



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

MCPB
Item # 7
4/15/10

DATE: April 6, 2010
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review
Ralph Wilson, Zoning Supervisor
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To allow an automobile filling station as a permitted use in the C-2 zone if located in a regional shopping center.

TEXT AMENDMENT: No. 10-04
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: The District Council at the Request of the County Executive
INTRODUCED DATE: March 16, 2010
PLANNING BOARD REVIEW: April 15, 2010
PUBLIC HEARING: April 20, 2010; 7:30 pm

STAFF RECOMMENDATION: Denial. There is no apparent rational basis for permitting an automobile service station by right in C-2 zoned regional shopping centers. The special exception process serves to ensure that filling station operations will not be detrimental to surrounding properties and the general public. Staff does not support establishing a lesser standard for filling stations located in a C-2 zoned regional shopping center. The incidence of automobile filling stations within ½ mile of the County's existing regional shopping centers is shown on the attached map.

BACKGROUND/ ANALYSIS

Currently, an automobile filling station is allowed in the C-2 Zone (and four other commercial zones) only through approval of a special exception application by the Board of Appeals. The subject ZTA, introduced at the request of the County Executive, would allow an automobile filling station as a permitted use in the C-2 zone if located in a regional shopping center. According to the County Executive, the Zoning Text Amendment will: allow regional shopping centers to better meet the needs of their customers by enabling them to provide a broader range of services on site; stimulate the revitalization of shopping centers that are located in the C-2 zone; and encourage additional capital investment in the County's shopping malls. Currently, there are three regional shopping centers located in the C-2 zone: Westfield Wheaton Shopping Center;

Westfield Montgomery Mall; and White Flint Mall. The County Executive believes there would be only minimal impact on the County's overall land-use policies.

The text amendment as proposed by the County Executive is as follows:

59-C-4.2. Land uses.

* * *

-Permitted Uses. Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

-Special Exception Uses. Uses designated by the letters "SE" may be authorized as special exceptions under article 59-G.

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
* * *												
(e) Services:												
Ambulance or rescue squads, privately supported, nonprofit.	P	P	SE		P	P	P	P	P			
Ambulance or rescue squads, publicly supported.	P	P	P		P	P	P	P	P	P		
Animal boarding place.					SE		P ²¹					
Appliance repair shops.					P	P	P	SE		P		
Automobile filling stations. ⁴¹					SE	P*/S E	SE	SE		SE		
* * *												

* When located in a regional shopping center.

As shown above, an automobile filling station is allowed in the commercial zones (C-1, C-2, C-3, C-4 and C-6 zones) only by special exception. This is also the case in most zones where an automobile filling station may be established. The only exceptions are in the RMX and TMX Zones, where an automobile filling station is permitted by right. Site plan and project plan reviews and other protections exist and provide a degree of regulations in the RMX and TMX zones.

Impacted C-2 Zone Locations in the County

ZTA 10-04, if approved, would have immediate application at Westfield Wheaton Shopping Center; Westfield Montgomery Mall; and White Flint Mall. The White Flint Mall is located within the White Flint Sector Plan where, under the recently approved sector plan, the shopping mall would be rezoned from the C-2 zone to the newly adopted CR zone. The SMA is anticipated to be considered by the Council sometime in May. Automobile filling stations are allowed in the CR zone only by special exception.

In the case of Westfield Wheaton and Westfield Montgomery, both are, at some boundary points, either adjacent to or confronting residentially zoned property (see Attachment 3). Public input in the facility design and layout process traditionally has been paramount, particularly when an automobile filling station is proposed in the vicinity of residential property. Under the ZTA, the potential physical, environment, and operational impacts associated with an automobile filling station and their relationship to the neighboring residential communities would go unexamined. Below staff explores this question through a discussion of the special exception process and how it compares to by-right development.

Special Exception Provisions

Inherent/Non-inherent Effects

The standard of evaluation for a special exception requires consideration of the inherent and non-inherent adverse effects on the nearby properties and general neighborhood where the use is proposed. Inherent adverse effects are the harmful effects caused by the physical and operational characteristics necessarily associated with the particular use irrespective of the size or scale of operations. 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.

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 previous automobile filling station cases, the inherent physical and operational characteristics necessarily associated with an

automobile filling station include: (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 a proposed automobile filling station that result from the above ten characteristics are considered inherent adverse effects. Alone, inherent adverse effects are not sufficient to constitute a denial. On the other hand, adverse effects that are not characteristic of an automobile filling station use, or inherent effects that are proliferated due to distinctive site characteristics, are considered non-inherent adverse effects, which may be sufficient to result in the denial of the special exception application.

As a permitted use, an automobile filling station would not be subject to an analysis of the inherent/non-inherent adverse impacts of the use on a particular site.

General Conditions of Approval for Special Exceptions/Specific SE Standards and Requirements

An applicant for a special exception must demonstrate that the general and specific standards are satisfied. These standards include: minimum setback requirements for gas pumps and queuing of vehicles; maintaining harmony with the general character of the adjacent neighborhoods through consideration of design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions; and establishing lighting and noise abatements measurements.

In cases where an automobile filling station becomes a by-right use, although the County and State enforce regulations pertaining to ingress/egress, fumes from pumps, underground storage tanks and stormwater management, there is no authority designated to these agencies to help mitigate impacts concerning building/gas pump location and overall site design. Further, public input in the facility design and layout process typically has been paramount, particularly when an automobile filling station is proposed in the vicinity of residential property.

Neighborhood Need

Under § 59-G-1.24, in addition to the findings and requirements of Article 59-G, an automobile filling station may only 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 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.

Without a need requirement, as would be the case for a by-right use, there would not be any analysis to determine whether another filling station could be supported.

Attachment 5 depicts the number of gas stations within a half mile and one mile of the CBD in Wheaton, Silver Spring and Bethesda. The maps also depict the number of stations within a half mile and one mile of Montgomery Mall. In Wheaton there are six stations within a half mile of the CBD and approximately nine more gas stations within a mile of the CBD. In Silver Spring there are five stations within a half mile of the CBD and approximately five more gas stations within a mile of the CBD. In Bethesda there are five stations within a half mile of the CBD and approximately nine more gas stations within a mile of the CBD. There are two gas stations within a half mile of Montgomery Mall and one more station approximately a mile from the mall.

RECOMMENDATION

Based on the analysis above, Staff recommends denial of the proposed text amendment to allow an automobile filling station as a permitted use in the C-2 zone if located in a regional shopping center.

Attachment 1 depicts the text amendment as introduced.

GR

Attachments

1. Zoning Text Amendment 10-04
2. Excerpt of Special Exception General Conditions & Specific Standards and requirements for Automobile filling Stations
3. Map Depicting affected C-2 Zone Locations in the County (Wheaton Regional Mall site)
4. Map Depicting affected C-2 Zone Locations in the County (Montgomery Mall site)
5. Maps of Existing Gas Stations near County CBDs and near Montgomery Mall

ATTACHMENT 1

Zoning Text Amendment No: 10-04
Concerning: C-2 Zone – Automobile
Filling Stations
Draft No. & Date: 1 – 3/15/10
Introduced: March 16, 2010
Public Hearing:
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: The District Council at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow automobile filling stations located in a regional shopping center as a permitted use in the C-2 zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-4 COMMERCIAL ZONES
Section 59-C-4.2 Land Uses

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-C-4 is amended as follows:**

2 **DIVISION 59-C-4. COMMERCIAL ZONES.**

3 * * *

4 Sec. 59-C-4.2. Land uses.

5 No use is allowed except as indicated in the following table:

6 **-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the zones
7 indicated, subject to all applicable regulations.

8 **-Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special
9 exceptions under article 59-G.

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Countr y Inn
* * *												
(e) Services:												
Ambulance or rescue squads, privately supported, nonprofit.	P	P	SE		P	P	P	P	P			
Ambulance or rescue squads, publicly supported.	P	P	P		P	P	P	P	P	P		
Animal boarding place.					SE		P ²¹					
Appliance repair shops.					P	P	P	SE		P		
Automobile filling stations. ⁴¹					SE	<u>P*/S</u> E	SE	SE		SE		
* * *												

10

11 * When located in a regional shopping center.

12 * * *

13

14 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
15 date of Council adoption.

16 This is a correct copy of Council action.

17

18 _____

19 Linda M. Lauer, Clerk of the Council

§ 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.
 - (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.
 - (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.
 - (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.
 - (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.
 - (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.
 - (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area,

ATTACHMENT 2

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.

- (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.
- (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.

§ 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.
- (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.
- (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.

(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, slightly, solid fence, not less than 5 feet in height,

ATTACHMENT 2

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.

- (2) Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways are prohibited.
- (3) Lighting is not to reflect or cause glare into any residential zone.
- (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.
- (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.
- (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.
- (7) Vehicles shall not be parked so as to overhang 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.

ATTACHMENT 3

General Location Map



LEGEND

-  Zone
-  Parcel
-  WSSC Map Grid

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 = 500 feet
Address: Veirs Mill Road and Georgia Avenue

Key Map



ATTACHMENT 4

General Location Map



LEGEND

-  Zone
-  Parcel
-  WSSC Map Grid

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 = 500 feet

Address: Democracy Blvd @ I-270



ATTACHMENT 5

GASOLINE STATIONS in Montgomery County and Central Business Districts

	Within CBD	0.5 mile	1.0 mile	Total
	Station	Station	Station	Station
<u>Wheaton CBD</u>				
ABI/Reference USA	5	0	9	14
<u>Silver Spring CBD</u>				
ABI/Reference USA	5	0	5	10
<u>Bethesda CBD</u>				
ABI/Reference USA	5	0	9	14
<u>Montgomery Mall</u>				
ABI/Reference USA			2	2
<u>Montgomery County</u>				
ABI/Reference USA				190

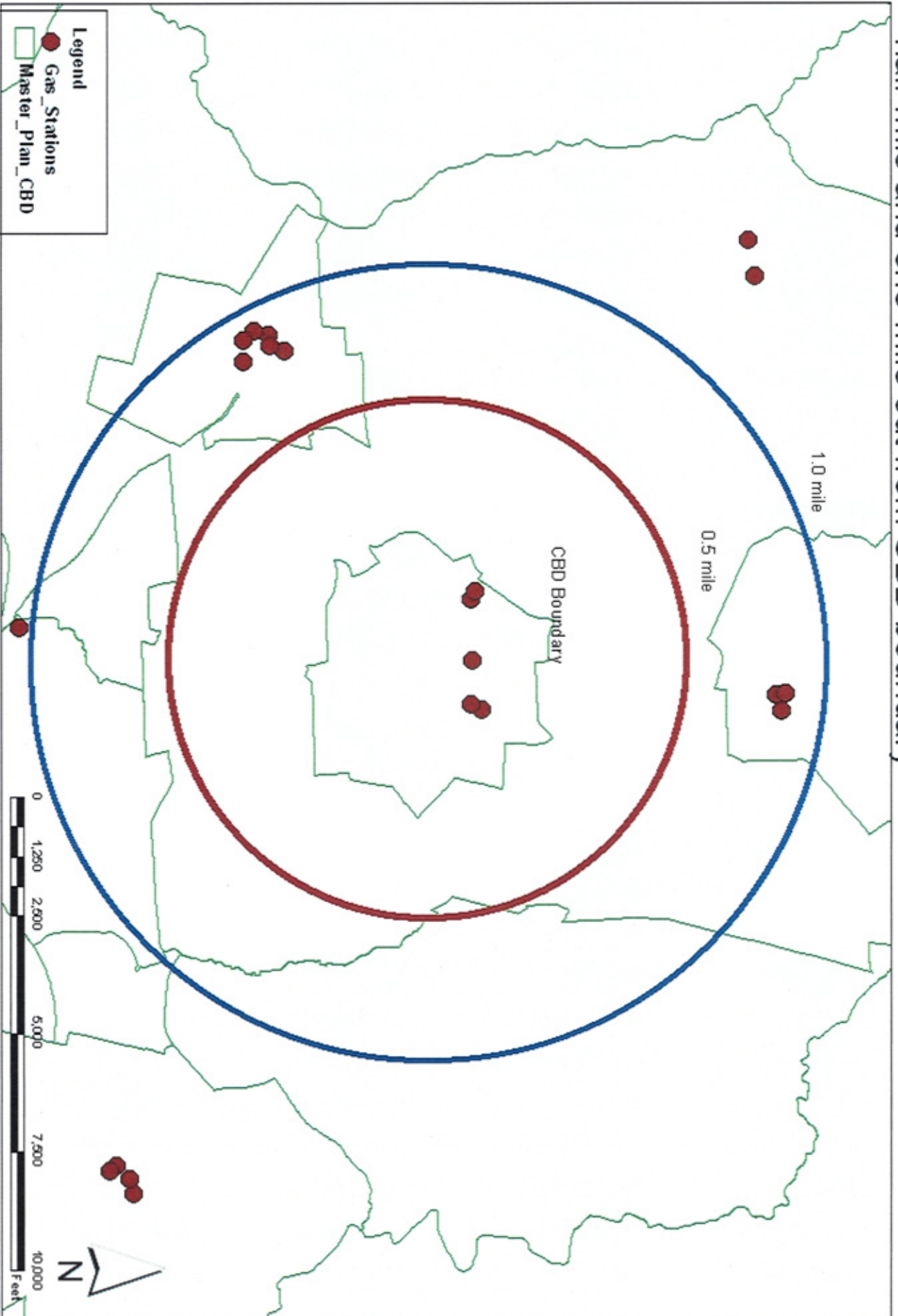
Source: 2009 ReferenceUSA Business Database

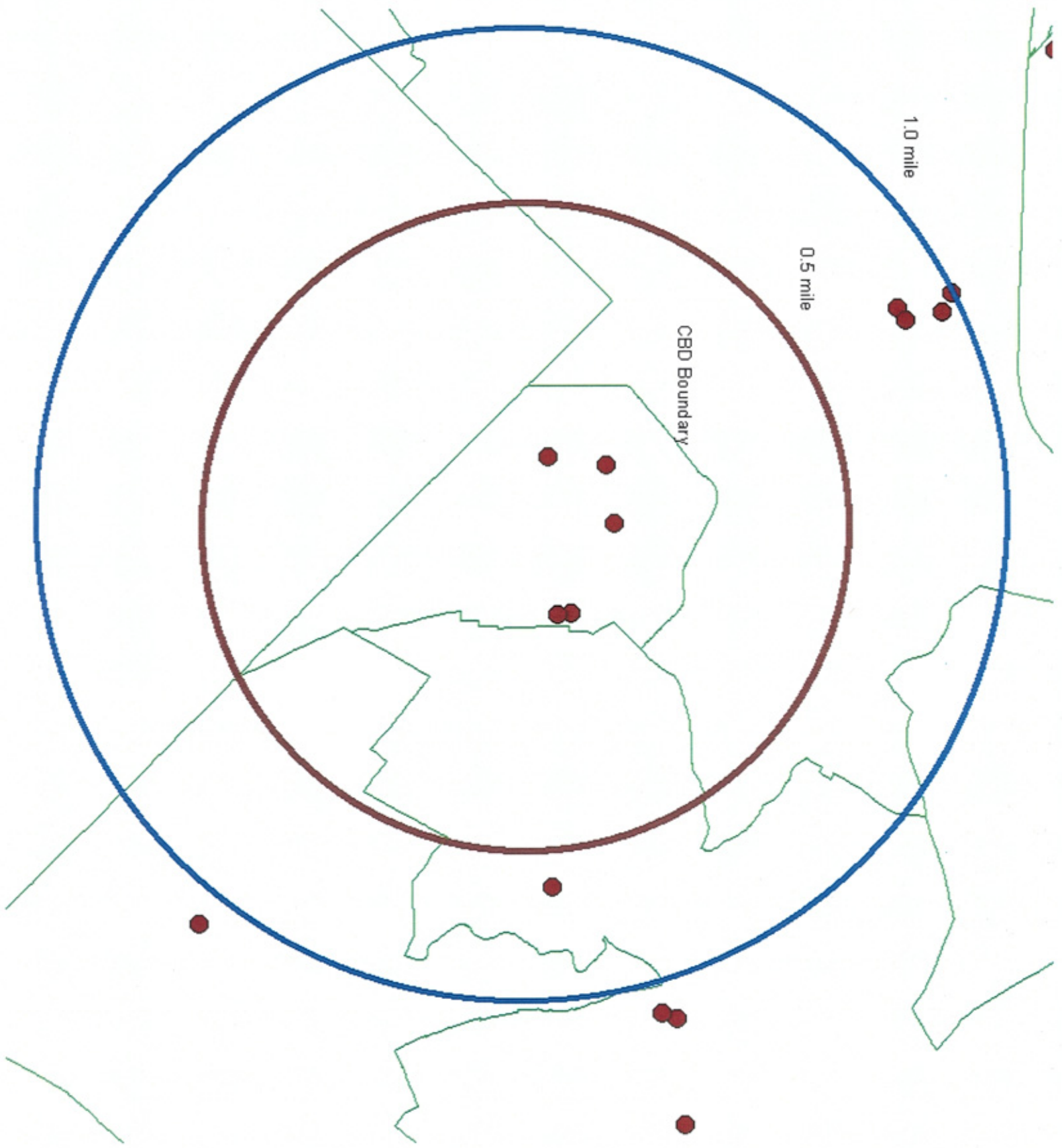
Note: The ReferenceUSA business database counts the number of business establishments in a specific geography based on that establishment's industrial classification or NAICS code. The NAICS code for gas stations is 4771.

Station	Address	Market	Within CBD		
			Boundary	0.5 mile of Boundary	1.0 mile of Boundary
Montgomery Mall Shell	10211 Westlake Dr	Mall		X	
Montgomery Mall Exxon	10201 Westlake Dr	Mall		X	
Exxon	7100 Wisconsin	Bethesda CBD	X		
Chevron	768 Old Georgetown Rd	Bethesda CBD	X		
Amoco	5001 Bradley	Bethesda CBD	X		
Texaco	8101 Wisconsin	Bethesda CBD	X		
E.C. Enterprise	8240 Wisconsin	Bethesda CBD			X
River Road Amoco	5054 River Rd	Bethesda CBD			X
Chevy Chase Citgo	8505 Connecticut Ave	Bethesda CBD			X
Westbard Citgo	5471 Westbard Ave	Bethesda CBD			X
Kenwood Shell	5151 River Rd	Bethesda CBD			X
River Road Mobil Auto Repair	5201 River Rd	Bethesda CBD			X
Westbard Texaco	5110 River Rd	Bethesda CBD			X
River Road Exxon	5143 River Rd	Bethesda CBD			X
Lake Amoco BP	8550 Connecticut Ave	Bethesda CBD			X
Armans Chevy Chase Svc Ctr	8500 Connecticut Ave	Bethesda CBD			X
Silver Spring Metro Exxon	8384 Colesville Rd	Silver Spring CBD	X		
Fenton Citgo	8333 Fenton St	Silver Spring CBD	X		
Pak Sunoco	8552 2nd Ave	Silver Spring CBD	X		
Silver Spring Texaco	8600 Georgia Ave	Silver Spring CBD	X		
Fenton Street Exxon	8301 Fenton St	Silver Spring CBD			X
Beltway Shell Auto Care	9510 Georgia Ave	Silver Spring CBD			X
Community Exxon	9336 Georgia Ave	Silver Spring CBD			X
Beltway Chevron	9475 Georgia Ave	Silver Spring CBD			X
Casa Blanca Chevron	8225 Piney Branch Rd	Silver Spring CBD			X
Montgomery Hill Exxon	9331 Georgia Ave	Silver Spring CBD			X
Spaid's Sunoco Svc	11249 Veirs Mill Rd	Wheaton CBD	X		
Lee's Auto Care	2204 University Blvd W	Wheaton CBD	X		
Wheaton Manor Citgo	2201 University Blvd W	Wheaton CBD	X		
Free State	11295 Veirs Mill Rd	Wheaton CBD	X		

Wheaton Exxon	11310 Georgia Ave	Wheaton CBD	X
Kensington Getty	10616 Connecticut Ave	Wheaton CBD	X
Kensington Service Ctr	3794 Howard Ave	Wheaton CBD	X
Kensington Exxon	10550 Connecticut Ave	Wheaton CBD	X
Glenmont Tire & Auto Svc	2301 Randolph Rd	Wheaton CBD	X
Glenmont Bp	12301 Georgia Ave	Wheaton CBD	X
Glenmont Sunoco	12321 Georgia Ave	Wheaton CBD	X
Kensington Chevron	10625 Connecticut Ave	Wheaton CBD	X
Kensington Shell	10515 Connecticut Ave	Wheaton CBD	X
Gasoline & Automotive Svc	10619 Connecticut Ave	Wheaton CBD	X

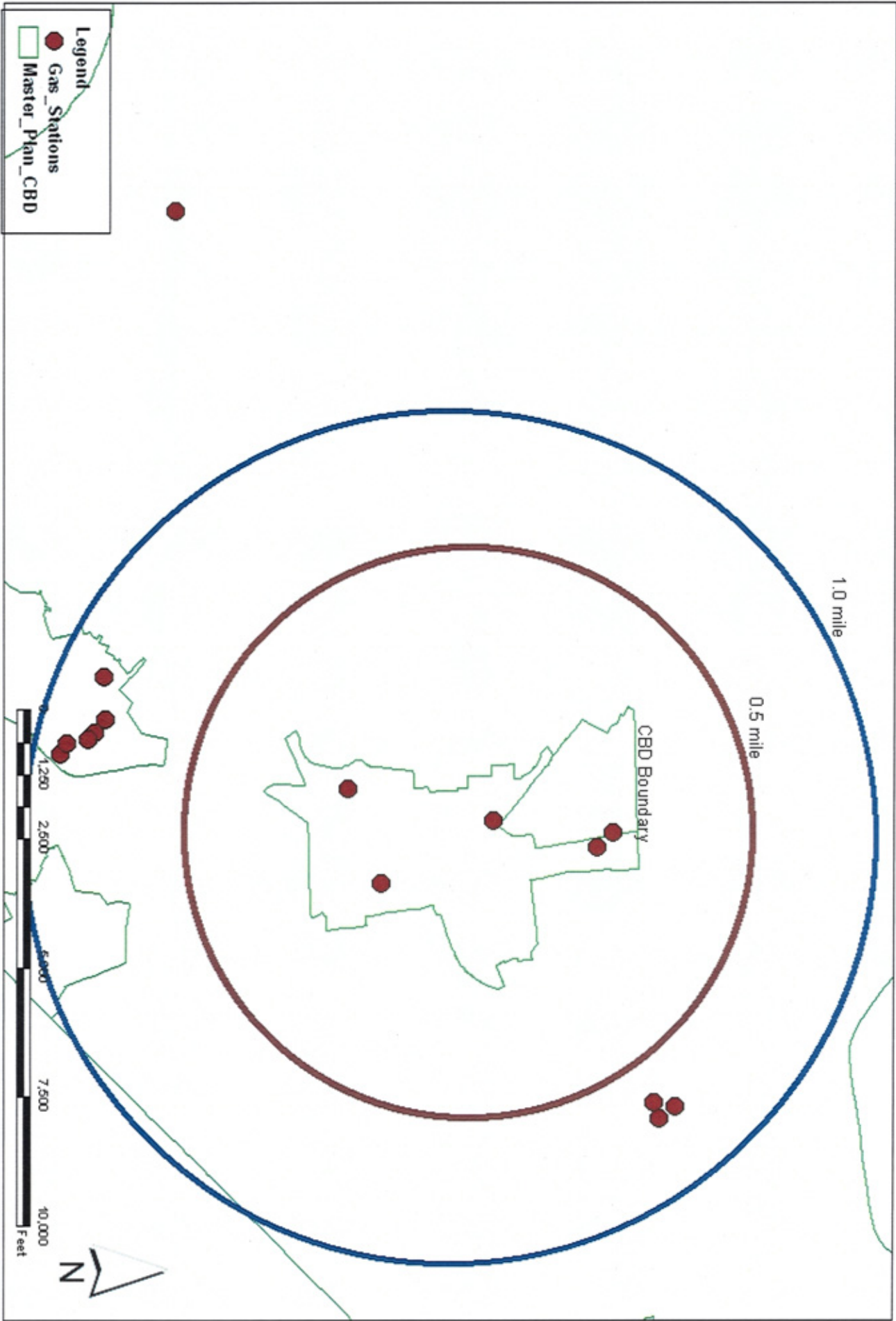
Number of gas stations within Wheaton CBD and half-mile and one-mile out from CBD boundary





Silver Spring

Number of gas stations within the Bethesda CBD and half-mile and one-mile from the CBD Boundary



Number of gas stations within half-mile and one mile radius of Westfield Montgomery Mall

