is located approximately two miles south of Ashton and one mile north of Cloverly Town Center.
Zone and Proposed Use:	The site is zoned C-1 and is currently developed with an abandoned filling station facility. The applicant proposes to raze the abandoned filling station on site and replace it with a filling station consisting of 10 fueling stations under canopy, a convenience store, and a car wash. A filling station is a permitted special exception in the C-1 zone.
Master Plan Consistency:	The project complies with the Cloverly Master Plan provided that the applicant removes a proposed right-out only driveway onto New Hampshire and replaces the driveway with a continuous evergreen screen.
Traffic Impact:	Transportation analysis requires that the right-out only onto New Hampshire be removed because this access point is unnecessary and would create unsafe traffic movements.
Zoning Ordinance:	The proposal does not meet the applicable building setback standard under § 59-C-4.343(a)(3), which requires a 60 foot setback from the center line of Old Spencerville Road. The applicant's proposal only provides a 41 foot setback from the center line to the proposed car wash building and only a 57 foot setback from the center line to the convenience store. The use is not in strict compliance with all applicable standards under § 59-G-2.06. However, the use conforms to § 59-G-1.21 and a neighborhood need has been established pursuant to § 59-G-1.24.
Further Action on Petition:	If the petition is approved despite Staff's recommendation of denial, the site will require a preliminary plan review.

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I. SUMMARY OF THE PETITION

Petition No. S-2699, filed March 8, 2007, seeks a special exception, pursuant to § 59-G-2.06 of the Montgomery County Zoning Ordinance ("Zoning Ordinance" or "Code"), to permit an automobile filling station at 16201 New Hampshire Avenue, Silver Spring, Maryland. The subject property is in the C-1 zone, which allows an automobile filling station by special exception.¹ The subject property is comprised of three parcels: N-890, P-918, and P-864. Currently, an abandoned filling station building sits on parcel N-890. The additional two parcels are unimproved.

The Montgomery County Board of Appeals ("Board of Appeals") has scheduled a public hearing date for this matter on December 10, 2007. The public hearing will be held by a hearing examiner in the Office of Zoning and Administrative Hearings ("Hearing Examiner"). However, the Montgomery County Planning Board ("Planning Board") first executes an initial review of the special exception petition before the Hearing Examiner's public hearing.²

Technical staff at the Maryland-National Capital Park and Planning Commission ("Staff") has reviewed the petition and recommends denial of the special exception.

II. RELEVANT FACTS AND FINDINGS

A. Subject Property and Neighborhood

The subject property is located at 16201 New Hampshire Avenue, Silver Spring, Maryland, in the northeast quadrant of the intersection of New Hampshire Avenue (MD 650) and Spencerville Road (MD 198). The subject property is approximately 1.25 acres in size and is generally triangular in shape. It is bordered to the northeast by Old Spencerville Road, to the south by Spencerville Road, and to the west by New Hampshire Avenue. The property has

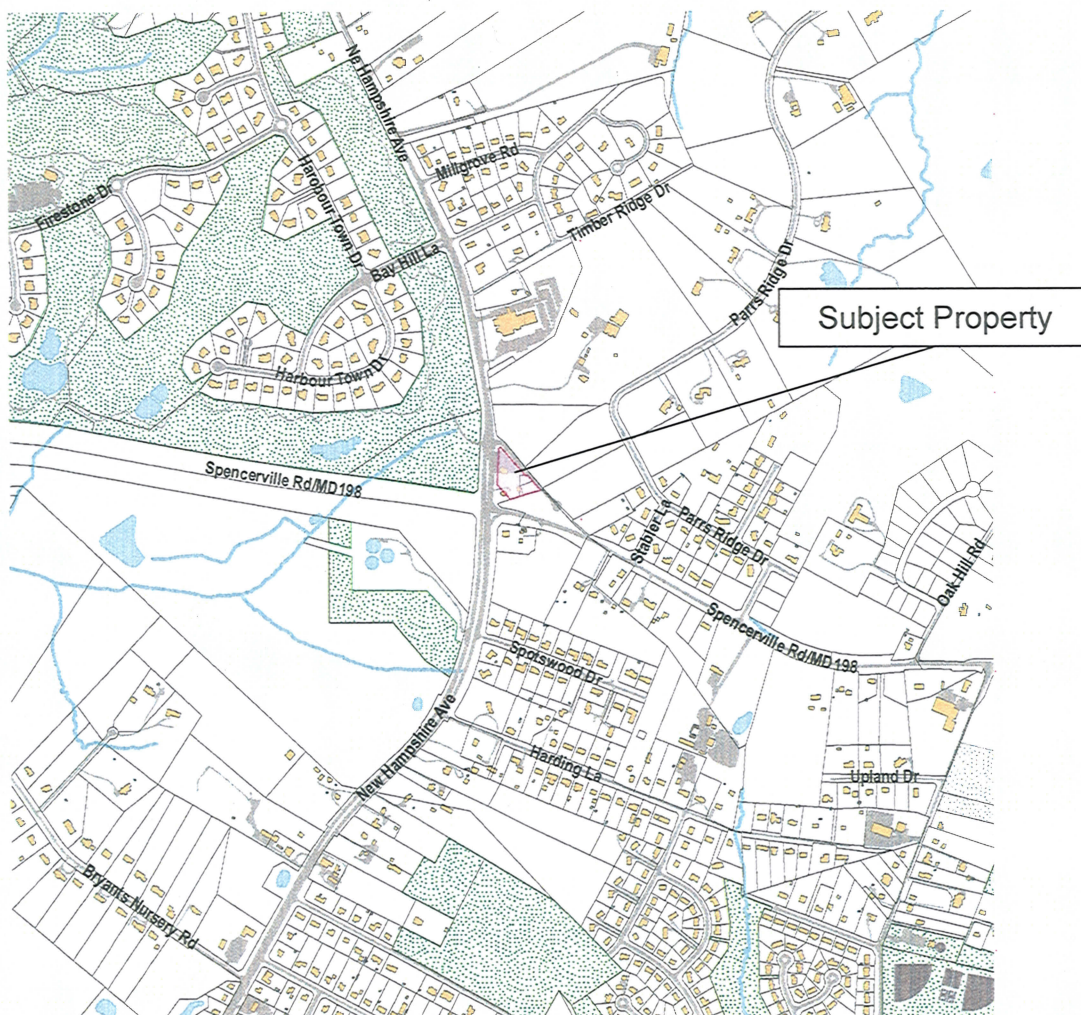
¹ § 59-C-4.2(e)

² § 59-A-4.128.

approximately 300 feet of street frontage along New Hampshire Avenue and nearly 400 feet of frontage along Old Spencerville Road.

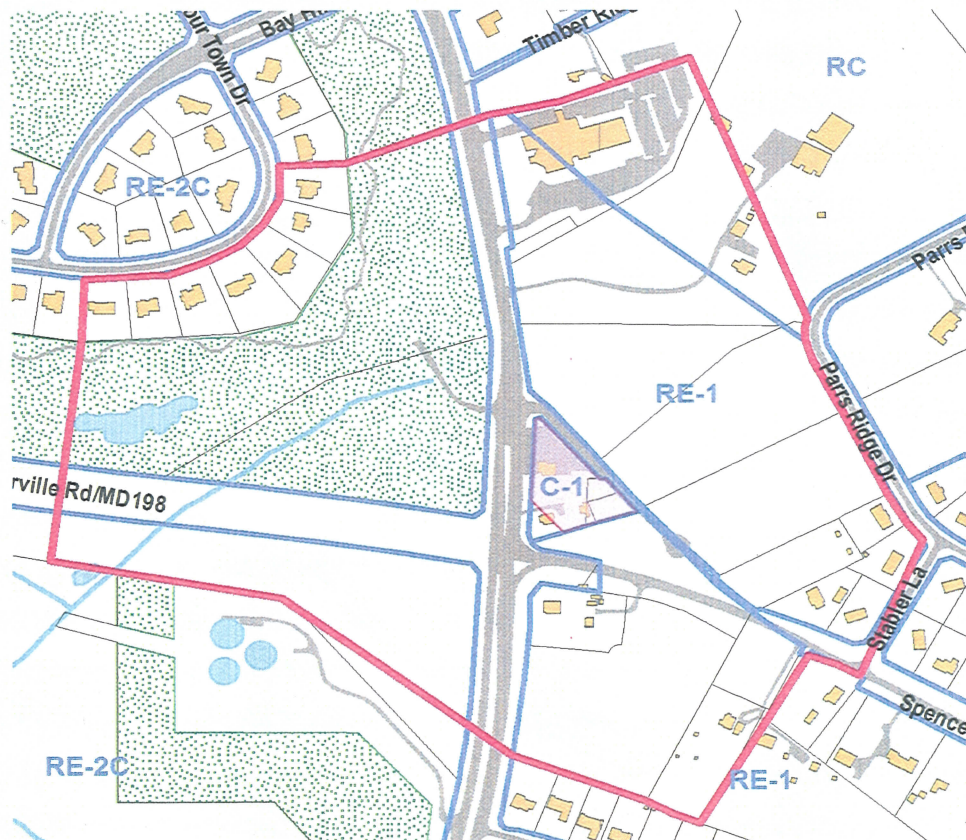
An abandoned 1400 square foot, two-bay filling station currently occupies the subject property. The abandoned filling station was originally constructed in 1964 under Special Exception No. 1660. It is unclear from the record when the existing station was abandoned. Another special exception application, CBA-1660-A filed by Exxon Corporation, was approved on the subject property in 1998 for a filling station plan very similar to the application currently before us. However, the approved special exception was never implemented because of the 1999 merger between Exxon and Mobil Oil and therefore the special exception lapsed. The general location of the subject site is illustrated in the map below.

Vicinity Map



Staff has defined the neighborhood to include all properties within sight of the proposed station as well as peripheral properties that may be subject to noise or glare associated with the proposed use. Although the subject property is zoned C-1, all surrounding properties in the neighborhood are zoned RE-1 or RE-2C, making the area predominantly residential and rural in character. Much of the land immediately surrounding the proposed filling station is vacant or very sparsely populated. The most intense residential use in the vicinity of the proposed station is the golf course community of Hampshire Greens, located slightly to the northwest. The nearest home in the Hampshire Greens community is approximately 900 feet away from the subject site. Ashton is approximately two miles north on New Hampshire Avenue; Cloverly Town Center is approximately one mile south. The neighborhood boundary as defined by Staff is outlined below in red. The only other special exception within the neighborhood as defined is a riding academy located to the north of the subject property that was approved on June 28, 1960.

Neighborhood Outline



B. Proposed Use

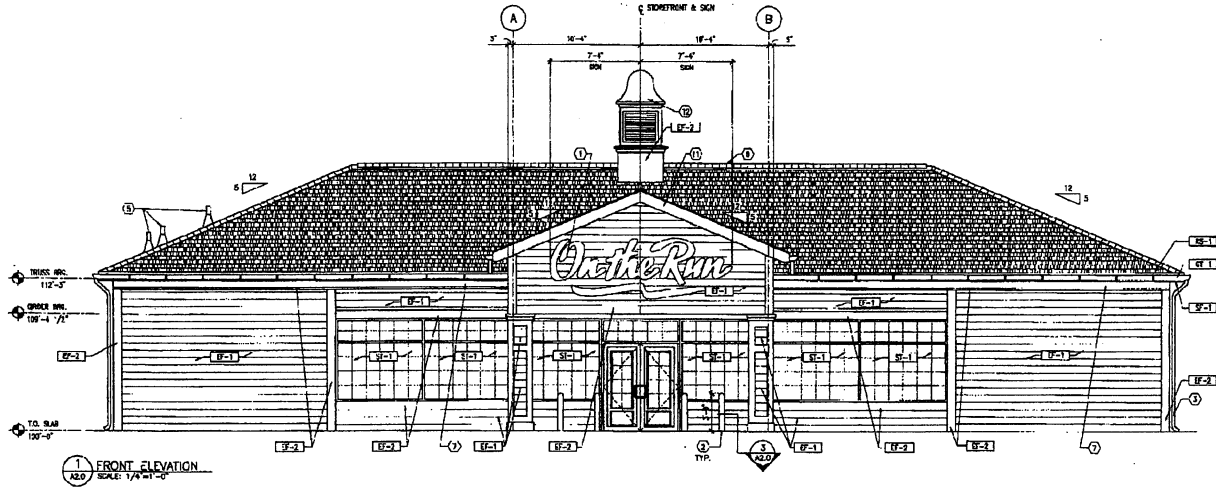
The applicant, ExxonMobil Corporation, proposes to raze the abandoned filling station on the subject property and replace it with a new filling station with an ancillary convenience store and car wash. The applicant is proposing to build the filling station with five double-sided gas pumps (creating a total of 10 fueling positions). Eight filling positions will dispense regular fuel and two will dispense diesel fuel.

The convenience store is proposed as a 3,354 square foot, one-story service building with 1770 square feet of sales area. The products for sale would be those commonly available in other filling station convenience stores, such as motor oil, wiper fluid, and car accessories. Additionally, the store will offer soft drinks, snack food, cigarettes, and news publications. The store will also feature a self-serve hot dog area and coffee bar.

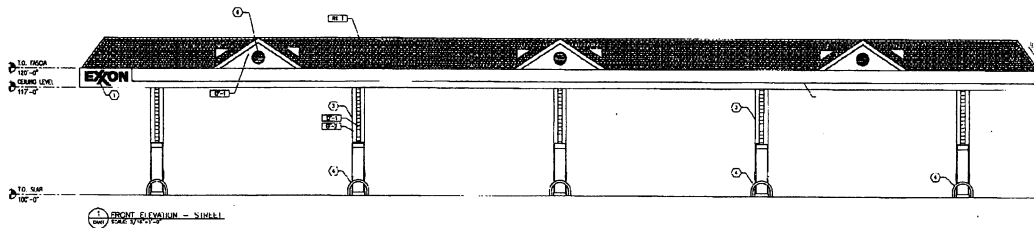
The automatic, single-bay car wash will be housed in an 864 square foot building slightly to the northeast of the convenience store. It is proposed that vehicles will enter the car wash by way of a dedicated car wash lane behind the convenience store so cars in the queue will be less visible to the street.

The applicant has made design modifications to the original submission in an attempt to reflect the area's rural character. The fueling area and convenience store have been reoriented to face the intersection of New Hampshire Avenue and Spencerville Road to minimize the visual impact of the buildings to vehicles traveling along New Hampshire. The convenience store façade is proposed to be constructed with clapboard siding in a tan tone with white trim. The roof is designed as a shingled roof with a copper-capped cupola. Both the canopy and car wash have been designed in a similar fashion with matching materials to complement the convenience store façade and present a more rural character. Various aspects of the design are depicted below.

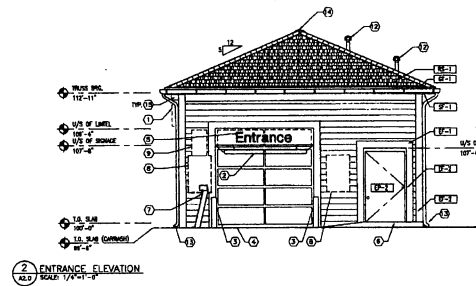
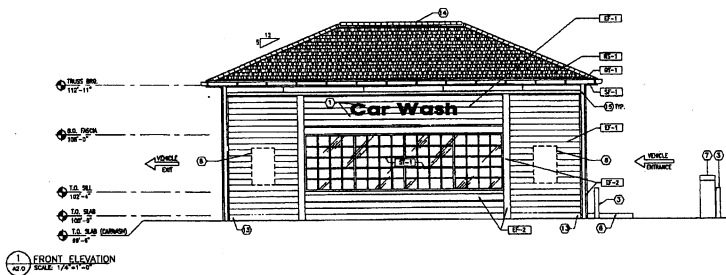
Convenience Store Façade



Gas Pump Canopy



Car Wash Façade



The gas station is proposed to be in operation seven days a week, from 5:00AM until midnight. The car wash hours will be limited to 8:00AM until 9:00PM. Normally three employees will be necessary for the operation of the facility, however, there may be times when four employees are needed on site for specific purposes.

C. Master Plan Compliance

The property is located within the area covered by the 1997 *Approved and Adopted Cloverly Master Plan*. The Cloverly Master Plan divides the planning area into three sections: the Suburban Communities, the Residential Wedge, and the Agricultural Wedge. The subject property lies within the Residential Wedge. Guidance on how this property should be developed is specifically discussed in the Cloverly Master Plan (pages 20 & 21):

Rezone two properties bordered by Old Spencerville Road, New Hampshire Avenue and Spencerville Road Relocated from RE-1 to C-1. Development of the entire C-1 zoned area at this location should be accomplished with the following design guidelines:

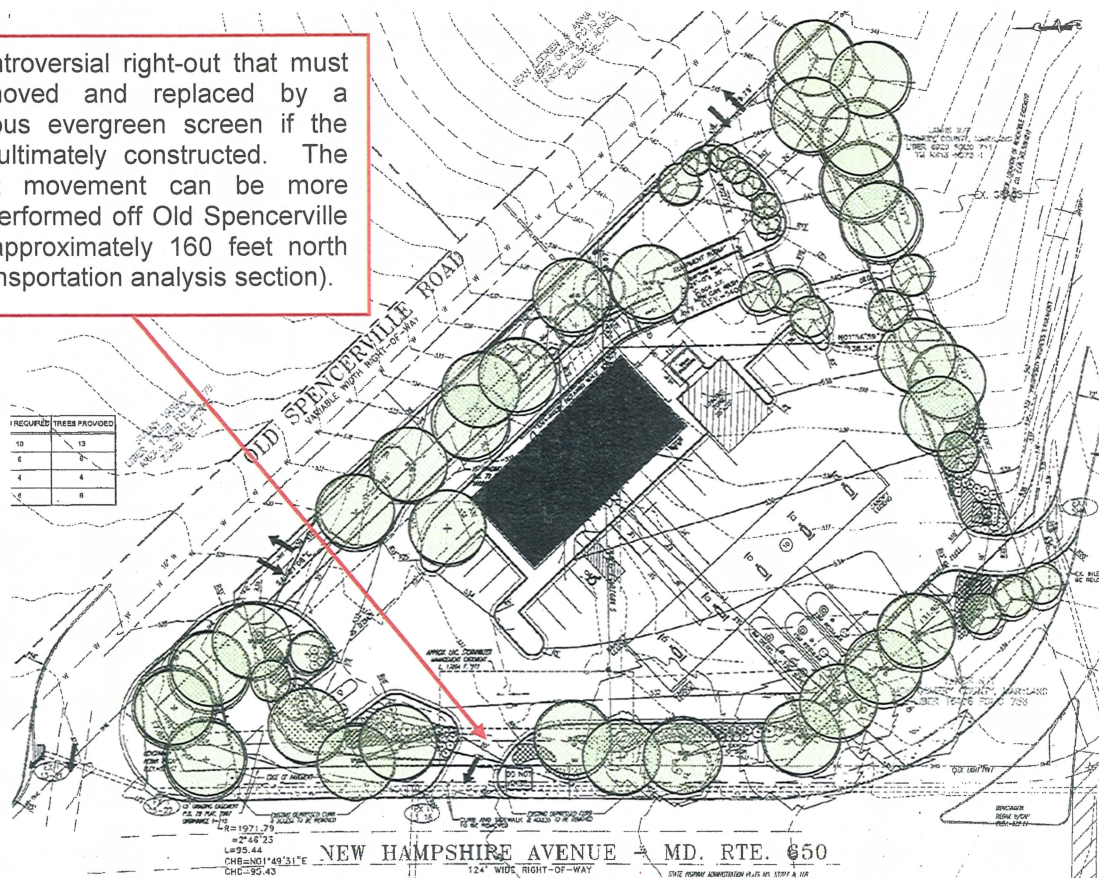
- (1) Commercial buildings should be located in a manner [that] maintains the rural character of New Hampshire Avenue with building setbacks comparable to adjacent properties.
- (2) Driveway entrances shall be minimized in width to maintain a safe and clearly defined edge of pavement along New Hampshire Avenue.
- (3) All proposed landscaping shall enhance and reinforce the rural character of New Hampshire Avenue and Spencerville Road. This shall be accomplished by screening all parking and internal vehicular circulation from the roadway with a low, evergreen hedge. A significant number of deciduous shade trees should be planted around the perimeter of the site to create a natural woodland setting.
- (4) If a gas station is the proposed use for the site, the configuration of the building and canopy should be sited so as to minimize visual impacts from New Hampshire Avenue and Spencerville Road in order to reinforce the rural character of the area.
- (5) Night lighting shall be located predominantly under the canopy to avoid glare and excessive lighting [that] is incompatible with the rural setting.

Community-based Planning Staff has indicated that the applicant's proposal is not in strict compliance with the Master Plan recommendation for this

particular site.³ For the applicant to meet recommendations three and four above, the applicant's proposed landscape plan needs a *continuous* evergreen screen along New Hampshire Avenue. As proposed, the applicant's landscaping along New Hampshire is broken where the right-out only driveway is located. In order for the site layout to come into compliance with the Master Plan, the right-out driveway must be deleted from the site plan⁴ and the evergreen screen, composed of a double row of Cherry Laurels, deciduous shrubs, flowering plants, and an additional shade tree, should be designed to comprise a *continuous* screen along New Hampshire Avenue. The applicant's Landscape Plan is reproduced below.

Landscape Plan

The controversial right-out that must be removed and replaced by a continuous evergreen screen if the site is ultimately constructed. The right-out movement can be more safely performed off Old Spencerville Road, approximately 160 feet north (see transportation analysis section).



³ See Community-based Planning Memorandum at Attachment 4.

⁴ The deletion of the right-out only driveway onto New Hampshire Avenue is also consistent with the recommendation in Transportation Planning's Memorandum at Attachment 6.

D. Transportation Analysis

The applicant's site plan proposes primary access to the filling station by way of two full movement driveways off of Old Spencerville Road. Additionally, an inbound-only driveway is proposed to allow access to the site from Spencerville Road (MD 198) while a right-out only driveway is proposed from the site onto New Hampshire Avenue (MD 650) to provide egress. Staff has received many complaints from the community about the safety of the access points to the site, particularly regarding the right-out only exit onto New Hampshire Avenue.

Because the site sits on the corner of two major roadways, the right-out only onto New Hampshire creates the potential for accidents involving vehicles turning right from Spencerville Road onto New Hampshire Avenue. Vehicles making this movement are likely to be looking to their left as they attempt to merge with oncoming traffic flowing north on New Hampshire. There is also the potential for conflict between vehicles traveling north on New Hampshire that are attempting to turn right into the site via Old Spencerville and vehicles leaving the site using the right-out only.

Allowing the right-out only may cause unnecessary collisions as the same right-out movement can be performed more safely approximately 160 feet north via the Old Spencerville Road exit. Finally, allowing this right-out may promote drivers to attempt an illegal u-turn at the new MD 650 median break as they exit the site. Staff believes the right-out only onto New Hampshire Avenue is unsafe and unnecessary.

Transportation Staff recommends the following conditions on approval if the use is approved:

- At the time of subdivision, the applicant must confirm the center line established on the special exception site plan for the non-master planned Old Spencerville Road in coordination with Transportation Planning Staff, the Montgomery County Department of Public Works and Transportation (DPWT) Staff, and the Maryland State Highway Administration (SHA) Staff.

- At the time of subdivision, in coordination with Transportation Planning Staff, DPWT Staff, and SHA Staff, the applicant must determine the appropriate right-of-way and cross-section for Old Spencerville Road, and must dedicate from the established right-of-way center line a minimum of at least half the road right-of-way as public right-of-way for the entire property frontage.
- At the time of subdivision, consistent with the 1997 Approved and Adopted *Cloverly Master Plan*, the applicant must show right-of-way dedication for MD 650 (minimum of 60 feet from the road right-of-way center line) and MD 198 (minimum of 60 feet from the road right-of-way center line) on the plan.
- At the time of subdivision, in coordination with Transportation Planning Staff, DPWT Staff, and SHA Staff, the applicant must determine the appropriate design for the intersection of MD 650 and Old Spencerville Road, and must show necessary turn lanes into/out of Old Spencerville Road from/to MD 650 and potential northbound U-turn restrictions along MD 650 between MD 198 and Bay Hill Lane. The intersection improvements and other approved turning restrictions must be in place prior to the release of occupancy permits for the proposed special exception use.
- The applicant must improve Old Spencerville Road along the property frontage to the cross-section determined as above within six months of the release of building permits for the proposed special exception use. Given the fact that there currently is no other land use proposed along Old Spencerville Road, the roadway may continue to be temporarily blocked to the east of the eastern driveway to the proposed use.
- The applicant must remove the existing sidewalk along the property frontage and must provide a new five-foot wide sidewalk along MD 650 between MD 198 and Old Spencerville Road. The sidewalk must be offset two feet from the property boundary and must be in place prior to the release of occupancy permits for the proposed special exception use.

E. Development Standards

The proposed filling station complies with all applicable development standards under the C-1 zone except for the building setback standard under §

59-C-4.343(a)(3). The development standards are shown in the table below (with the noncompliant provision highlighted in red).

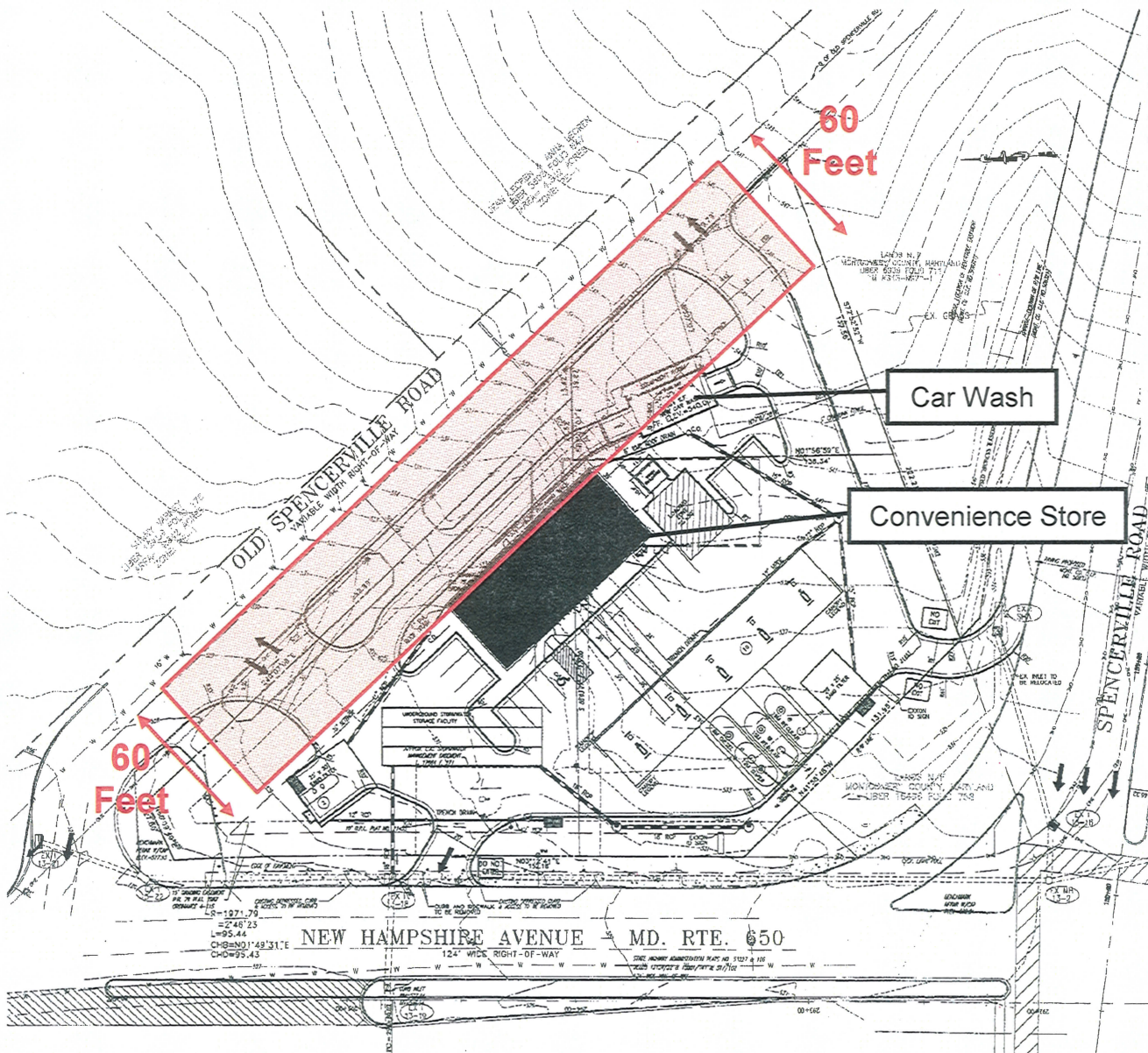
Development Standard	Required	Provided	Applicable Zoning Provision
Maximum Lot Area	15 Acres	1.25 Acres	§ 59-C-4.341
Building Height	30'	26'	§ 59-C-4.342
Building Setback from R.O.W. (New Hampshire Ave)	10'	29'	§ 59-C-4.343(a)(1)
Building Setback from R.O.W. (Old Spencerville Road)	60' from Center Line of Street to all Buildings	41' from Center Line of Street to Car Wash; 57' from Center Line of Street to Convenience Store	§ 59-C-4.343(a)(3)
Side Yard Setback from RE-1 Property to the Southeast ⁵	17'	63'	§ 59-C-1.323(b)(1)
Minimum Green Area Provided	10% of Lot	40% of Lot	§ 59-C-4.344
Parking Setback	35'	35'	§ 59-E-2.81(a)
Required Number of Parking Spaces	22	26	§ 59-E-3.7

Since the proposal fronts on two street right-of-ways (Old Spencerville and New Hampshire), all proposed buildings must be set back from the street as provided in § 59-C-4.343(a). Under this provision, the building setback is listed as 10 feet from the applicable lot line if the street right-of-way is established on a master plan. This is the controlling standard for the building setback from New Hampshire Avenue, since New Hampshire is clearly established in the Cloverly Master Plan. The applicant's proposal meets the required setback from New Hampshire. However, if a street right-of-way line is not established in a master plan, then all proposed buildings must be set back 60 feet from the center line of

⁵ Except in circumstances not relevant here, C-1 property adjoining a residential zone must have a side yard setback not less than that required in the adjoining zone. The adjoining property to the southeast is zoned RE-1, which has a 17 foot side setback requirement.

the applicable street. In the instant case, Old Spencerville Road, the other road adjoining the subject property, does *not* have a right-of-way line shown on the controlling Cloverly Master Plan.⁶ Therefore, the building setback standard from Old Spencerville Road's center line is 60 feet. As provided on the applicant's submitted site plan dated November 8, 2007, two buildings are proposed within 60 feet of Old Spencerville Road's center line (the car wash at only 41 feet, and the convenience store at 57 feet).

Site Plan



⁶ See Transportation Planning Memorandum at Attachment 6.

As shown in the graphic above, the convenience store and car wash are clearly noncompliant with the 60 foot building setback standard measured from the center line of Old Spencerville Road. Both buildings fall within the red zone that visually represents the 60 foot setback.

Staff notified the applicant of their noncompliance with § 59-C-4.343(a). In response, the applicant submitted a memorandum outlining their position that Old Spencerville Road is, in fact, established in the 1997 Cloverly Master Plan and therefore their proposal need only comply with the 10 foot building setback standard.⁷

F. Community Involvement in Petition

There has been a great deal of community interest in this special exception application. A letter written on behalf of the Hampshire Greens Homeowners Association was delivered to Staff voicing concerns with the proposal. These concerns had to do with noise, light, and traffic safety. A copy of the letter is attached to the end of this staff report.⁸ Further, a meeting with Staff and community representatives took place on September 12, 2007.

III. ZONING ORDINANCE ANALYSIS

A. Inherent and Non-inherent Adverse Effects

The standard of evaluation for a special exception use requires consideration of the inherent and non-inherent adverse effects on the location, vicinity, and general neighborhood where the use is proposed.⁹ Inherent adverse effects are the harmful effects caused by the physical and operational characteristics necessarily associated with the particular use irrespective of the

⁷ The applicant's full position on this issue is explained in Attachment 9.

⁸ See Attachment 10.

⁹ § 59-G-1.2.1.

size or scale of operations.¹⁰ Non-inherent adverse effects are any harmful effects caused by physical and operational characteristics not necessarily inherently associated with the particular special exception use, or adverse effects created by unusual characteristics of the site.¹¹

Any analysis of inherent and non-inherent adverse effects must first establish what physical and operational characteristics are necessarily associated with a particular special exception use. As established by precedent, the following are the inherent physical and operational characteristics necessarily associated with an automobile filling station: (1) fuel pumps; (2) a structure providing storage space and shelter for employees; (3) traffic generated by customers, employees, and fuel delivery trucks; (4) potential for queuing vehicles on site; (5) noise associated with the use; (6) signage advertising gas products and prices; (7) outdoor lighting; (8) longer hours of operation than the average business establishment; (9) environmental impacts that may include fumes from idling vehicles and potential spillage of automobile fluids; and (10) underground fuel storage tanks.

Any adverse effects of the proposed automobile filling station that are raised by the above ten (10) characteristics are considered inherent adverse effects. Alone, they are not sufficient to constitute a denial.¹² On the other hand, adverse effects that are raised and are uncharacteristic with the above attributes are considered non-inherent adverse effects, which may be sufficient to result in the denial of the special exception application.¹³

An automobile filling station is defined in the Zoning Ordinance under § 59-A-2.1. This definition does not include any mention of a convenience store being part of a filling station. Although the definition does anticipate a car wash, a car wash is defined as an accessory use and therefore not always associated with a filling station. Thus, Staff considers a convenience store and car wash operation to be non-inherent characteristics of an automobile filling station

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

(although Staff notes that convenience stores and car washes have become common features of modern-day filling stations).¹⁴

In the instant case, although there is a car wash and convenience store proposed in this application, there are no non-inherent adverse effects that would result from the operation of these accessory uses to warrant denial solely on this basis. The convenience store is proposed to be open long hours (5:00AM until Midnight), but not long enough to be considered unreasonable for the use proposed. Additionally, the car wash hours have been limited from 8:00AM until 9:00PM to mitigate any adverse effects on the community. As sited, the car wash would not be substantially visible from New Hampshire or Spencerville Road because of the placement behind the convenience store. Substantial landscaping and a rural-style design have been proposed to further help the convenience store and car wash fit into the rural surroundings.

Staff considers the remaining aspects of the proposal to be inherent characteristics of the use. Although the application is recommended for denial because of noncompliance with a setback standard and potentially unsafe traffic movements from a proposed exit, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an automobile filling station.

B. General Conditions Precedent to Approval of Use

§ 59-G-1.21. General Conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

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

Analysis: An automobile filling station is a permitted use in the C-1 zone.

¹⁴ This analysis acknowledges a recent Hearing Examiner report examining an automobile filling station application. See Board of Appeals Case No. CBA-2740-A, dated August 3, 2007.

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

Analysis: The application fails to satisfy the required setback standard. Under § 59-C-4.343(a)(3) of the Montgomery County Zoning Ordinance, if there is no master plan showing the street right-of-way line, all buildings must be setback 60 feet from the center line of a non-master planned street. Staff has carefully reviewed the applicable master plan and development standards and finds that the right-of-way for Old Spencerville Road is not shown; that 59-C-4.343(a)(3) is the proper building setback standard to apply, and that the center line established by the applicant fails to satisfy the required 60 foot setback requirement.

Further, the applicant's submitted lighting plan ranges from 0.1 to 0.7 footcandles along the property's side and rear property lines that are adjacent to residential zones and is not in strict compliance with § 59-G-1.23(h)(2) and § 59-G-2.06(b)(3).

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

Analysis: The proposal fails to provide adequate landscaping and a continuous evergreen screen along the property's New Hampshire Avenue frontage and is therefore not in strict compliance with the Cloverly Master Plan.

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

Analysis: The filling station would not, by its nature, increase population density in the neighborhood. The filling station has been architecturally designed to blend in with its more rural neighbors, the scale and bulk of the structures would be buffered by the applicant's proposed landscaping, and no similar uses are present in the neighborhood as defined by Staff.

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

Analysis: There is no evidence that the filling station would be detrimental to the use, peaceful enjoyment, or economic value of the surrounding properties or the general neighborhood.

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

Analysis: The application satisfies this standard as the site's design mitigates potential objectionable noises, vibrations, fumes, odors, dust, illumination, glare, and physical activity at the subject site.

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

Analysis: The proposed filling station would not dramatically increase the number of special exceptions in the neighborhood. Although there is one other existing special exception in the neighborhood, the addition of the filling station would not increase the intensity or scope enough to affect the area adversely.

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

Analysis: There is no evidence that the proposed use would adversely affect the health, safety, security, morals, or general welfare of the residents, visitors, or workers in the area.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.
 - (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.
 - (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

Analysis: If the application is approved, the impact of the proposed filling station on public facilities will be evaluated at the preliminary plan stage of review. A

traffic study was required for the filling station application per the *Local Area Transportation Review (LATR) Guidelines* since the filling station is estimated to generate 30 or more peak-hour trips during the typical weekday morning (6:30AM – 9:30AM) and evening (4:00PM – 7:00PM) peak periods.

The consultant for the applicant submitted a traffic study (dated April 3, 2007; Revised July 3, 2007) that determined traffic-related impacts of the proposed use on the nearby roadway intersections during weekday morning and evening peak periods. The traffic study estimated that the proposed special exception use, an automobile filling station with ten pumping stations, a convenience store, and a car wash, will generate approximately 173 total peak-hour trips during the weekday morning peak-period, and 218 total peak-hour trips during the weekday evening peak-period. Transportation Staff's review of the traffic study indicated that it complied with the requirements of the *LATR Guidelines* and the traffic study scope.¹⁵

C. Specific Conditions Precedent to Approval of Use

§ 59-G-2.06. Automobile filling stations.

- (a) An automobile filling station may be permitted, upon a finding, in addition to findings required in division 59-G-1, that:
 - (1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed.

Analysis: There is no evidence showing that the proposed use will constitute a nuisance because of noise, fumes, odors, or physical activity.

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

¹⁵ See Transportation Planning Memorandum at Attachment 6.

Analysis: The proposed right-turn out driveway from the site to New Hampshire Avenue (MD 650) is unnecessary and creates unsafe traffic movements. All traffic movements facilitated by this driveway can be easily accommodated by the Old Spencerville Road connection to New Hampshire, which is located approximately 160 feet north. This proposed exit point could create new conflicts between vehicles exiting the site, vehicles accelerating to precede north on New Hampshire, and vehicles decelerating/weaving to turn right into the site from the Old Spencerville Road access point.

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

Analysis: The proposed filling station would be consistent and compliant with the Cloverly Master Plan if certain design modifications were made to the proposal. Therefore, the proposed station would not affect the logical development of the neighborhood considering the character and density of the area. There are no other filling stations in the neighborhood as defined.

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

Analysis: The proposed filling station abuts a residential zone on the property's southeast property line. This residential zoned land is an undeveloped lot owned by Montgomery County. It is not recommended for reclassification in the Cloverly

Master Plan. Given the applicant's landscaping plan, the filling station would be effectively screened from the abutting residential zone by plantings, trees, and shrubs.

- (2) Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways are prohibited.

Analysis: The submitted plans indicate that no displays or other obstructions would adversely affect visibility at intersections or access driveways.

- (3) Lighting is not to reflect or cause glare into any residential zone.

Analysis: The applicant's submitted lighting plan ranges from 0.1 to 0.7 footcandles along the property's side and rear property lines that are adjacent to residential zones and is not in strict compliance with § 59-G-1.23(h)(2).

- (4) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in section 59-A-2.1, and such driveways shall not exceed 30 feet in width; provided, that in areas where no master plan of highways has been adopted, the street line shall be considered to be at least 40 feet from the center line of any abutting street or highway.

Analysis: The proposed layout satisfies this standard. All ingress and egress driveways to the site are at least 20 feet from the intersections of New Hampshire/Old Spencerville and New Hampshire/Spencerville. The width of the driveways must be determined by the appropriate authority prior to the issuance of building permits.

- (5) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building line; and all service storage or similar activities in connection with such use shall be conducted entirely within the building. There shall be at least 20 feet between driveways on each street, and all driveways shall be perpendicular to the curb or street line.

Analysis: The gasoline pumps and vacuum area are both located at least 10 feet behind the building line. The storage activities associated with the use are to be conducted inside the convenience store building. There is over 20 feet between the various driveways, and all driveways are shown perpendicular to the curb.

- (6) Light automobile repair work may be done at an automobile filling station; provided, that no major repairs, spray paint operation or body or fender repair is permitted.

Analysis: This application does not propose to offer automobile repair work.

- (7) Vehicles shall not be parked so as to overhang the public right-of-way.

Analysis: The site layout does not contain any parking spaces that would allow a vehicle to be parked in a location that overhangs into the public right-of-way.

- (8) In a C-1 zone, an automobile, light truck and light trailer rental, as defined in section 59-G-2.07, and in a C-2 zone, an automobile, truck and trailer rental lot, as defined in section 59-G-2.09, may be permitted as a part of the special exception, subject to the provisions set forth for such uses in this section. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.

Analysis: The applicant is requesting a single-bay car wash as part of this special exception application.

D. Need for the Proposed Use

Under § 59-G-1.24, before granting a special exception for an automobile filling station the Board of Appeals must find that a need exists for the proposed station to serve the population in the general neighborhood considering the availability of similar uses in the area. The applicant presented a written report from Thomas Point Associates, Inc. that demonstrates such a need in this neighborhood. In particular, the report states that the area will experience heavy traffic demands over the next five years, that there are limited alternative modes

of transit in the area, and that the proposed station offers different products and services than the other stations within driving distance to the site. Additionally, the report estimates that the existing stations in the area cannot meet the demand for gasoline as there is a 1.3 million gallon gap in the amount of gas provided to the area. Research & Technology Staff carefully reviewed the submitted report and found that the analysis provides sufficient proof of neighborhood need for the filling station.¹⁶

IV. STAFF RECOMMENDATION

Based on the forgoing analysis, Staff recommends that Petition S-2699, a special exception to permit an automobile filling station in the C-1 zone, located at 16201 New Hampshire Avenue, Silver Spring, Maryland, be denied for the reasons set forth in this report.

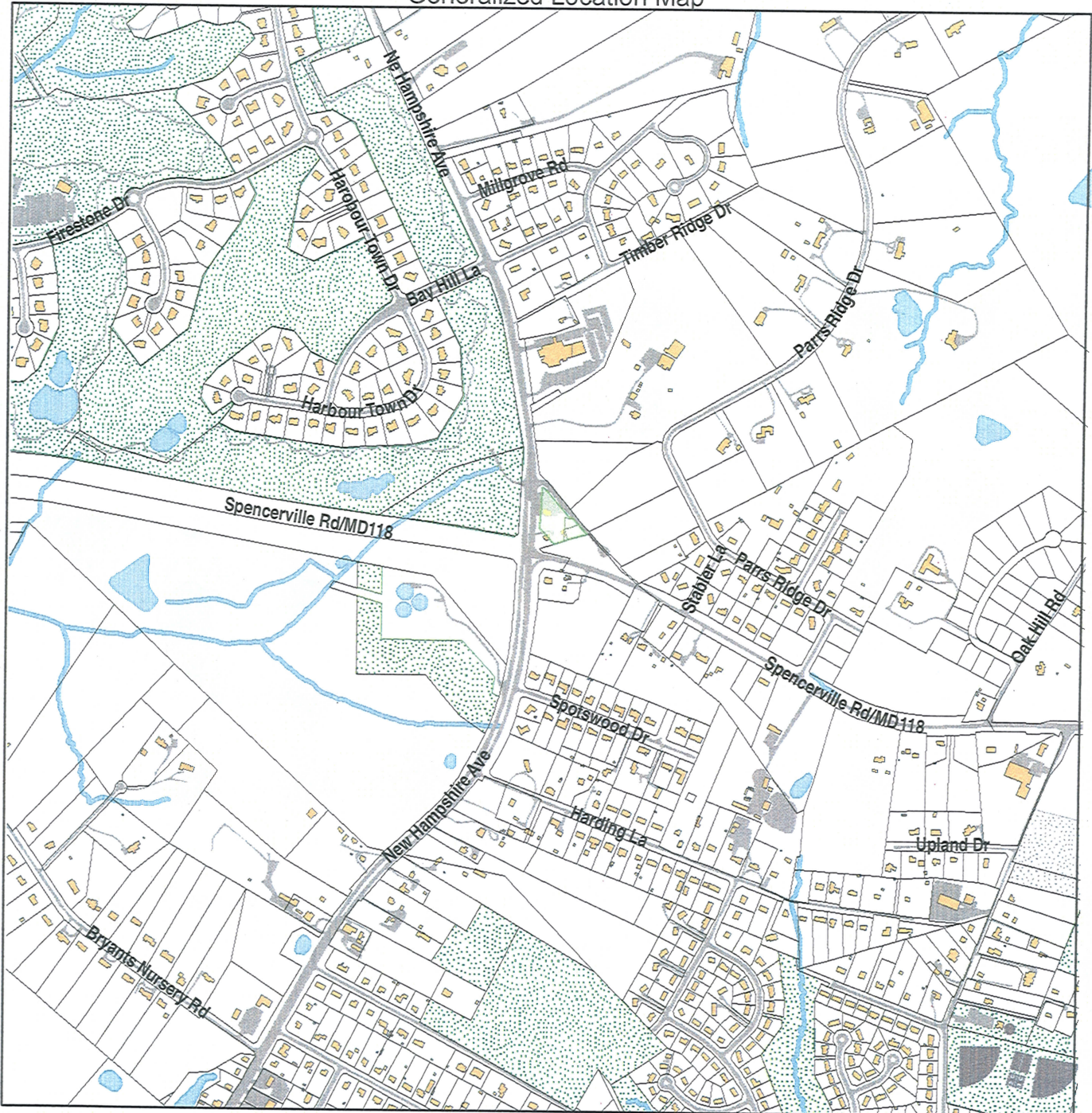
¹⁶ See Research & Technology Internal Staff Memorandum at Attachment 8.

V. ATTACHMENTS

1. Generalized Location Map
2. Zoning Map
3. Site Plan
4. Community-based Planning Internal Memorandum
5. Environmental Planning Internal Memorandum
6. Transportation Planning Internal Memorandum
7. Development Review Internal Memorandum
8. Research & Technology Internal Memorandum
9. Historic Preservation Internal Memorandum
10. Letter from Applicant's Attorney Regarding the Building Setback Issue
11. Correspondence from the Community

ATTACHMENT 1

Generalized Location Map



LEGEND

- S-2699 Site
- Parcel
- Building
- Paved Area
- Lake and Pond
- Stream and River

NOTICE:

The planimetric, property, and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from M-NPPC.

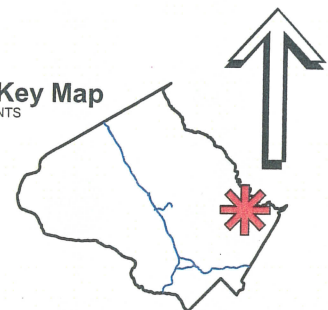
Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended.

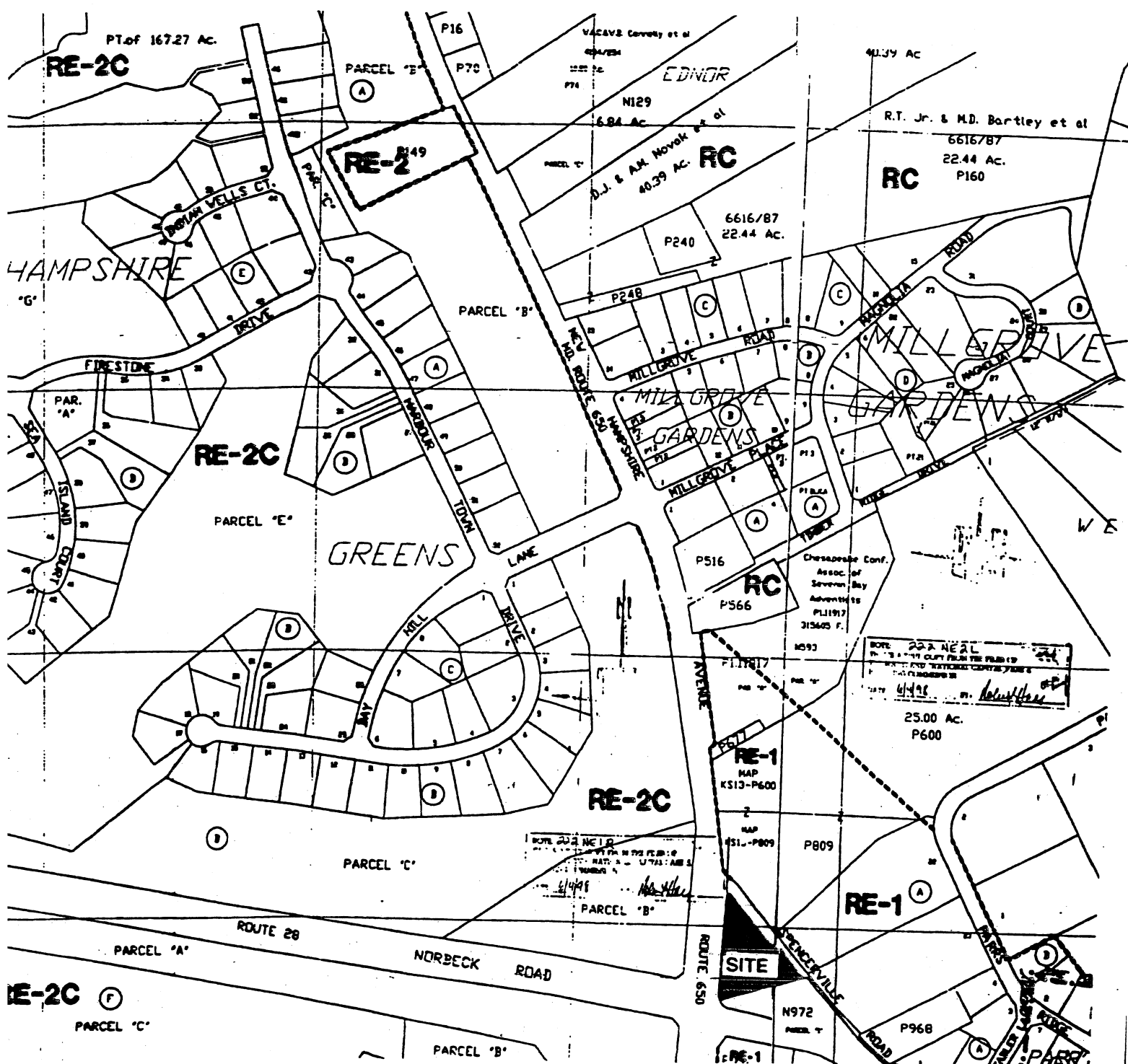
1 inch = 1,000 feet
Address: 16201 New Hampshire Avenue

Key Map

NTS



27







MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

November 13, 2007

MEMORANDUM

TO: Damon Orobona, Development Review Division
VIA: Bill Barron, Community-Based Planning Division
FROM: Calvin Nelson, Jr., Community-Based Planning Division *CN*
SUBJECT: Special Exception Case No. S-2699, ExxonMobil Petition

The triangular-shaped site is located on the corner of Spencerville road (MD 198) and New Hampshire Avenue (MD 650), in the Residential Wedge area of the Cloverly Master Plan. The Planning Board Draft of the Master Plan reconfirmed the C-1 zoning for the abandoned service station located on the northern most parcel at the intersection of New Hampshire Avenue and Spencerville Road. The Planning Board did not recommend a change in zoning for the two adjacent RE-1 zoned parcels to the south and east. The County Council decided to rezone the two RE-1 Zoned parcels, one of which included an existing residence. The Council also recommended five design guidelines to be added to the master plan, with two specific guidelines to be applied if a gas station were to be developed on the entire C-1 zoned property. The Cloverly Master Plan was approved and adopted in July, 1997 and made the following recommendations for the property (S-2699):

"Rezone two properties bordered by Old Spencerville Road, New Hampshire Avenue and Spencerville Road Relocated from RE-1 to C-1. Development of the entire C-1 zoned area at this location should be accomplished with the following design guidelines:

1. Commercial buildings should be located in a manner which maintains the rural character of New Hampshire Avenue with building setbacks comparable to adjacent properties.
2. Driveway entrances shall be minimized in width to maintain a safe and clearly defined edge of pavement along New Hampshire Avenue.
3. All proposed landscaping shall enhance and reinforce the rural character of New Hampshire Avenue and Spencerville Road. This shall be accomplished by screening all parking and internal vehicular circulation from the roadway with a low, evergreen hedge. A significant number of deciduous shade trees should be planted around the perimeter of the site to create a natural woodland setting.
4. If a gas station is the proposed use for the site, the configuration of the building and canopy should be sited so as to minimize impacts from New Hampshire Avenue and Spencerville Road in order to reinforce the rural character of the area.
5. Night lighting shall be located predominately under the canopy to avoid glare and excessive lighting which is incompatible with the rural setting."

To meet recommendations three and four, the proposed landscaping should be revised. The Landscape Plan should show a continuous evergreen screen (a double row of cherry laurel) along the edge of the parking and circulation compound which faces New Hampshire Avenue, including the area between the

two proposed Exxon ID signs. To add variety to the evergreen screen, deciduous shrubs, grasses, and flowering plants are also to be provided in front of the screen. This landscape treatment, and an additional shade tree, is also to be provided within the area where the exit to New Hampshire Avenue is to be eliminated. If these supplemental landscaping treatments are added, the site can meet the intent of the master plan recommendations.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

DATE: September 5, 2007
TO: Damon Orobona
FROM: Marion Clark, Countywide Planning, Environmental 
VIA: Jorge Valladares, P.E., Countywide Planning, Environmental 
SUBJECT: Special Exception 2699 Exxon Mobile Station

Recommendation: Approval

Forest Conservation

This special exception is exempt from Forest Conservation and does not require a Tree Save Plan. There is one significant tree, a White Oak, in good condition, to be removed.

Environmental Guidelines

This property is not located in a Special Protection Area or Primary Management Area. There are no wetlands, streams or floodplains on site.

Water Quality

Northwest Branch watershed is in fair condition and is the largest of three contributing watersheds to the Anacostia watershed (CSPS 1998). The Bryant's Nursery tributary where the subject property is located is currently in excellent condition, but bank instability is pronounced and needs special protection. On site infiltration using bioretention methods should be seriously considered for stormwater management.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

November 19, 2007

MEMORANDUM

TO: Damon B. Orobona, Zoning Analyst/Senior Planner
Development Review Division

VIA: Daniel K. Hardy, Supervisor *DKH*
Transportation Planning

FROM: Cherian Eapen, Planner/Coordinator *CE*
Transportation Planning
301-495-4525

SUBJECT: Special Exception Case No. S-2699
ExxonMobil Automobile Filling Station with Ancillary Convenience Store and Car Wash
Parcels N890, P864, and P918
16201 & 16255 New Hampshire Avenue, Silver Spring
Cloverly Policy Area

This memorandum presents Transportation Planning staff's Adequate Public Facilities (APF) review of the subject special exception petition for an automobile filling station with ten (10) pumping stations, a convenience store (with 1,770 square-feet of sales area), and a single-bay car wash to the northeast corner of New Hampshire Avenue (MD 650) and Spencerville Road (MD 198) in Silver Spring within the Cloverly Policy Area. The property is zoned C-1.

A similar special exception without a car wash was approved on a portion of the current site (Parcel B; Brown's Corner) in 1998 (CBA-1660-A), but was never implemented. An abandoned building currently exists on the property.

On November 13, 2007, the County Council adopted the FY 2007-09 Growth Policy that is applicable to completed subdivision applications filed on or after January 1, 2007. The new Growth Policy requires each subdivision application to pass a new Policy Area Mobility Review (PAMR) test and a more restrictive Local Area Transportation Review (LATR) test. The subject special exception case requires subdivision approval and is located in the Cloverly Policy Area. In FY2008, the subdivision application will not require further study to satisfy PAMR requirements since the Cloverly Policy Area is operating under "acceptable" conditions. Though the FY 2007-09 Growth Policy reduces the LATR congestion standard for intersections in the Cloverly Policy Area to 1,450 Critical Lane Volume (CLV), the analysis contained in the special exception traffic study suggests that the proposed use in all likelihood will pass the LATR test during subdivision.

RECOMMENDATIONS

Transportation Planning staff recommends that the following conditions be part of the transportation-related requirements to grant approval of this special exception request (per site plan dated November 8, 2007):

1. Limit use on the property to an automobile filling station with ten (10) pumping stations, a convenience store (with 1,770 square-feet of sales area), and a single-bay car wash, with no more than seven (7) employees.
2. Limit hours of operation of the automobile filling station and the convenience store from 5:00 a.m. to 12:00 midnight and that of the car wash from 8:00 a.m. to 9:00 p.m.
3. At the time of subdivision, the applicant must confirm the centerline established on the special exception site plan for the non-master-planned Old Spencerville Road in coordination with Transportation Planning staff, the Montgomery County Department of Public Works and Transportation (DPWT) staff, and the Maryland State Highway Administration (SHA) staff.
4. At the time of subdivision, in coordination with Transportation Planning staff, DPWT staff, and SHA staff, the applicant must determine the appropriate right-of-way and cross-section for Old Spencerville Road, and must dedicate from the established right-of-way centerline a minimum of at least half the road right-of-way as public right-of-way for the entire property frontage.
5. The applicant must improve Old Spencerville Road along property frontage to the cross-section as determined above (Recommendation 4) within six months of the release of building permit for the proposed special exception use. Given the fact that there currently is no other land use proposed along Old Spencerville Road, the roadway may continue to be temporarily blocked to the east of the eastern driveway to the proposed use.
6. The applicant must remove the proposed right-turn out driveway from the site to MD 650 from the special exception site plan. (Though this right-turn out driveway was approved by SHA, Transportation Planning staff strongly believes that this driveway is unnecessary, unsafe, and redundant, since a.) The movement facilitated by this driveway is accommodated via Old Spencerville Road, b.) Vehicles exiting the site via this driveway may attempt to make U-turns at the newly constructed MD 650 median break at Old Spencerville Road, and c.) The existing movements could create a new conflict point between MD 198 and Old Spencerville Road between vehicles exiting the site, accelerating from westbound MD 198 to proceed north on MD 650, and vehicles decelerating/weaving to turn right to Old Spencerville Road to proceed to the site).
7. At the time of subdivision, consistent with the 1997 Approved and Adopted *Cloverly Master Plan*, the applicant must show right-of-way dedication for MD 650 (minimum of 60 feet from the road right-of-way centerline) and MD 198 (minimum of 60 feet from the road right-of-way centerline) on the plan.

8. At the time of subdivision, in coordination with Transportation Planning staff, DPWT staff, and SHA staff, the applicant must determine the appropriate design for the intersection of MD 650 and Old Spencerville Road, and must show necessary turn lanes into/out of Old Spencerville Road from/to MD 650 and potential northbound U-turn restrictions along MD 650 between MD 198 and Bay Hill Lane. The intersection improvements and other approved turning restrictions must be in place prior to the release of occupancy permit for the proposed special exception use.
9. The applicant must remove the existing sidewalk along the property frontage and must provide a new five-foot wide sidewalk along MD 650 between MD 198 and Old Spencerville Road. The sidewalk must be offset two feet from the property boundary and must be in place prior to the release of occupancy permit for the proposed special exception use.

DISCUSSION

Site Location, Vehicular Access, and Pedestrian/Bikeway Facilities

The subject special exception use is located within the northeast quadrant of New Hampshire Avenue (MD 650) and Spencerville Road (MD 198) in Silver Spring. The intersection of MD 650 and MD 198 is traffic signal controlled. The proposed use is bounded by Old Spencerville Road along the northeast boundary of the property. Old Spencerville Road (approximately 400 feet north of MD 198) extends southeast from MD 650 towards MD 198, and is a non-master-planned roadway of undesignated functional classification and with variable right-of-way width, under SHA jurisdiction. It ends at a cul-de-sac to the southeast of the site near MD 198. Its approach to MD 650 is STOP sign controlled. The roadway is currently barricaded approximately 300 feet southeast of MD 650.

The special exception site plan proposes primary access to the use from Old Spencerville Road via two full movement driveways. Additionally, an outbound only driveway is proposed from the site to MD 650 and an inbound only driveway is proposed into the site from MD 198, off the deceleration lane that facilitates westbound MD 198 to northbound MD 650 movement.

The automobile filling station and the convenience store are proposed to be open from 5:00 a.m. to 12:00 midnight and the car wash from 8:00 a.m. to 9:00 p.m., seven days a week. The use is proposed to have seven employees who will work in shifts.

MD 650 is a two-lane highway to the north of MD 198 and is a four-lane highway to the south of MD 198. The roadway has a posted speed limit of 45 mph in the vicinity of the site. MD 198, to the east of MD 650 is a two-lane highway with a posted speed limit of 40 mph. Norbeck Road Extended, to the west of MD 650, is a two-lane highway with a posted speed limit of 40 mph. An off-road shared use path exists along the west side of MD 650 to the north towards Ednor Road. An off-road shared use path exists also along the north side of Norbeck Road Extended to the west towards Layhill Road. MD 650 is currently serviced by the Metrobus Route Z2, with stops approximately 500 feet to the south of the site.

Staff finds that the proposed special exception use will not adversely affect area pedestrian/bicyclist accessibility or safety with the recommended replacement of the existing sidewalk along the MD 650 property frontage with a new five-foot wide sidewalk.

Master Plan Roadways and Pedestrian/Bikeway Facilities

The Approved and Adopted 1997 *Cloverly Master Plan* includes the following nearby master-planned roadway, bikeway and pedestrian facilities:

1. New Hampshire Avenue (MD 650), as a two-lane major highway (M-12) with a minimum right-of-way width of 120 feet to the north of Spencerville Road (MD 198) to Ednor Road and with a minimum right-of-way width of 125 feet to the south of MD 198 to Bryant's Nursery Road with a rural streetscape. A Class I shared use path (PB-23) is recommended to the north of MD 198 to Ednor Road, and Class II bike lanes are recommended to the south of MD 198 to the Intercounty Connector (ICC) in the *Cloverly Master Plan* (BL-11 in the 2005 *Countywide Bikeways Functional Master Plan*) for New Hampshire Avenue. The master plan Class I bikeway designation for the section of New Hampshire Avenue between MD 198 and Ednor Road is upgraded to a dual bikeway classification (DB-8) in the *Countywide Bikeways Functional Master Plan*.
2. Norbeck Road Extended, as a two to four-lane divided major highway (M-18), with a minimum right-of-way width of 150 feet between New Hampshire Avenue to the east and Layhill Road (MD 182) to the west. A Class I shared use path (PB-33) is recommended in the master plan for the above section of Norbeck Road Extended (also, SP-21 in the *Countywide Bikeways Functional Master Plan*).
3. Spencerville Road (MD 198), as a four-lane divided major highway (M-76), with a minimum right-of-way width of 120 feet between Thompson Road to the east and New Hampshire Avenue to the west. A Class I shared use path (PB-34) is recommended in the master plan for the above section of Spencerville Road (also, SP-21 in the *Countywide Bikeways Functional Master Plan*).

Staff notes that Old Spencerville Road, along the northeast property boundary, is not a master-planned roadway.

Local Area Transportation Review

A traffic study was required for the subject special exception petition per the *Local Area Transportation Review (LATR) Guidelines* since the proposed use was estimated to generate 30 or more peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods.

The consultant for the applicant submitted a traffic study (dated April 3, 2007; Revised July 3, 2007) that determined traffic-related impacts of the proposed use on the nearby roadway intersections during weekday morning and evening peak periods. Staff review of the traffic study indicated that it complied with the requirements of the 2004 *LATR Guidelines* and the traffic study scope.

The traffic study estimated that the proposed special exception use, an automobile filling station with ten pumping stations, a convenience store, and a car wash, will generate approximately 173 total peak-hour trips during the weekday morning peak-period, and 218 total peak-hour trips during the weekday evening peak-period. A summary of the above is provided in Table 1.

TABLE 1
SUMMARY OF TRIP GENERATION
PROPOSED EXXONMOBIL AUTOMOBILE FILLING STATION

Trip Generation	Morning Peak Hour			Evening Peak Hour		
	In	Out	Total	In	Out	Total
Total Trips – Automobile Filling Station with 10 Pumping Stations (Upcounty station with a convenience store and a car wash)	92	81	173	111	107	218
“Pass-by” Trips (AM – 60%, PM – 50%)	55	49	104	56	53	109
“New” Trips	37	32	69	55	54	109

Source: Wells and Associates, LLC. ExxonMobil Filling Station Traffic Impact Study; April 3, 2007, Revised July 3, 2007.

A summary of the capacity analysis/Critical Lane Volume (CLV) analysis results for the study intersections for the weekday morning and evening peak hours within the respective peak periods from the traffic study is presented in Table 2.

TABLE 2
SUMMARY OF CAPACITY CALCULATIONS
PROPOSED EXXONMOBIL AUTOMOBILE FILLING STATION

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Norwood Rd/Norbeck Rd Extended	1,326	1,148	1,340	1,156	1,345	1,164
MD 650/MD 198/Norbeck Rd Extended	979	1,053	993	1,071	1,007	1,100
MD 198/Good Hope Rd	1,283	1,300	1,298	1,310	1,306	1,324
MD 650/Ednor Rd	1,160	1,186	1,175	1,200	1,184	1,213
MD 650/Old Spencerville Rd	483	404	490	411	563	521
MD 650/Briggs Chaney Rd	843	892	867	908	873	916

Source: Wells and Associates, LLC. ExxonMobil Filling Station Traffic Impact Study; April 3, 2007, Revised July 3, 2007.

FY 2005-07 Congestion Standard for Cloverly Policy Area: 1,475 CLV.

FY 2007-09 Congestion Standard for Cloverly Policy Area: 1,450 CLV.

As shown in Table 2, the weekday morning and evening peak-hour capacity analysis presented in the traffic study indicated that under Total (Build) traffic conditions, CLV at the study intersections

would below the applicable congestion standard. Therefore the application satisfies the LATR requirements of the APF test.

DKH:CE:tc

cc: Shahriar Etemadi
Cathy Conlon
Bill Barron
Jody S. Kline
Nancy Randall
John Borkowski
Shawn Burnett
Greg Leck

mno to do re S-2699.doc



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

Date: September 6, 2007

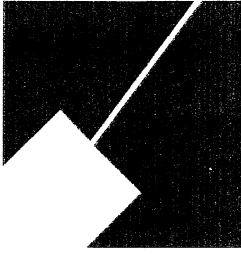
To: Damon Orobona
Community Based Planning Division

From: Taslima Alam 

Subject: Board of Appeals Petition No. S-2699

On May 26, 2000, a record plat was recorded among the land records of Montgomery County known as Brown Corner, Parcel "B". As part of a proposed special exception review, additional parcels (Parcels 864 and 918) were included with this parcel to build a proposed Automobile Filling Station. Parcels 864 and 918 were never subdivided or platted in the land records. In order to combine the unplatted parcels with the platted parcel B and acquire a building permit, the applicant will be required to submit a Preliminary Plan Application and record a plat in the land records pursuant to Chapter 50 of the Subdivision Regulations.

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

August 31, 2007

Memorandum

To: Damon Orobona, Development Review

Via: Roselle George, Research & Technology Center, 301-650-5627

From: Krishna Akundi, Senior Planner

Re: Evaluation of the Proof of Need Analysis for ExxonMobil gas station and convenience store, Special Exception S-2699

Finding: **Applicant shows a need for the proposed 3,250 square foot gas station and convenience store at 16001-16255 New Hampshire Avenue.**

Background

ExxonMobil Corporation proposes an automobile filling station with an ancillary convenience store and car wash on three parcels of land in the Cloverly Planning Area at the intersection of New Hampshire Avenue and Spencerville Road. On May 31, 2007 applicant (ExxonMobil through its legal representative Miller, Miller, & Canby.) submitted a proof of need analysis for review as required by County Zoning Ordinance 59-G-1.25

A special exception may only be granted if 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 concentration 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".

The ordinance gives a strong indication what avenues of analyses an applicant should pursue and what needs to be proved to support a special exception.

(1) Analysis of Market Demand & Proof of Undersupply in County

The applicant must conduct a market demand analysis and prove that there is an undersupply of automobile filling stations to meet Montgomery County demand.

(2) Analysis of Existing Similar Uses & Proof That Neighborhood Will Not Be Saturated

The applicant must complete an inventory of existing and planned automobile filling stations (or gas stations) offering facilities and amenities that would compete with the subject property. Since all gas stations are not designed the same, but vary in terms of the number of pumps, availability of diesel fuel, an ancillary convenience store, or a car wash, the applicant must indicate what product they are proposing to build and how many similar and nearly similar products are within “the same general neighborhood” of the proposed development. Using this information, the applicant must show that an additional facility will not lead to multiplicity or saturation of similar uses.

Proposed – Needs Study

The applicant commissioned Thomas Point Associates Inc. to provide a needs study. The applicant in making its case used the following: field surveys, master plan documents, demographic data, industry data, and a retail opportunity analysis from Claritas—an internationally recognized market analysis research company.

Staff, in conducting its evaluation was guided by the following questions:

1. What is the “general neighborhood”? How has applicant defined the *market area*?
2. What are the *economic and demographic characteristics* of the market area?
3. Has applicant identified the *competition*—all automobile filling stations that are directly and indirectly competitive with the subject property?
4. Does applicant examine *market demand*, i.e., show that there is an undersupply of fuel and convenience stores in the general neighborhood not currently being met by the existing gas station market.

Staff Assessment of Applicant’s Analysis of Existing Similar Uses & Proof That Neighborhood Will Not Be Saturated

Applicant shows that the neighborhood—an area which they define as being within a four to eight minute drive from the intersection of New Hampshire and Spencerville Road—will experience heavy traffic demands over the next five years. Their data show that between 1999 and 2005, average annual daily traffic in the neighborhood’s major cross streets increased 54 percent.

Applicant makes the case that with limited alternative modes of transportation available, automobile traffic in the area will increase. Most of this traffic generation will come from the non-resident worker population and ‘pass-by’ traffic. The applicant suggests that with these long commutes, services available from existing gas stations will not meet the needs of the population.

Applicant claims that there are nine other gas stations in the defined neighborhood that are similar in most respects to the proposed station. In contrast to existing stations, the proposed station offers a car wash. Eight of the nine existing gas stations have an ancillary convenience store: the average size is 338 square feet. The proposed gas station will have a 3,250 square foot convenience store. The proposed station, on the other hand, does not provide service bays while seven of the nine existing stations provide tune-up and other related mechanical services. Nearly all stations provide an equally ample number of pumps. Four of the nine existing stations offer diesel fuel. The proposed station will add to the market area's brand variety: national chains such as Sunoco, British Petroleum, Chevron, Citgo, and Exxon; as well as low cost retail outlets such as Excel, Econoline, Garcia's, and Lowest Price. The comparative analysis, however, does not count four 7-11 stores with gas station pumps.

Applicant makes the technical argument that because of the size, age, and amenities provided by the proposed station, it does not saturate the market.

Staff Assessment of Applicant's Analysis of Market Demand & Proof of Undersupply in County

The applicant's retail opportunity analysis shows that the Cloverly planning area could absorb an additional \$8.4 million in gasoline station with convenience store sales. The Research and Technology Center (RTC) also subscribes to Claritas. RTC staff found that within a 4-minute drive time of the proposed station's location; there is a \$3.0 million sales opportunity for gasoline stations with convenience stores. And, within an eight-minute drive time of the proposed location there is a \$22.0 million opportunity.

Applicant estimates that residents in the Cloverly Planning area demand 6.4 million gallons of gasoline yearly. However, the existing gas stations cannot meet demand—there is a 1.3 million gallon gap. RTC staff accepts that the proposed gas station could capture some of that opportunity.

Staff concludes that the applicant's submitted report provides sufficient proof of need.

Manarolla, Kevin

Subject: Review of 16201 New Hampshire Ave Silver Spring 20905

Upon review of 16201 New Hampshire Ave, Silver Spring, MD 20905, this property has not been designated as historic on either the Master Plan or the Locational Atlas. This will not impact any know historic resources.

Kevin Manarolla
Senior Administrative Assistant
Montgomery County Planning Department
Countywide Planning--Historic Preservation Section
1109 Spring Street, Suite 801
Silver Spring, MD 20910
301-563-3400 phone
301-563-3412 fax

*This is the way to
handle this.
Thank you.
JMC*

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MEMORANDUM

TO: DAMON OROBONA
RALPH WILSON

CC: TYLER PAYTAS
JERRY Eastridge
KEVIN LIANG
JODY KLINE, ESQUIRE

FROM: SUE CARTER

DATE: NOVEMBER 6, 2007

RE: SPECIAL EXCEPTION NO. S-2966,
PETITION OF EXXONMOBIL

Ralph and Damon,

This memo is intended to summarize our position with respect to the setback that is required along the northern end of the subject property abutting Old Spencerville Road.

The subject property is zoned C-1. Section 59-C-4.343 of the Zoning Ordinance provides, in pertinent part, as follows:

All buildings shall be set back from lot lines at least as follows:

- (a) *From any street right-of-way*
 - (1) *If the right-of-way line is established on a master plan – 10 feet. . . .*
 - (3) *If there is no master plan showing the right-of-way line, the setback shall be 60 feet from the center line of the street. . . .*

The issue that you have raised is whether the right-of-way for Old Spencerville Road is established on a master plan. If so, we satisfy the ten (10) foot setback requirement. If there is no master plan showing the right-of-way line and we must set back 60 feet from the center line of the street, such a setback would conflict with proposed structures shown on Exxon's site plan.

In our opinion, the right-of-way for this roadway is established in the current 1997 Cloverly Master Plan and, accordingly, it is our position that a setback of 10 feet from the current property/right-of-way line is the appropriate building setback.

Our reasoning is as follows:

1. The "Land Use and Highway Plans" fold-out map that is part of the 1997 Master Plan identifies Spencerville Road/M-76 as an existing major roadway by the use of a solid black line. That solid black line extends from New Hampshire Avenue in an easterly direction, along the northern boundary of the subject property. There is also a proposed re-alignment of Spencerville Road/M-76 that is shown with a dashed line. The Land Use and Highway Plan identifies this as a "proposed" roadway.

The accompanying text contained in the Master Plan on page 42 identifies M-76 as a major highway and indicates that the section extending from New Hampshire Avenue to Thompson Road has a minimum right-of-way width of 120 feet.

Staff has apparently suggested that this reference to the text describing Route 198 extending from New Hampshire Avenue to Thompson Road refers to the proposed realigned roadway, not the then-existing roadway. In response, I'd point out that while that might be the logical conclusion, the Master Plan text doesn't specifically say that. If one reads both the Ordinance and the Master Plan quite literally, there is no conclusion other than that the right-of-way for Spencerville Road/M-76 (as it is shown in bold) is 120 feet.

2. If logic is going to enter the equation, then it's also appropriate to consider the fact that it would be illogical to require the applicant to set back 60 feet from the centerline of a roadway that has since been realigned. Clearly the intent of Section 59-C-4.343 of the Zoning Ordinance is to avoid the scenario where buildings might encroach into a roadway in the event of future widening. As a practical matter, there is no possibility that the roadway located immediately north of the subject property (now referred to as "Old Spencerville Road") will be widened. The situation in this case is the reverse of what is contemplated in Section 59-C-4.343: the Zoning Ordinance is protecting possible future right-of-way if/when a road is expanded; in the present case, Old Spencerville Road, will not be expanded so there is no need for protection of future ROW.

3. Finally, the record plat of subdivision for the subject property that is recorded at Plat 21453 (a copy of which I will forward to you) shows a 10' building restriction line on the northern end of the subject property, adjacent to what was Spencerville Road (now referred to as "Old Spencerville Road"). The Owner's Certificate makes reference to, among other things, the establishment of the "minimum building setback lines, as shown hereon". This record plat was reviewed and approved by the Maryland-National Capital Park and Planning Commission on June 10, 1999. Presumably, the

Commission had no issue with the location of the ultimate right-of-way for Spencerville Road as no further dedication was required of the applicant. Moreover, the Commission approved the record plat with the 10' building setback that is referenced on that plat. It would be inconsistent and somewhat arbitrary for the Commission to now conclude otherwise.

Please call if you have any questions.

Stephen Szot
Hampshire Greens Homeowners Association
16604 Sea Island Court
Silver Spring, MD 20905
301.421.1493
Support@HampshireGreens.Com
Szot@Verizon.net

June 8, 2007

RE: Case No. S-2699

Dear Mrs. Youla,

In April of this year, you recommended that I should detail the issues the community of Hampshire Greens has concerning the proposed ExxonMobil station at the corner of MD 198 and New Hampshire Ave. The community of Hampshire Greens, comprising of 286 residents, began in 1997 (from the primary entrance off New Hampshire Ave.) and is located approximately one tenth of a mile north of the proposed ExxonMobil site. A unique feature to our community is a partnership with Montgomery County, which owns and operates its public golf course within our community.

Background

In 1999, Exxon proposed a similar plan without a car wash at the same site. During this time the small yet growing number of residents at Hampshire Greens had many concerns regarding the 24 hour operation of the proposed business including size/scope, environmental impact, traffic flow, light and noise pollution, and ascetics to name a few. We thought the proposal was dropped. This year our property management company received a letter from Miller, Miller & Canby representing ExxonMobil in January of this year, notifying us of their intention to move forward with this project.

Presentation of Plans

Our community invited the ExxonMobil representatives to a meeting in early February 12, 2007, during they proclaimed that they had acquired additional property and were requesting our feedback on their expanded plans. Needless to say all of the residents in attendance asked pointed, direct questions about the proposed 10 gas pumps, diesel pumps, 24 hour operation, food service, car wash, in addition to raising all of the same issues mentioned over seven years prior. The February Homeowners Association meeting presentation concluded with the representatives indicating that they would take our comments into consideration.

Three weeks later on March 8, 2007 we (our Property Management Company) received a letter from Miller, Miller & Canby that they have filed for a special exception. The second paragraph from Ms. Jody Kline states that "it did take into account some of the comments made at the February 12th meeting". What troubled us about this letter is that

the enclosed site layout plan that was filed and submitted to the County has a date of January 8, 2007 (architecture drawing date at the bottom right of the page) well prior to our initial discussion on February 7. On March 28, the Hampshire Greens Board of Directors sent a certified letter to Ms. Jody Kline requesting a list of specific design details that were changed or altered based on our discussion as mentioned in their filing notification letter. As of June, we have not yet received a reply. *At this time, it is apparent to us that ExxonMobil is moving ahead without regard to our Community feedback, comments, and concerns about this project.*

Cloverly Master Plan

Page 21-22 of the 1997 Cloverly Master Plan discusses the rezoning of the land in question. We have included an excerpt here for reference:

- 1. Commercial buildings should be located in a manner which maintains the rural character of New Hampshire Avenue with building setbacks comparable to adjacent properties.*
- 2. Driveway entrances shall be minimized in width to maintain a safe and clearly defined edge of pavement along New Hampshire Avenue.*
- 3. All proposed landscaping shall enhance and reinforce the rural character of New Hampshire Avenue and Spencerville Road. This shall be accomplished by screening all parking and internal vehicular circulation from the roadway with a low, evergreen hedge. A significant number of deciduous shade trees should be planted around the perimeter of the site to create a natural woodland setting.*
- 4. If a gas station is the proposed use for the site, the configuration of the building and canopy should be sited so as to minimize visual impacts from New Hampshire Avenue and Spencerville Road in order to reinforce the rural character of the area.*
- 5. Night lighting shall be located predominately under the canopy to avoid glare and excessive lighting which is incompatible with the rural setting.*
- 6. Retain low-density residential and parkland Land Use designations consistent with the 1981 Plan throughout the Agricultural Wedge and the Patuxent watershed.*

It is unfortunate that the authors of the Cloverly Master Plan had anticipated a filling station at this location. (It is acknowledged that there was once a 4 pump Texaco station residing there prior to the redirection of Old Spencerville Road.) Please note the constant use of "rural character of the area" mentioned in the text. It can not be stressed enough that this land zoned C-1 is in the middle of a residential area, north of the Cloverly business district which already has two filling stations.

Detailed Community Issues

The list below itemizes the issues our community has with this proposed project.

Environment:

- Protection of the Patuxent Watershed from potential hazardous waste. The location of this station is adjacent to the Patuxent Watershed. Any and all runoff can potentially contaminate this valuable natural resource.
- ExxonMobil's track record of building new stations in Maryland is poor. The State of Maryland is currently suing ExxonMobil for a tank leak in Jacksonville Maryland where 25,000 gallons of gasoline leaked contaminated the drinking water of neighboring residents.
- Many of the near by communities have well water.
- Concerns with impervious space used versus green space. This parcel of land that is just over an acre would essentially be paved over with very little room for green space.
- There are a number of historical landmarks in the area that would be negatively impacted by an accident or fuel spill in the area. In addition, a once operational child day care center existed across the street from this proposed facility. The possibility of this existing facility reopening to the public for daycare must be taken into account.

Size and Scope of Proposed Project:

- The proposed filling station, food mart, and car wash is more than twice the size of the existing filling stations located three tenths of a mile away in the Cloverly business district.
- As a Community we feel that there 3 business being proposed at this location: a filling station serving both gas and diesel, a food mart, and a car wash service. Each "business" needs to be closely evaluated as to its impact to the environment, surrounding communities, traffic patterns, light, noise, etc. Lumping them into one "business" is not acceptable.
- All of the existing filling stations in the Cloverly business district close by 10:00 p.m. ExxonMobils proposal is for 24-hour operation in a residential area. This is not acceptable to a residential community.
- The largest existing filling station in the Cloverly business district, the Citgo, has 8 pumps. ExxonMobil's proposed 10 pumps plus diesel pumps located in a residential area is excessive.
- We are concerned about the additional light, smell, and noise pollution this station would bring to our community. Several of our residents are located across from this station. The topology of the land of the proposed site (sloping downward towards New Hampshire Ave.) exposes all of its facilities to our community. No amount of street trees will block its impact to our residents.
- Our community is fearful that the existing plans for the ExxonMobil filling station (including the sale of diesel), food mart, and car wash, will attract more trucks along the rural roads of MD 198 and the Norbeck Connector. We feel that the proposed plans better fit a location along the proposed ICC rather than a two lane rural road.



- The proposed plan is not consistent or in compliance with the Cloverly Master Plan. From its proposed size, number of businesses (filling, food, car wash) this project in no way conforms to the words or “sprit” of the Cloverly Master Plan in retaining a rural character of the area.
- The Safeway in Cloverly last year lost an effort to sell gas on their property. Our Community that was in favor of Safeway’s proposal feels that it would be hypocritical to deny an existing business located in the central business district this service while approving a vastly larger scaled filling station in a residential area.
- Is the number of “special exceptions” already existing in the Cloverly area meet or exceeded the allotment for the area? After all the rural area already has two filling stations and ended up denying Safeway permission to construct a gas station let alone ExxonMobil’s proposed large scale car wash and food mart.
- ExxonMobil’s proposed plan goes against the County’s General Plan for Eastern Montgomery County in its efforts to retain the rural character of the area.

Traffic, Entrance, and Exit Concerns

- The entrance and exit that would exist in the merge/acceleration lane when traveling north on New Hampshire Ave. would be extremely dangerous. The intersection of MD 198 and New Hampshire Ave. is already accident prone and would be far worse for those merging north on New Hampshire Ave. who would need to be on alert for traffic on the right and left of the acceleration lane. This is compounded with the consolidation of lanes from 2 to 1 at the same location.
- Those exiting the proposed filling station have no legal choice but to exit north on New Hampshire Ave. A double striped yellow divider exists north of the MD 198 / New Hampshire Ave. intersection. Any vehicle that was originally heading east or west on the Norbeck Connector, east or west on MD 198, and south on New Hampshire Ave. would need to make a u-turn somewhere north of the ExxonMobil station. Unfortunately for our community of Hampshire Greens, located one tenth of a mile north of the proposed filling station site, we are the first opportunity for ExxonMobil patrons to perform a u-turn. This being our main entrance already is used by residents and patrons of the public golf course has a divided entrance forcing cars and trucks wishing to perform a u-turn to enter into Hampshire Greens, right besides our children’s playground, tennis courts, and gazebo. It is unacceptable to use our residential community as a means to redirect patrons of this facility.
- It is apparent that with the one entrance and exit to this facility that drivers will attempt to illegally cross the north bound lane of New Hampshire Ave. in an attempt to return directly to the southbound lane. Again, the existing intersection of MD 198 / New Hampshire Ave. already has a high frequency of accidents. The only way to prevent patrons exiting the filling station, illegally crossing the striped yellow lines would to have the State extend the existing hard medium at the intersection. Unfortunately, this would increase the number of vehicles using our development as a u-turn. Either way you look at it, the existing layout/design negatively affects our Community and others (the horse farm, and Spencerville Church) to defacto turn-a-bouts.

- The ExxonMobil facility if approved would be given exclusive use to Old Spencerville Road, a County (e.g. taxpayer) maintained road. This is not fair to the tax payers of the County and State. Having 18 wheelers and other trucks parked idle there in a what ends up being a private driveway does not belong in our neighborhood.

Conclusion

Our Community, along with others in the area who have similar thoughts and feelings, will be present at the Board of Appeals to voice our concerns about this project. Members and concerned residents of the Hampshire Greens Homeowners Association would like to meet with you (Park and Planning) including all members that provided research and insight into the review of this project to discuss it in more detail. We are passionate about keeping all rural aspects of our community as outlined in our County Master and General Plans. Thank you for your time and consideration and we hope to meet with you in the near future. Feel free to contact me using the information located on the first page.

Stephen Szot
Secretary, Hampshire Greens Board of Directors

