

**Special Exception Request S-2863, Costco Wholesale Corporation**



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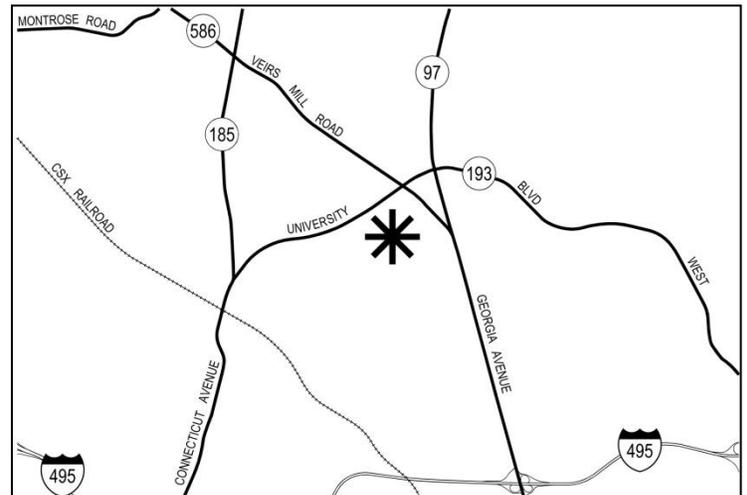
**notice dates—not applicable**

**Completed 02/14/2013**

**description**

- Southwest corner of Wheaton Mall (the Mall), within the Mall's Ring Road;
- C-2, 2012 *Wheaton CBD & Vicinity Sector Plan*;
- Request to operate an automobile filling station (gas station) under §59-G-2.06 on approximately 37,754 square feet of the Mall Property.

The public hearing by the Office of Zoning and Administrative Hearings is scheduled for March 11, 15, 18 and 22, 2013.



**summary**

Staff recommends denial of the proposed special exception request. Issues to be discussed in this report are non-inherent adverse characteristics and the unmet burden of proof in determining adverse impacts on health. There are numerous letters in both opposition and support of this request.

## I. Executive Summary

Staff recommends denial of the proposed gas station based on three sections of the Zoning Ordinance.

First, according to Section 59-G-1.21, Standard of Evaluation, the non-inherent adverse effects of the proposed use, alone or in conjunction with the inherent adverse effects, are a sufficient basis to deny a special exception. Staff has determined that three of the proposed use's six non-inherent characteristics are cause for concern because combined, they have the potential to create adverse health impacts for residents of the area to the south of the proposed Site. These three characteristics are: location, size, and queuing of vehicles. (Full discussion is in Section VII, Standards for Evaluation.)

Second, the Applicant has not satisfied the requirement of Section 59-G-1.21, General Conditions, which states that, "*A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use...(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."*

Staff has closely reviewed the Applicant's analysis of the Volatile Organic Compounds (VOCs) and other toxics, some of them deemed carcinogenic by the United States Environmental Protection Agency (EPA) and other research. Staff has also conducted its own research of the relevant and most recent available scientific material to understand the full context of the issues related to health impacts of these toxics. Staff's conclusion is that the Applicant's analyses and assertion of no adverse health impacts is based on insufficient information, and may have understated the exposure of the adjacent population to some of the toxics. For example, staff reviewed three of the six pollutants associated with automobile idling (mobile sources) considered the most harmful due to one of the non-inherent characteristics of the proposed use (queuing): CO; PM<sub>2.5</sub>; and NO<sub>2</sub>. Staff found that although the CO emissions are well below the National Ambient Air Quality Standard (NAAQS) for the maximum 1-hour standard, they will still create a CO hotspot at the proposed location, similar to hot spots created at major intersections in the area. However, unlike an intersection hot spot, which quickly dissipates with distance, the hotspot created with this gas station will dissipate over a wider area, remain stagnant for a longer period of time, and therefore may have more adverse health impacts on nearby residents than otherwise demonstrated by the Applicant's analysis (see Attachment 8).

Staff also disagrees with the Applicant's cancer risk analysis based on the estimated additional incremental exposure to VOCs (hydrocarbons such as benzene, toluene, xylene, and 1, 3 butadiene) both from stationary and mobile sources because we question the Applicant's low assessment of residential exposure rates to these carcinogens. More importantly, staff has no

supporting information on the methodology used by the Applicant in calculating the cancer risk, and there are no reliable tools to analyze this information adequately (see Attachment 8). Therefore, staff has concluded that the Applicant's analysis cannot be relied on to provide the evidence needed to make the finding required by the §59-G-1.21(8).

Third, according to Section 59-G-1.21(c) General Conditions,

*“The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden going forward with the evidence, and the burden of persuasion on all questions of fact.”*

Staff believes that the Applicant has not met the burden of proof in this case. Three of the non-inherent characteristics of the proposed use could create potential health impacts that have not been adequately analyzed by the Applicant, and not clearly demonstrated to be negligible (as the Applicant claims). The Applicant has not provided sufficient information for staff to determine that the potential health impacts associated with emissions from the proposed use (fueling, reloading and burping of storage tanks, spills, idling of vehicles) are not significantly higher than those considered to be inherent in a typical gas station (see full discussion in Section VI.C and Attachment 8).

## **II. Conditions of Approval**

Should the Applicant provide evidence on the record to prove that there will be no adverse health impacts, and persuade the Planning Board, the Hearing Examiner, or the Board of Appeals to approve this special exception, staff recommends the following conditions of approval:

- 1) No more than 12 million gallons per year of gasoline can be sold.
- 2) Nothing other than regular and premium unleaded gasoline can be sold here.
- 3) The proposed gas station is limited to 16-fueling stations, consisting of four islands with four gas dispensing hoses each.
- 4) Hours of operation must be limited to Monday through Friday, from 6:00 A.M. until 9:30 P.M. and Saturday and Sunday from 6:00 A.M. until 7:00 P.M.
- 5) The number of on-site employees is limited to two per shift.
- 6) Lights will be turned off no later than 9:30 P.M. Monday through Friday and 7:00 P.M. Saturday and Sunday, with the exception of low-level security lighting.
- 7) No more than five fuel deliveries will occur per day, Monday through Friday, to coincide with the retail store operations. Delivery vehicles must not idle and must be turned off during the off-loading of fuel.
- 8) The Applicant must provide “no idling” signs adjacent to the area where the delivery trucks will unload fuel.

- 9) The Applicant must provide pedestrian access to the planned walking area on the adjacent property, 2609 McComas Avenue, which is being developed under Preliminary Plan number 120110170 (Kensington Heights).
- 10) Before this special exception takes effect, the Applicant must submit a landscape plan with planting installation details to Planning Department Staff for approval and entry into the record.
- 11) Before this special exception takes effect, the Applicant must submit detailed installation and construction plans for the proposed green wall to Planning Board staff for approval and entry into the record.
- 12) The Applicant must provide a raised pedestrian crosswalk from the southern edge of the Mall ring road (near Mt. McComas) towards the loading docks of the Costco Warehouse.
- 13) The Applicant must provide for the record an updated Exhibit T: "Impact on Nearby Property Values" to correctly state the distances between the nearest houses and the special exception area, and remove the reference to the Site being "located approximately the same" as the Montgomery Ward Automobile Service Station.
- 14) The Applicant must provide adequate traffic control measures in cooperation with the Mall that include, but are not limited to, directional arrows and signage to provide safe passage to and through the special exception Site.
- 15) The Applicant must have at least one employee directing traffic if the queuing vehicles start to block the entrance from the ring road into the queuing area.

### **III. Procedural History**

The original application (S-2794) for a special exception to allow a gas station at the Mall was filed on December 1, 2010. That case, initially scheduled for a hearing before the Office of Zoning and Administrative Hearings (OZAH) on May 20, 2011, was continued at the request of the Applicant to June of 2012. It was amended several times, and on April 19, 2012, Kensington Heights Civic Association (KHCA) filed a motion to continue the June hearing dates, which the Applicant opposed. OZAH ultimately granted the continuance, and new dates in October 2012 were agreed to by all parties. However, on July 24, 2012, the Council adopted ZTA 12-07 (Ordinance No. 17-19), effective August 13, 2012, which prohibited gas stations with sales of 3.6 million gallons or more per year within 300-feet of certain sensitive land uses. As a result, and with the agreement of counsel for the parties to that case, OZAH scheduled new hearing dates for March 2013.

Following further analysis, the Applicant determined that it could not establish a gas station at the location specified in S-2794 consistent with the requirements of ZTA 12-07. Therefore, by letter to the Board of Appeals dated October 23, 2012, the Applicant withdrew S-2794.

On November 13, 2012, the Applicant filed the current special exception application, S-2863, which seeks to locate the proposed gas station approximately 260-feet east of the original Site. The Hearing Examiner will hold a hearing on the application in the Office of Zoning and Administrative Hearings on March 11, 15, 18, and 22, 2013, in the Stella B. Werner Council

Office Building at 100 Maryland Avenue, Rockville, Maryland. The Montgomery County Planning Board (Planning Board) will conduct an initial public review on February 28, 2013, located at 8787 Georgia Avenue, Silver Spring, Maryland.

#### **IV. Subject Property and Neighborhood Description**

The Special Exception Site (the Site), a portion of the Mall's parking lot, is approximately 37,754 square feet, and zoned C-2. It is located on the southwest corner of the approximately 75-acre Mall property, which is located west of the intersection of Georgia Avenue and Veirs Mill Road in Wheaton, Maryland. The Site is rectangular in shape, and is accessed from the Mall's ring road, which has access to Veirs Mill Road and University Boulevard West. The ring road has overflow parking along the outside curb used only during peak shopping periods. The Mall property contains approximately 1.5 million square feet of retail uses, including anchor stores (e.g., Target, J.C. Penny and Macy's) and a Giant grocery store (see Attachment 1). The Site is surrounded by the Mall's surface parking lot to the north and west, by the ring road to the south, and by a drive aisle and the new Costco Warehouse to the east (see Attachment 2).

Although the Site, and a large portion of the Mall property, is zoned C-2, approximately 26.4 acres of the Mall property along its Veirs Mill frontage is zoned CR-6.0, C-5.5, R-5.5, H-200. The surrounding neighborhood is generally zoned R-60 with some properties zoned PD-9, RT-8 and RT-12.5. To the south and west of the Mall property is a residential community with single-family detached houses and some townhomes. The Kenmont Swim and Tennis Club property is located approximately 375 feet to the northwest of the Site, and the Stephen Knolls School is approximately 874 feet to the southeast.

Staff has defined the neighborhood to include all properties that may be impacted by traffic, noise, glare, vibrations or fumes associated with the proposed use. The defined neighborhood includes the entire Mall property and the first ring of properties adjacent to the south and west of the Mall (see Figure 1).

There is a significant grade difference between the Mall property and the residences to the south and west of the Mall, which results in the Mall property being approximately nine to thirty feet higher than the surrounding community. There is a green buffer of vacant land with trees and understory between the ring road and the adjacent residences to the south. The Mall is located in both the Rock Creek and Sligo Creek watersheds.

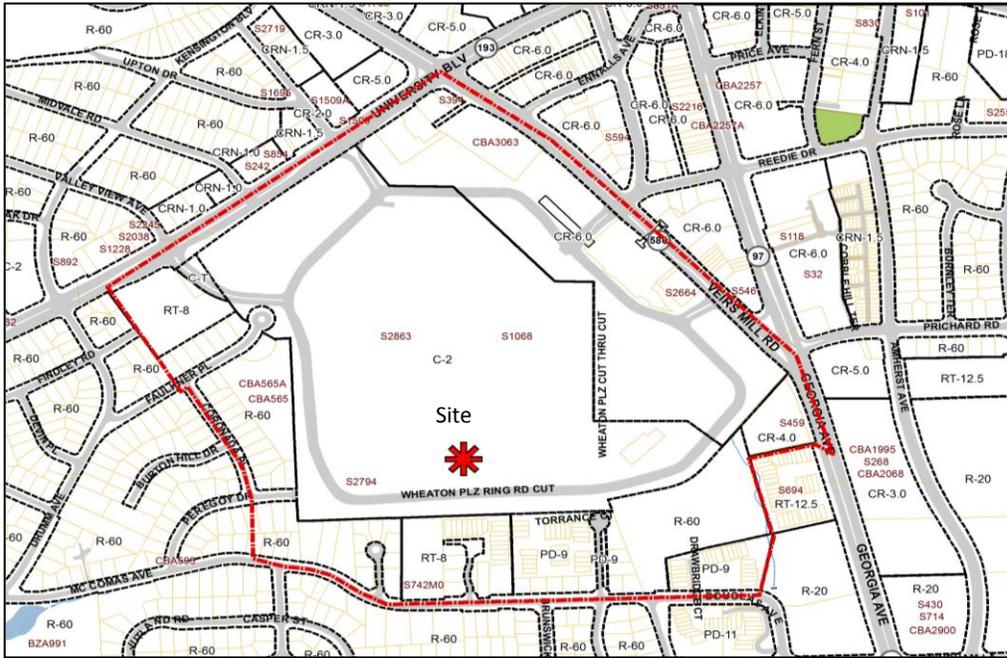


Figure 1: Surrounding Neighborhood

### V. Proposed Application

The Applicant is proposing to construct a new gas station with 16-fueling positions (consisting of four islands with four gas dispensers per island), a canopy, one handicapped accessible space, and associated lighting and landscaping (see Attachment 3). Only regular and premium unleaded gasoline and no diesel or propane gas will be sold. There are no other services, such as car wash, air pumps, services bays, or water and brushes for window washing. One parking space for an employee is incorporated into the Special Exception Site. Additional parking spaces for employees are incorporated into the adjacent Mall parking lot. The canopy over the gas station is 17-feet, 6-inches at its highest point. Lighting will consist of 175-watt metal halide, recessed flat lens, down lights, and 100-watt metal halide recessed focus spot lights (see Attachment 4). The proposal includes four signs, one for each side of the canopy that measure 28.5 square feet each (see Attachment 5). A fifth sign, a portable sandwich board, will display pricing. A 128-square-foot metal kiosk (an accessory structure), slightly over 8 feet in height, for a gas attendant is proposed on the west side of the canopy.

The Applicant is proposing to supplement the existing green buffer area between the Mall’s ring road and the adjacent community with additional native tree species (see Attachment 3). Additionally, the Applicant is proposing landscaped islands that will surround the Site with Red Maple, Willow Oak for shade, and Blue Princess Holly and Feathered Reed Grass for understory. Also proposed is a landscaped stormwater retention area on the southern portion of the Site.

The Applicant proposes to construct a green wall with steel lattice to hold plant material along the outer curb of the Mall’s ring road. The green wall will be 8-foot high, installed through drilled sonotubes (16” diameter, variable depth), 7 feet, 9 inches on-center with panels covered with American Bittersweet vine (see Attachment 3).

The proposed hours of operation for the gas station are Monday – Friday 6:00 A.M. until 9:30 P.M., Saturday and Sunday 6:00 A.M. until 7:00 P.M. with lights to be extinguished upon closing of the gas station, except certain canopy lights that will remain on for security purposes. The Applicant proposes two employees per shift, and all employees will be required to be certified gas attendants. Up to five fuel deliveries are anticipated per day during regular business hours, Monday through Friday. Each delivery will take approximately 45 minutes and truck engines will be turned off during delivery.

## **VI. Staff Analysis**

### **A. Master Plan Conformance**

The Site is within the 2012 *Wheaton CBD and Vicinity Sector Plan* (Sector Plan), which describes Wheaton as a “specialized urban center, serving local and regional retail demand” (page 9), and the Mall is identified as “eastern County’s regional shopping mall” (page 48). The Sector Plan does not provide any specific recommendations for the proposed use or general guidance for special exception uses (see Attachment 6).

The Sector Plan’s focus is to promote high quality redevelopment within the business core by encouraging mixed-use redevelopment while retaining most of the existing small businesses. The Sector Plan recommended rezoning the Mall’s frontage along Veirs Mill Road from C-2 Zone to the CR Zone, but it maintained the C-2 Zone on the rest of the Mall property since the current set of CR Zones was not considered suitable for existing regional malls (pages 48-49).

The Sector Plan specifically limits maximum building height to 45 feet, with a depth of 200 feet along the south side of the Mall property to make sure new construction along the Mall’s ring road does not overwhelm the adjoining residential areas in the Kensington Heights community. The height and location of the proposed canopy would be within the maximum building heights described in the Sector Plan (see Attachment 6).

The Sector Plan specifically recommends retaining the “existing green buffer along the property’s southern edge” to “reduce the impact of new development on adjacent residential areas and the nearby school” (page 48). The proposed project includes a green wall and multiple plantings, which will help mitigate possible visible impacts from the proposed use on adjacent residential properties. The Applicant is reinforcing the green buffer with native plantings.

Staff does not believe that the goals of walkability, connectivity, and other smart growth principles necessarily lead to a general prohibition against uses such as the proposed gas station within the Mall property. For example, on page 33, the Sector Plan states that its zoning recommendations are based on five goals.

- Encourage Class A office development at the Metro station.
- Allow for retail in the center of the CBD and along the three main roads.
- Increase housing mixed with some retail surrounding the center of the CBD.
- Place highest densities and building heights in the center of the CBD.
- Protect existing residential neighborhoods.

Staff believes that language such as “protect existing residential neighborhoods” in the fifth goal above should be interpreted in the context of the zoning recommendations in the Sector Plan. These five goals were the guiding principles for reviewing and developing new zoning recommendations for the Sector Plan. The application of CR and other zones recommended in the Sector Plan followed these principals. More specifically, the fifth goal above was the basis for Sector Plan’s recommendation to retain existing zoning for the single-family residential neighborhoods surrounding the core. It was not meant as a general recommendation against uses like the proposed gas station in the Sector Plan area.

The Sector Plan has a brief section on Health (page 77), but it does not contain any general or specific language that can be interpreted to determine the consistency, or lack thereof, of the proposed use with the Sector Plan on the basis of health issues. The Health section focuses on opportunities for active and passive recreation, integration of natural and built environment, promotion of walking and cycling on safe streets, provision of a variety of choices for fresh, local food, convenient access to health care, “Safe Routes to School” program, safe access to local amenities, community gardens and urban farms, green roofs and walls, innovative stormwater management, provision of community clinics and expanded local health care facilities, and adequate bicycling and trail connections to local destinations. Staff does not believe the typical health impacts associated with a use allowed by the recommend zone are a basis for non-compliance with a sector plan’s general goals absent clear proof that the use will have significant adverse health impacts on the surrounding residential areas.

Based on the above analysis, staff concludes that the proposed gas station is generally consistent with the 2012 *Wheaton CBD and Vicinity Sector Plan*.

## **B. Transportation Planning**

The Site is located within the Wheaton CBD, a Metro Station Policy Area, which has a maximum allowed Critical Lane Volume (CLV) of 1,800. The Wheaton Metro Station Policy area is within the larger Kensington/Wheaton Policy Area, which has a maximum CLV standard of 1,600.

On November 18, 1999, the Planning Board approved an Adequate Public Facilities (APF) test for 579,625 additional square feet for a total of 1,595,269 square feet of retail space at the Mall. The APF was documented in the Local Area Transportation Review Agreement (LATR Agreement) executed July 18, 2001. Since then, approximately 212,032 square feet of retail space, equating to 793 peak-hour trips remain unbuilt. The proposed gas station generates

138 new peak-hour trips, which is equivalent to 11,205 square feet of retail space and is within the existing trip credit approved in 1999.

Although the Mall property has surplus trips remaining from the 1999 APF approval, the Applicant conducted a traffic study to show the likely impacts on several intersections around the Site. The traffic study analyzed twenty signalized intersections including three which are located in the larger Kensington/Wheaton Policy Area. The proposed gas station is expected to generate a total of 218 morning, and 420 evening peak hour trips (Monday through Friday). Approximately 80 trips (36.6%) in the morning and 156 trips (37.1%) in the evening peak hours are considered “pass-by trips” (i.e., vehicles already on the road for other purposes and destinations). Also, in the evening, approximately 126 trips (30%) are anticipated to be internal to the Mall (see Attachment 7), resulting in a net increase of 138 peak hour trips. Site generated trips were calculated using real-time trip generation at an existing, comparable Costco gas station in Virginia, Pennsylvania and Maryland. The Applicant’s traffic study analyzed the intersections for the existing, background and total traffic conditions. As shown in Attachment 7, the CLV values at all analyzed intersections during the weekday morning and evening peak hours were less than the applicable standards (1,800 and 1,600 CLV). Therefore, even though the proposed use is not subject to a new APF test at this time due to surplus trips already approved for the Mall, it nevertheless meets those requirements. The Applicant does not have to make transportation improvements to satisfy the LATR test.

Effective January 1, 2013, the 2012 – 2016 Subdivision Staging Policy replaced the Policy Area Mobility Review (PAMR) standards with Transportation Policy Area Review, or TPAR. The Council Resolution allowed the Applicant to meet the APFO requirements under either the previous PAMR standards or the new TPAR standards. The Applicant has requested that the TPAR standards be used for the transportation review of this application. The transportation analysis is therefore a review of LATR and TPAR, under the current 2012 – 2016 Subdivision Staging Policy.

Within Wheaton, the transportation network is comprised of urban boulevards, such as Georgia Avenue, business streets such as Grandview Avenue between Reddie Drive and Blueridge Avenue, and primary residential streets. Multiple streets around the Site are classified in the 2012 *Wheaton CBD and Vicinity Sector Plan* and contain specifications for bike and/or pedestrian paths (see Attachment 7). Of particular interest is the on-road shared-use path proposed along the southern and western portions of the ring road adjacent to the Site, which is recommended to be used as a connection among the neighborhood, the Mall and the Wheaton Metro Station.

Transit is available to the employees through the use of many Metrobus and Ride-On routes, as well as the Wheaton Metro Station entrance located within 1,700 feet (as the crow flies) of the Site.

The Applicant has provided real-time queuing data at Sterling Costco Gas Station. The counts were taken on a Friday and Saturday, and were minute-by-minute counts for the entire day. Based on this analysis, Staff estimates that during half of the operational hours, 22 vehicles or less are expected to be in the queue to purchase gas. Approximately 3% of the time, more than 40 or more vehicles are estimated to be in the queue waiting to purchase gas. The proposed configuration of the gas station allows for a maximum of 40 cars to queue without overcrowding the entrance. Staff is concerned with the safety of the vehicles and pedestrians along the southern ring road if the queue exceeds 40 cars. Staff is therefore recommending that a Costco employee must be available to direct traffic when the queue appears to block the entrance into the gas station.

Staff concludes that, with the recommended conditions stated in the Transportation staff's memorandum (Attachment 7), the proposed special exception would satisfy the applicable transportation APF test, should a new test be required.

### C. Environmental Planning

Staff approved a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD #42013053E) on November 9, 2012 (see Attachment 8) for the entire Mall property. The 75-acre parcel contains 2.25 acres of forest and 0.99 acres of environmental buffers from a stream located at the southwest corner of the parcel (see Figure 2). The Site drains to the Wheaton Branch subwatershed of Sligo Creek. The proposed project is in compliance with the Environmental Guidelines if constructed within the limits of disturbance shown on 42013053E.

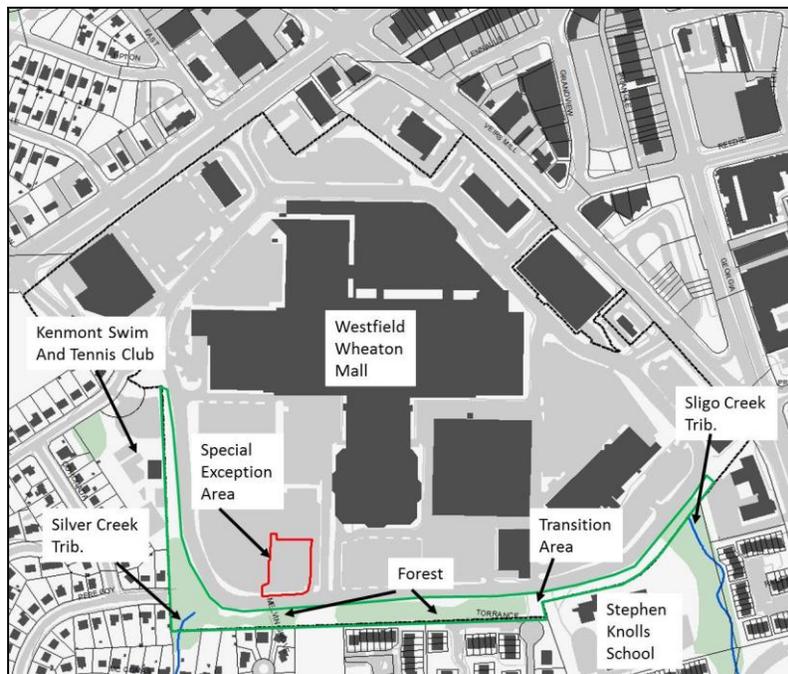


Figure 2: Environmental Features

This Site is subject to Chapter 22A, Montgomery County Forest Conservation Law; however, the proposed gas station is exempt from submitting a Forest Conservation Plan per Article II, Section 22A-5(t) as part of the approved NRI/FSD #42013053E for the following reasons: 1) no more than 5,000 square feet of forest will be cleared on a property of more than 40,000 square feet; 2) the project does not affect any forest in a stream buffer or is located on property in a Special Protection Area, which must submit a Water Quality Plan; and 3) the modification does not require approval of a new subdivision plan. Any changes from the approved exemption request may constitute grounds to rescind or amend any approved actions taken. If there are any subsequent modifications to the approved plan, a separate amendment must be submitted to M-NCPPC for review and approval prior to those activities occurring.

The Applicant has proposed a screening wall along the outside of the Mall ring road, which will be covered with vines, normally considered invasive plants. This wall can be installed while still meeting the conditions of 42013053E. The Applicant has also shown landscaping in the area outside the ring road in the unforested part of the green buffer.

The Applicant submitted an Environmental Report, dated November 19, 2012, which was supplemented on December 18, 2012 and January 16, 2013. This report includes modeling results to demonstrate that the proposed gas station will not constitute a nuisance or adversely impact health. The modeling used in this analysis accounted for the local topography, meteorological conditions, emission from the local transportation network, the proposed gas station, and regional background air quality. However, what is not accounted for is the existing local air quality conditions for the Site, nor Wheaton.

Neither Montgomery County nor the State of Maryland has air quality analysis standards. The EPA standards and methodologies used to evaluate the modeling results are generally applied on a regional level, and are not site-specific. Background levels are calculated regionally and reflect non-source specific quantities. Second, gas stations are considered to be hotspots for air toxics due to the concentration of emission sources (e.g., idling vehicles, underground storage tanks, etc.). These air toxics can be divided into origin categories – mobile or stationary sources. An example of a mobile source is the traffic and idling of vehicles; while stationary sources include emissions from refueling, underground storage tanks, spills, etc.

The Clean Air Act requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for air toxics with public health and environmental impacts. The six primary pollutants are carbon monoxide (CO); lead; nitrogen dioxide (NO<sub>2</sub>); ozone (O<sub>2</sub>); particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>); and sulfur dioxide (SO<sub>2</sub>). Each toxic has specific national ambient air quality standards. Primary standards provide public health protection, including protecting the health of sensitive populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against damage to animals, crops, vegetation, and buildings.

Staff reviewed three of the six pollutants associated with automobile idling, or mobile sources since the anticipated queues of vehicles waiting to purchase gas are not typical of a gas station. Staff reviewed CO; PM<sub>2.5</sub>; and NO<sub>2</sub> and found that, while the CO emissions are well below the NAAQS for the maximum 1-hour standard, they will still create a CO hotspot, similar to those created at intersections. However, unlike an intersection hot spot, which dissipates over a wider area, the hotspot created with this gas station will not dissipate as quickly (see Attachment 8), and will be a true hotspot, circular in nature, centered around the area that is associated with the queuing (i.e., idling vehicles).

Additionally, the proposed gas station will create a hotspot in NO<sub>2</sub> emissions. And even though the incremental addition will dissipate across a small area, it could still be a cause for concern for nearest residents. The nearby residents will be directly impacted by the CO and NO<sub>2</sub> emissions (see Attachment 8). The proposed gas station, therefore, will bring the emissions directly into a neighborhood, and these emissions will not dissipate as they would along a transportation corridor.

The proposed gas station will minimally contribute to the levels of PM<sub>2.5</sub> since the projected emissions from the proposed use will be small compared to the existing background levels of PM<sub>2.5</sub>, partly because diesel fuel will not be sold here.

In addition to reviewing mobile sources, staff also reviewed stationary sources. The quantity of air toxics emitted from gas stations is directly related to the volume of gas dispensed. There are many components included in gas station-related emissions. These toxics are combined into one category, VOCs. VOCs include hydrocarbons such as benzene, toluene, xylene, and 1, 3 butadiene. Many compounds in this class are also a byproduct of gas combustion. Therefore, there are some VOCs associated with both mobile and stationary sources. However, a gas station has a much higher contribution to VOC levels than emissions from mobile sources, and these VOCs come from several sources such as the refueling of the underground storage tanks (UST), breathing (or burping) of the UST, refueling of vehicles, spillage, and idling vehicles waiting to purchase gas.

Staff has found that the VOC emissions from the proposed gas station will create another hotspot comparable to the nearby bus transfer station (see Attachment 8). Staff believes that the Applicant has understated the exposure of the nearest residents to these emissions. The applicant has provided a cancer risk analysis based on the additional incremental exposure to VOCs, which have been determined to be carcinogenic. Staff disagrees with the Applicant's low assessment of residential exposure rates (see Attachment 8), since the graphics provided show VOC emissions in the backyards of the nearest residents to be higher than stated in the analysis. Additionally, staff has no supporting method for calculating the cancer risk since the risk assessment is not broken out by compound or length of exposure. It is also not clear what assumptions have been made to conclude that there will be no cancer risk.

The Applicant provided odor and noise analyses. While staff disagrees with the assumptions and accompanying conclusions about the frequency of projected odor incidents, staff accepts the Applicant's assertion, supported by the Applicant's expert odor panel, that the general character of the odor will be neutral.

The proposed gas station will minimally contribute to the ambient noise of the neighborhood as the increase of traffic associated with the gas station will not increase the noise levels significantly (see Attachment 8).

## **VII. Standards for Evaluation**

The standards for evaluation under Section 59-G-1.21 requires consideration of the inherent and non-inherent effects of the proposed use at the proposed location. Inherent adverse effects are the physical and operational characteristics necessarily associated with a particular use, regardless of its physical size or scale of operations. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. The inherent adverse effects are evaluated based on size, scale, scope, light, noise, traffic, and environment. Non-inherent adverse effects are the "physical and operational effects not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site." Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a gas station use. The inherent and non-inherent effects identified must then be analyzed in the context of the subject property and the general neighborhood to determine whether these effects would create adverse impacts sufficient to result in denial.

The inherent characteristics of a gas 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 retail establishment;
- 9) environmental impacts that may include fumes from idling vehicles and potential spillage of automobile fluids; and
- 10) underground fuel storage tanks.

Staff has identified six non-inherent characteristics as follows:

- 1) Sales to Costco members only;
- 2) Location along a private road, near houses;

- 3) Size (volume of gasoline sold, and number of pumps);
- 4) Queues and traffic volume along the southern ring road;
- 5) Type of gasoline sold (Regular and Unleaded, only); and
- 6) Payment by debit or credit card only.

Three of the six non-inherent characteristics are cause for concern with regards to the health and safety of the residents and visitors within staff's defined neighborhood. They are the location, size and queuing. The other three--sale to Costco members only, type of gasoline sold, and method of payment--are either neutral or small in scope and will not have any negative impacts. For example, most stations provide diesel; this gas station is not proposing to sell this type of fuel, so the type of gasoline sold will not have any adverse impacts.

Staff also disagrees with the Applicant's statement that the scale of the operation will not be adverse to the neighborhood. Although the design of the gas station is typical of gas stations (canopies, signage, lighting, etc.), the estimated volume of gasoline is not, nor is the proposed number of fueling stations. The anticipated queues were not included as potential non-inherent characteristics in the Applicant's statement. Second, the Applicant only considered the Mall property as its neighborhood, which disregarded the effect of the non-inherent characteristics of the proposed use on the residential homes between 120 feet and 200 feet from the Site.

Staff believes that three non-inherent characteristics—the location, the size (volume of gasoline sold), and anticipated queues--will adversely affect the neighborhood and could potentially cause adverse health impacts to the nearby residences (see Section VII, below).

- 1) Location. The proposed Site is along a private ring road. Most gas stations are located along arterial or major roads. This non-inherent characteristic alone may not adversely affect the neighborhood, but it needs to be considered in conjunction with the second non-inherent characteristic, volume of gasoline sold.
- 2) Size. The volume of gasoline estimated to be sold is 3 to 4 times (at the most conservative estimate) the volume of a typical gas station. The volume of gas sold is naturally aligned with increased emissions from both the number of vehicles waiting for a service, and the size of underground storage tanks, etc. close to the residential neighborhood to the south, which contribute to multiple air pollutants.
- 3) Queuing. The Applicant's queuing study suggests that, for 50% of the operating time, 22 or less vehicles will be in the queue waiting (and idling) to purchase gasoline. While the refueling happens quickly (four minutes per vehicle, according to the Applicant), the anticipated queuing will not be like a typical gas station.

As discussed in the health impacts of the proposed gas station on Page 16, the cumulative impacts of the non-inherent characteristics are cause for concern.

## VIII. Conditions for Granting a Special Exception

(a) *A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:*

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

**Staff Response:** A gas station is a permissible special exception in the C-2 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.*

**Staff Response:** As discussed in Section IX below, the proposed gas station complies with the findings of §59-G-2.06.

*(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.*

**Staff Response:** As discussed fully in Section VI.A, the proposed gas station is consistent with the goals and vision of the 2012 *Wheaton CBD & Vicinity 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.*

**Staff Response:** The proposed use will be in harmony with the general character of the neighborhood, when considering density, design, scale, and bulk of the proposed new structures. Staff realizes that, although the proposed location may not be the most desirable location for this use on the Mall property, it is not out of character with the surrounding mix of retail, transportation and office uses, which currently exist on the Mall property.

*(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.*

**Staff Response:** The proposed gas station will not be detrimental to the use and peaceful enjoyment of the adjacent residential neighbors. There is no odor or visual impact and the character is similar to the surrounding uses of the C-2 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.*

**Staff Response:** The proposed gas station will not cause objectionable noise, vibrations, odors, dust, as discussed in Section VI.C (page 13) and illumination, as discussed on page 21. Staff has defined fumes as those pollutants which come from the tailpipes of vehicles, discussed on page 22. Based on staff's analysis of potential health impacts, staff finds that the proposed use may have objectionable fumes, as discussed fully in Attachment 8.

*(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 plan do not alter the nature of an area.*

**Staff Response:** There are no special exception gas stations within the Staff's defined neighborhood; one was approved in 1975, but it no longer exists. There are six other special exceptions within the defined neighborhood, including the Kenmont Swim Club, but they do not constitute a predominance of special exception uses as the defined neighborhood is a mix of retail and residential uses. Therefore, staff believes that this use will not alter the nature of the 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.*

**Staff Response:** As fully discussed in the executive summary and the environmental section of this report, the non-inherent characteristics of the proposed use could cause health impacts to the residents and workers in the area. Staff believes that the Applicant has understated the exposure to the carcinogenic toxins that the cancer risk analysis was based on. And the Applicant has not provided sufficient information for staff to

determine that the proposed use will not adversely affect the health of people in the neighborhood.

*(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.*

*(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.*

*(B) If the special exception:*

*(i) does not require approval of a new preliminary plan of subdivision; and*

*(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*

*then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

*(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

**Staff Response:** Staff evaluated the impact of the proposed gas station on public facilities as part of the special exception review because no Preliminary Plan review is needed for the proposed use. On November 18, 1999, the Planning Board approved an Adequate Public Facilities test for 579,625 additional square feet for a total of 1,595,269 square feet of retail space at the Mall. The APF was documented in the Local Area Transportation Review Agreement (LATR Agreement) executed July 18, 2001. Since then, approximately 212,032 square feet of retail space, equating to 793 peak-hour trips remain unbuilt. The proposed gas station generates 138 new peak hour trips, which is within the existing trip credit approved in 1999 (see Attachment 7).

Although not required for purpose of LATR, the Applicant conducted a traffic study to determine if the site-generated traffic had any adverse impact at nearby intersections during the weekday morning and evening peak hours. Table 2 in Attachment 7, contains the calculated CLVs at the twenty identified intersections affected by this application. All intersections will continue to operate within acceptable CLV standards. Therefore, the proposed use meets the LATR requirements of the APF review.

Because the Site is located in the Wheaton CBD Metro Policy Area, which is deemed adequate for roads and transit, no mitigation payments are required under TPAR.

The Department of Permitting Services (“DPS”), Water Resources Section, in a letter dated December 11, 2012, has accepted the proposed stormwater management concept plan (see Attachment 9). The Site will be adequately served by water, sanitary sewer and police and fire protection, and the proposed use will have no impact on the school system.

**IX. General Development Standards**

*(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

**Staff Analysis:** This Site is located in the C-2 Zone. Table 1 below shows that that the proposed application meets the required development standards of the zone.

**Table 1: Applicable Development Standards – C-2 Zone**

Development Standards	Required	Provided
Maximum Building Height:	3 stories or 42 ft.	17 ft. 6 in.
Floor Area Ratio (FAR)	1.5	.47
Minimum Width at Front Lot Line:	10 ft.	± 1,354 ft. (University Blvd) ± 1,513 ft. (Veirs Mill Rd)
Minimum Side and Rear Yard Setback:	If the lot adjoins a residential zone, the setback must not be less than required in the adjoining zone. <sup>1</sup>  Rear (R-60): 20 ft. Side (R-60): 18 ft. <sup>2</sup>	258 ft. 379 ft.

<sup>1</sup> To determine the rear and side yard setback, staff took the most conservative development standard of the Zones around the Mall.

<sup>2</sup> Sum of both sides.

Development Standards	Required	Provided
Minimum Green Area	10%	13.6%
Parking Requirement (§59-E-3.7)	<i>1 space for each employee; 2 for each car wash bay, grease bay or similar service area</i> 2 staff X 1 = <b>2</b> 0 service bays X 2 = <b>0</b> <b>Total = 2</b>	1 (within special exception Site); the 2 <sup>nd</sup> parking spot is to be located within the Costco leased parking area for the warehouse store.

*(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

**Staff Analysis:** As stated in Table 1 above, the proposed use requires two parking spaces per §59-E-3.7. The Applicant is providing one parking space within the Site and the other in the adjoining parking spaces dedicated for the Costco store (leased from the Mall).

*(c) Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) Rifle, pistol and skeet-shooting range, outdoor.*
- (2) Sand, gravel or clay pits, rock or stone quarries.*
- (3) Sawmill.*
- (4) Cemetery, animal.*
- (5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) Equestrian facility.*
- (7) Heliport and helistop.*

**Staff Analysis:** Not applicable. The application satisfies the minimum frontage requirements of the C-2 Zone.

*(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

**Staff Analysis:** This property is subject to the Chapter 22A Montgomery County Forest Conservation Law; however, the proposed gas station is exempt from Article II, in accordance with Section 22A-5(t) as part of the approved Mall's NRI/FSD #42013053E

for the for the following reasons: 1) no more than 5,000 square feet of forest will be cleared; 2) the proposed project does not affect any forest in a stream buffer or is located on a property in a Special Protection Area which must submit a water quality plan; and 3) the proposed project does not require approval of a new subdivision plan. Any changes from the approved exemption may constitute grounds to rescind or amend any approved actions taken. If there are any subsequent modifications planned to the approved plan, a separate application must be submitted to M-NCPPC for review and approval prior to those activities occurring.

*(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

**Staff Analysis:** Not applicable. This site is not within a Special Protection Area; therefore, a Water Quality Plan is not required.

*(f) Signs. The display of a sign must comply with Article 59-F.*

**Staff Analysis:** The Applicant is proposing four signs; each measuring 28.5 square feet (see Attachment 5). The proposed signs are typical of a gas station. In accordance with State law, a pricing sign (portable sandwich board) will be located on the Site. Prior to obtaining building permits for the installation for signs, the applicant will need to provide the submitted concept signage plan to the County's Sign Review Board.

*(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

**Staff Analysis:** Not applicable. This Site is not within a residential zone.

*(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

**Staff Analysis:** Not applicable. This Site is not within a residential zone. However, at staff's request, the Applicant submitted a photometric plan showing the footcandles of the proposed lighting, which will not exceed 0.1 footcandles at the property lines.

#### **X. Neighborhood need.**

*In addition to the findings and requirements of Article 59-G, the following special exceptions 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:*

- (1) *Automobile filling station.*
- (2) *Automobile and light trailer rental lot, outdoor.*
- (3) *Automobile, truck and trailer rental lot, outdoor.*
- (4) *Automobile sales and service center.*
- (5) *Swimming pool, community.*
- (6) *Swimming pool, commercial.*

**Staff Response:** Staff has reviewed the Hearing Examiners' previous decisions and reports on automobile gas station need analyses, and found that the terms "neighborhood" and "need" are relative and flexible. The need analyses often vary based on the demographics, employment, location or other characteristics of each case. For a typical gas station, it is reasonable to accept a five- to seven-minute drive time for purposes of defining a neighborhood for need analysis. Staff believes that, due to the members-only nature of the proposed use and that Costco members in the area typically drive longer than seven minutes to the Beltsville Costco station (or others farther away), a 10-minute drive time is an appropriate neighborhood definition in this case. As shown in Attachment 10, page 2, this boundary is generally half of the drive time distance between the existing Beltsville Costco gas station and the proposed station in Wheaton.

Costco fuel is not available within the defined neighborhood. The closest Costco station is about a 20-minute drive to Beltsville in Prince George's County, requiring Costco members living in Wheaton to travel out of Wheaton to purchase Costco fuel.

There is an existing base of Costco customers in the defined neighborhood. The applicant states that 23% of the households and 92% of businesses within a 7-minute drive time from the proposed location are currently Costco members. It is reasonable to assume that membership will increase when the retail store is completed.

While staff believes that the need for the proposed gas station is justified by Costco membership within the defined neighborhood (both households and businesses, existing and future), staff also reviewed the retail gap analysis submitted by the Applicant. Staff used this retail gap analysis not as the primary mechanism for determining the need, but to understand the full picture of gasoline sales and purchases in the area. Although there can be a number of reasons for gap in spending and sales, a retail gap analysis has generally been accepted as an objective measure of unmet demand (and therefore, need) in an area (see Attachment 10).

Supply estimates are based on sales by existing gas stations in the study area. Demand estimates are based on the amount that households located in the study area spend on gas purchases, regardless of where those stations are located. A retail gap is calculated by subtracting the total gasoline sales (supply) from total spending (demand). This figure represents the amount (in dollars) that households in the study area spent on gasoline purchases (regardless of the study area), minus total sales by gasoline stations located within the study area. In other words, this unmet demand reflects the extent to which households in the study area are buying gasoline elsewhere (see Attachment 10).

At the 10-minute drive time, there is a retail gap of \$215.4 million. The Applicant's consultant, however, estimated that the gasoline sales typically account for about 65.4% (about 2/3) of all consumer purchases, which reduced the estimated gap to \$140.9 million at the 10-minute drive time.

Staff has determined that this retail gap analysis further confirms the need for the proposed gas station at this location.

#### **XI. Conditions for Granting an Automobile Filling Station**

*(a) In addition to findings required in division 59-G-1, an automobile filling station may be permitted if the Board of Appeals finds that:*

*(1) the use will not constitute a nuisance because of noise, fumes, odors, or physical activity in the location proposed;*

**Staff Analysis:** Staff has defined fumes as those pollutants which come from the tailpipes of vehicles, and determined that the proposed gas station will have localized impacts to air quality, with elevated CO, VOC, and NO<sub>2</sub> emissions. While all modeled emissions will be under applicable NAAQS levels, new air quality impacts are being introduced to adjacent residences and the effects of the Wheaton air quality hotspot will be extended into the adjacent residential community. The proposed gas station will constitute a nuisance because of fumes at the subject Site (see also the odor and noise analysis in Section XIII).

*(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; and*

**Staff Analysis:** The proposed use will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, or the necessity of turning movements in relation to its access to public roads or intersections. As described in the Transportation staff memorandum (see Attachment 7), there is a potential for conflicts with internal circulation in relation to other uses near the Site (which may occur for less than 5 minutes within the entire operational hours of the gas station); staff's recommendation that one of the gasoline attendants must be there to direct traffic away from the gas station will address any potential conflict. Staff believes that pedestrian conflicts will be increased for those utilizing the ring road for access to the Mall and points beyond, but they can be adequately mitigated by providing a pedestrian crossing of the ring road at the southeast side of the Site to allow for safer pedestrian crossing of the ring road.

*(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.*

**Staff Analysis:** The proposed gas station will not adversely affect nor retard the logical development of the general neighborhood. It is consistent with the other uses in the Mall and the uses permitted in the C-2 Zone.

*(b) In addition, the following requirements must be satisfied:*

*(1) After August 13, 2012, the area identified by a special exception application for a new automobile filling station designed to dispense more than 3.6 million gallons per year must be located at least 300 feet from the lot line of any public or private school or any park, playground, day care center, or any outdoor use categorized as cultural, entertainment and recreation use.*

**Staff Analysis:** The proposed Site is more than 300 feet from the lot line of any public or private school or any park, playground, day care center, or any outdoor use categorized as cultural, entertainment and recreation use (see Attachment 11).

*(2) 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 must be screened by a solid wall or a substantial, 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 must satisfy Article 59-E. Screening must not be required on street frontage.*

**Staff Analysis:** The Site is within 120-feet of the nearest residential property to the south and approximately nine to thirty feet higher in elevation than the adjacent lots. While the use does not directly abut residential or institutional uses, the Applicant is proposing to reinforce the existing green buffer area between the ring road and the adjoining properties with native plants to enhance the screening. Additionally, the Applicant is proposing an eight-foot high green wall with American Bittersweet vines on each panel.

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

**Staff Analysis:** The submitted plans indicate that no displays or other obstructions would adversely affect visibility at the station driveways. This Site is not located adjacent to any roadway intersections.

*(4) Lighting must not reflect or cause glare into any residential zone. Lighting levels along the side and rear lot lines adjacent to a residential zone must not exceed 0.1 footcandle.*

**Staff Analysis:** The applicant's submitted photometric plan shows that illumination levels surrounding the gas station will not exceed 0.1 footcandles at the adjacent property lines. This measurement meets the Zoning Code requirements under §59-G-1.23(h)(2), a standard for lighting in residential zones.

*(5) When such use occupies a corner lot, the ingress or egress driveways must 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 must not exceed 30 feet in width.*

**Staff Analysis:** Not applicable. This Site does not occupy a corner lot.

*(6) Each gasoline pump or other service appliance must be located on the lot at least 10 feet behind the building line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building. There must be at least 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line.*

**Staff Analysis:** A building line is defined as a “line, parallel to a lot line, creating an area into which a structure must not project.” In the C-2 Zone, there is no building setback; therefore, the building line is the lot line. According to the applicant’s site plan, all pumps are more than 10-feet behind the building line.

*(7) Light automobile repair work may be done at an automobile filling station, but major repairs, spray paint operation or body and fender repair are prohibited uses.*

**Staff Analysis:** No automobile repair work is proposed.

*(8) Vehicles must be parked completely off of the public right-of-way.*

**Staff Analysis:** No parking spaces are proposed in any public right-of-way.

*(9) 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 if the requirements of this section are satisfied. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.*

**Staff Analysis:** No automobile services other than fuel dispensing are proposed.

*(10) In a Rural Village Overlay Zone the following additional standards apply for new development:*

*(A) Car wash is prohibited.*

*(B) Pump canopies must not exceed 35 feet in height.*

*(C) Any structure approved for the use must not exceed the scale and bulk of existing commercial structures in the village.*

**Staff Analysis:** Not applicable. The Site is not located in a Rural Village Overlay Zone.

## **XII. Community Comment**

Staff received multiple letters in both support of (see Attachments 12 and 13) and opposition to (see Attachment 14) the proposed use. Staff received multiple letters from local businesses and home owners stating a need for such a facility close to the Wheaton area for reasons such as handicapped accessibility (better than other gas stations), revitalization, and reduction in the cost of gas prices for smaller business owners. The Applicant provided 5,000 postcards in support of the proposed use with a breakdown by zip code (see Attachment 13). Due to the large amount of correspondence, staff has provided a single copy of any form letters and/or postcards received as an attachment to this report.

In addition to receiving rebuttals of the applicant's information from the Stop Costco Gas Coalition, (see Attachments 15-23), staff also received individual letters of opposition from concerned citizens. They expressed issues including master plan compliance, environmental impacts, forest conservation, transportation impacts, health impacts, decrease in home resale values, disaster planning, and the need for the proposed gas station. Staff has reviewed all correspondence and provided a brief response as follows:

**Issue 1: Master Plan Compliance** – Opposition contends that the proposed use does not conform to the letter or spirit of the 2012 *Wheaton CBD & Vicinity Sector Plan*, is the opposite of smart growth and transit-oriented development, and violates the Sector Plan's vision of Wheaton's future (see Attachment 15).

**Staff Response:** Staff believes that the goals of walkability, connectivity, and other smart growth principles do not necessarily lead to a general prohibition against uses such as the proposed gas station within the Mall property, as stated in Section VI.A. Staff believes that the proposed use is not in violation of the Sector Plan's vision. It is not uncommon for CBDs to include gas stations even though other means of travel are encouraged.

**Issue 2: Environmental Impacts** – Opposition expert, Dr. Henry Cole stated that Costco's air quality and risk assessment are likely to underestimate impacts on the adjoining properties. He believes that due to the omission of important pollutants and sources, and the use of background values that are not representative of the Mall, the Applicant's risk assessment underestimates what is likely to occur. His report further details specific pollutants, such as "ultrafine particles," and concludes that the Applicant's environmental report is not an adequate health assessment capable of estimating the likely health impacts of the proposed gas station on residents. Rather, it is just an air quality modeling study (see Attachment 16). He asserts that the applicant should be required to conduct a comprehensive public health study of the facility, conduct ambient air monitoring for a 12-month period, and conduct a new air quality modeling study based on new data. He disagrees with multiple findings of the applicant's air quality report, and the traffic model used to estimate the impacts of the proposed gas station. The Applicant's estimates of cancer risk, in his opinion, exclude the carcinogens associated with combustion products (see Attachment 16).

**Staff Responses:** Staff agrees that there is an understatement in the site-specific air pollutants and therefore, the risk assessment could potentially underestimate the level of exposure to the adjacent residences and ultimately the effects on health. With regards to ultrafine particles, staff believes that due to the fact that no diesel fuel will be sold, ultrafine particles will not be a critical pollutant associated with this gas station.

For further discussion, please refer to of Sections VI.C, VII, and VIII, above.

**Issue 3: Forest Conservation Plan Exemption**– Stop Costco Gas Coalition contends that the Forest Conservation Plan Exemption, 42011026E issued for the Costco Store is not valid, which means that the Applicant should be subject to a full FCP review. The Audubon Naturalist Society also refutes the validity of this FCP Exception (see Attachment 17A and 17B).

**Staff Response:** Staff disagrees. The exemption referenced by the Stop Costco Gas Coalition is not the subject of the current special exception request, rather it is a previous exemption granted on October 20, 2010 to the Costco store, which is permitted by right in the C-2 Zone. The Costco store received that exemption from submitting a Forest Conservation Plan because it was: 1) an existing, developed property and 2) was not removing more than 5,000 square feet of forest and not affecting forest in a stream buffer. The submitted exemption plan did not show a stream or stream buffer nor did that exemption show any clearing or grading outside of the ring road and no forest was proposed for removal.

About the same time, a collapsed stormwater management conveyance was found outside the ring road that needed repairs. The Department of Permitting Services (DPS) directed the Mall’s owner to repair the outfall. The repair had to occur regardless of whether or not the Costco store would be constructed. DPS determined that the storm drain conveyance did not require a sediment control permit because less than 5,000 square feet of land was being disturbed. Since no sediment control permit was required, the restoration work was not subject to the forest conservation law and therefore, no further action was required under the Chapter 22A.

The current application was granted an exemption from submitting a Forest Conservation Plan because 1) it is an existing developed property; and 2) it is not removing more than 5,000 square feet of forest or affecting any forest in a stream buffer (See Attachment 8).

**Issue 4: Transportation Impacts** – The Stop Costco Gas Coalition has questioned some of the findings of the Applicant’s traffic study. While they accept the methodology used for the traffic study, they state that the traffic study has failed to address several general and specific conditions of §59-G-1.21(a) and §59-G-2.06(a)(2) including impacts of increased traffic on pedestrian access across the ring road, and pedestrian/vehicle competition at nearby critical intersections. And they contend that the proposed gas station will take away parking spaces from the Mall parking lot which already does not have adequate parking for Costco and other stores (see Attachments 18A and 18B).

**Staff Response:** Staff has fully addressed the vehicular and pedestrian circulation in Sections VI.B and VIII, above.

**Issue 5: Health Impacts** –Stop Costco Gas Coalition states that the Applicant has not met the burden of proof with regards to §59-G-1.21(a)(8), which require a finding that the proposed use will “not adversely affect the health, safety, or general welfare of residents, visitors, or

workers”. In their opinion, the major health danger connected with this use is the pollution from evaporation and emissions. They point to various research showing links to lower IQ, increased respiratory tract complications, including chronic cough and asthma, lung cancers, Chronic Obstructive Pulmonary Disease (COPD), to name a few. Further, they are extremely concerned with the health of students attending Stephen Knolls School, who already have compromised health (see Attachment 19).

**Staff Response:** While staff does not fully agree with all the Coalition’s claims and statements, staff has provided a full analysis of health impacts in Section VIII, above. Staff believes that the Applicant has not proved that the proposed use will not adversely affect the health of residents, visitors or workers in the area of the Site as required by the Zoning Ordinance.

**Issue 6: Resale and Home Value** – Staff received two letters rebutting the applicant’s real estate assumptions, which compared the location of the proposed gas station to homes near high tension electrical lines. The writer claims that the gas station “would put a cloud impacting one’s health in addition to the additional noise and smell. Whether real or perceived if one’s health would be impacted by gasoline fumes from filling and idling would affect its value.” Second, Stop Costco Gas Coalition believes that the Applicant’s real estate analysis is speculative, and housing values will decrease due to the increased volume of traffic on the southern ring road (see Attachment 20A and 20B).

**Staff Response:** Section VIII contains a full analysis on the “use, peaceful enjoyment, economic value or development of surrounding properties,” as required by §59-G-1.21(a)(5).

**Issue 7: Disaster Plan** – Staff received correspondence contending that the applicant fails the burden of proof that adequate public facilities can be guaranteed (§59-G-1.21(a)(9)) if there is an emergency and the area surrounding the Mall suffers a total gridlock (see Attachment 21).

**Staff Response:** Staff has consulted with the Montgomery County Fire & Rescue Services in the review of this case. Adequate services are assessed regularly by both Fire Rescue and the Police Department. They received the proposed plan and determined it to be sufficient. Disaster Planning is not under the purview of the Zoning Ordinance. In addition, the State Department of Environment regulates gas stations for compliance with safety procedures and protocols, etc. The Hearing Examiner may require the Applicant to adhere to any and all State, County or Federal regulations, as needed.

**Issue 8: Need Analysis** – The Stop Costco Gas Coalition submitted an analysis of the Applicant’s Statement of Need, prepared by Michele Rosenfeld for the Kensington Heights Civic Association for the first application (S-2794) for the proposed gas station. They provided a supplemental statement for S-2863 questioning the Applicant’s justification for a new gas station in the area (see Attachment 22).

**Staff Response:** Staff has accepted the Applicant’s need analysis as valid. Please see Section X, above.

**Issue 9:** Staff received several correspondences that the Applicant’s land use report statement does not meet the burden of proof standards of the code (see Attachment 23A – 23E).

**Staff Response:** Staff agrees that the applicant has not met the burden of proof when determining “will not adversely affect the health,” nor did we agree with the Applicant’s assessment of the neighborhood, but as described throughout this report, some of the studies provided were valid, such as the needs analysis, and real estate values.

#### **XI. Conclusion**

Staff recommends denial of the proposed special exception use for reasons stated in Section VII and Section VIII. The Applicant has failed to meet the burden of proof to demonstrate that the proposed use will not adversely impact the health of the residents, and visitors within the neighborhood as required by §59-G-1.21(c).

## Attachments

- Attachment 1:** Aerial Map
- Attachment 2:** Site Photographs
- Attachment 3:** Landscape Plans, as submitted by Applicant, January 3, 2013
- Attachment 4:** Lighting and Photometrics, as submitted by Applicant, November 13, 2012
- Attachment 5:** Architectural Rendering (signage and canopy), as submitted by Applicant, November 13, 2102
- Attachment 6:** Master Plan Comments, January 28, 2013
- Attachment 7:** Transportation Comments, January 28, 2013
- Attachment 8:** Environmental Comments, January 28, 2013
- Attachment 9:** Correspondence from Richard R. Brush, Department of Permitting Services, to Matthew Jones, P.E., dated December 11, 2012
- Attachment 10:** Memorandum from Steve Cary and Lisa Tate, to Renée M. Kamen, dated January 11 2013
- Attachment 11:** Analysis Map (300-foot buffer)
- Attachment 12:** Letter(s) in Support
- Attachment 13:** Postcard(s) in Support (sample only)
- Attachment 14:** Letter(s) in Opposition
- Attachment 15:** Email Correspondence from Donna R. Savage to Renée M. Kamen, dated January 15, 2013
- Attachment 16:** Memorandum (and Supplement) from Dr. Henry S. Cole, PhD to Amy Lindsey, dated January 18, 2013
- Attachment 17A:** Correspondence from Mark R. Adleman to Renée M. Kamen, dated January 15, 2013
- Attachment 17B:** Correspondence from Dain M. Cameron, Audubon Naturalist Society to Renée M. Kamen, dated January 15, 2013
- Attachment 18A:** Correspondence from Mark R. Adleman, to Renée M. Kamen, dated January 15, 2013
- Attachment 18B:** Correspondence from Mark R. Adleman, on behalf of Mark L. Fritz to Renée M. Kamen, dated January 15, 2013
- Attachment 19:** Correspondence from Abigail Adelman, to Renée M. Kamen, dated January 15, 2013
- Attachment 20A:** Correspondence from Timothy H. Harper, to Renée M. Kamen, dated January 15, 2013
- Attachment 20B:** Comments on Real Estate Marketing Study, submitted by Karen Cordry, dated January 15, 2013
- Attachment 21:** Correspondence from Patricia M. Mulready, to Renée M. Kamen, received January 16, 2013
- Attachment 22:** Correspondence from Karen Cordry, to Renée M. Kamen, dated January 15, 2013
- Attachment 23A:** Correspondence from Mark R. Adleman, to Renée M. Kamen, dated January 15, 2013

- Attachment 23B:** Correspondence from Mark R. Adleman, to Renée M. Kamen, dated January 15, 2013
- Attachment 23C:** Summary of Non-Inherent/Special Effects of This Station, submitted by Karen Cordry, received January 15, 2013
- Attachment 23D:** Critical Factual Assumptions - Sources, Calculations, and Contradictions, submitted by Karen Cordry, received January 15, 2013
- Attachment 23E:** Correspondence from Mark R. Adleman to Renée M. Kamen, dated January 25, 2013