



Burtonsville Starbucks Drive-Thru, Conditional Use No. 17-06

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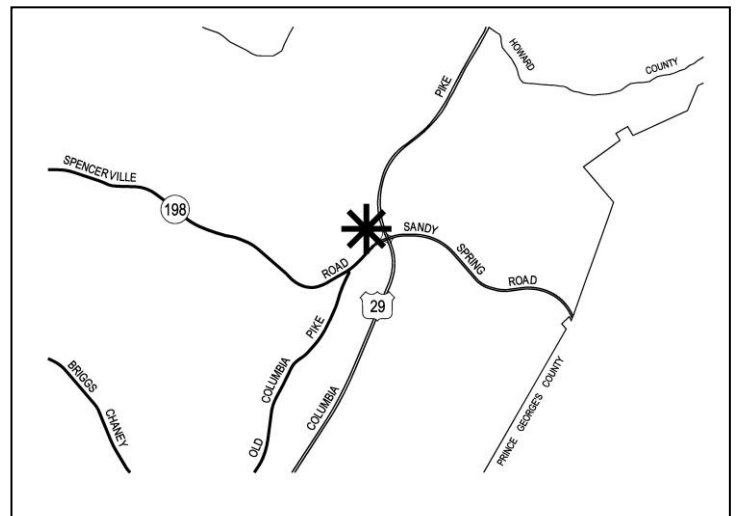
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Completed: 12/30/2016

Description

- Request for conditional use approval to operate a drive-thru use as an accessory use to a new Starbucks restaurant (Project)
- Site Address: 15600 Old Columbia Pike, Burtonsville, MD 20866
- Site Size: 0.24 acres
- Zone for Drive-Thru Use: CRT-1.5, C-1, R-1.25, H-70 (Commercial Residential Town-1.5 Max. FAR, Nonresidential-1 Max. FAR, Residential-1.25 Max. FAR, Height Max. 70 ft.)
- Master Plan: Burtonsville Crossroads Neighborhood Plan
- Applicant: Burtonsville Towne Square, LLC c/o BMC Property Group
- Filing Date: Oct. 14, 2016
- Hearing Examiner public hearing Feb. 3, 2017



SUMMARY

- With recommended conditions, the conditional use conforms to section 59-4.5.1 (Commercial/Residential Zones), section 59-7.3.1 (Conditional Use) and section 59-3.5.14.E. 2b (Drive-Thru Use Standards) of the Montgomery County Zoning Ordinance.
- Pursuant to section 59-3.1.6 (Use Table) of the Montgomery County Zoning Ordinance, a drive-thru use is allowed in the CRT zone with an approved conditional use.
- Pursuant to section 59-7.7.1.A.1, the new restaurant building at this location is grandfathered under the 2004 zoning ordinance and C-2 zone development standards, and is not part of this review.
- The use is consistent with the Burtonsville Crossroads Neighborhood Plan.
- The Project complies with Montgomery County Environmental Guidelines.
- There are no significant land use or environmental impacts associated with the request.

Section I: Staff Recommendations and Conditions of Approvals

Staff recommends approval of Conditional Use No. CU-17-06, subject to the following conditions:

- 1) Operation of the drive-thru use is limited to that shown on the applicant's site plans dated October 7, 2016.
- 2) Permitted hours of operation are seven days a week from 5:30 a.m. to 11:00 p.m.
- 3) The applicant shall conform to relevant conditions set forth in Preliminary Plan No. 12004109, or as such preliminary plan may be amended pursuant to Chapter 59 of the Montgomery County Code (Zoning Ordinance).

Section II: Project Description

A. Legal Framework

On March 21, 2006, the Planning Board approved Preliminary Plan No. 12004109 for the development of the property under the C-2 zone. The preliminary plan approved up to 250,000 sq. ft. of retail space and 10,000 sq. ft. of other commercial space on the 27.21 acres of land.

In the year 2010, the applicant constructed the pad site, which included curbs, sidewalks, handicapped ramps, utilities, storm drains, driveways (including the drive-thru lane), parking areas, lighting, and other site improvements.

In 2013, the property was rezoned from the C-2 zone to the CRT zone under the 2004 zoning ordinance. On March 4, 2014, the County Council adopted a new zoning ordinance (effective October 30, 2014).

Of the 260,000 sq. ft. of development approved by Preliminary Plan No. 1200409, approximately 120,000 sq. ft. has been construction.

Aerial photographs submitted by the applicant show the subject building pad site as developed and present in 2012, 2014, and 2017.

On December 28, 2016, the Hearing Examiner issued an order that determined the applicable zoning and development standards for the Project. Pursuant to the order, the development standards of the former C-2 zone (section 59-C-4.35 of the 2004 zoning ordinance) shall be applied to physical improvements to the property, and the use criteria of section 59-3.5-14.E of the 2014 zoning ordinance.

Therefore, this analysis will review the request for a conditional use drive-thru use only under the criteria of section 59-3.5-14.E of the 2014 zoning ordinance. The physical improvements related to the construction of the new restaurant building are not part of this review.

B. Background

The applicant, Burtonsville Towne Square, LLC, has requested approval of a conditional use to allow the operation of drive-thru use located in the CRT-1.5, C-1, R-1.25, H-70 zone (hereinafter referred to as CRT zone) pursuant to section 59-7.3.1 (Conditional Use) and

section 59-3.5.14.E 2.b (Accessory Commercial Uses, Drive-Thru) of the Montgomery County Zoning Ordinance (Project). Currently, the property is a 0.23-acre undeveloped pad site within an existing shopping center commonly known at the Burtonsville Towne Square. The drive-thru use will be operated as an accessory use to a new 2,278 sq. ft. Starbucks restaurant.



Figure 1 – 15600 Old Columbia Pike, Burtonsville, MD (Project Area Highlighted)

C. Site Description

The property is in the northwest quadrant of Old Columbia Pike and MD 198 in the Burtonsville Town Square shopping center. The overall shopping center consists of approximately 120,000 sq. ft. of building area, with associated parking, on 27.21 acres of land area.

There are no streams, wetlands, or known rare or endangered species present. There are no historically significant structures or sites located on or near the property.

Table 1 Site Description

Site Address:	15600 Old Columbia Pike, Burtonsville, MD 20866
Access:	Old Columbia Pike/Sandy Spring Road and MD 198
Zoning:	CRT
Land Use Description:	Retail
Master Plan:	Burtonsville Crossroads Neighborhood Plan
Septic Tier:	Tier 1: Sewer existing
Site Area:	0.24 acres
Parking Spaces:	Minimum of 5 queuing spaces required for a drive-thru use

D. Neighborhood Description

For the purposes of this application, staff has defined the surrounding neighborhood as property generally located within 2,000 ft. of the subject property. The neighborhood primarily consists of suburban and highway-oriented commercial uses including, retail, restaurants, offices, and neighborhood services. There are no known pending or proposed project approvals in the neighborhood vicinity. Table 2 below displays the existing zoning and land uses within 2,000 ft. of the property.

Table 2 - Neighborhood Description

Existing Zoning	
Subject:	CRT
North:	RC (Rural Cluster)
South:	<ul style="list-style-type: none"> CRT-1.5, C-1.0, R-1.25, H-75 (Commercial Residential Town-1.5 Max. FAR, Nonresidential-1 Max. FAR, Residential-1.25 Max. FAR, Height Max. 75 ft.) CRN-0.5, C-0.5, R-0.25, H-35 (Commercial Residential Neighborhood-0.5 Max. FAR, Nonresidential-0.5 Max. FAR, Residential-0.25 Max. FAR, Height Max. 35 ft.) R-200 (Residential 20,000 sq. ft. min. parcels) EOF-0.75, H-100 T (Employment Office 0.75 Max. FAR, Height Max. 100 ft.)
East:	<ul style="list-style-type: none"> CRT-1.5, C-1.0, R-1.25, H-75 EOF-075, H-100 T IM-2.5, H-50 (Moderate Industrial 2.5 Max. FAR, Height Max. 50 ft.) RC
West:	RC
Existing Land Use	
Subject:	Shopping center (Giant as anchor store)
North:	Vacant/open space, residential detached dwellings
South:	Retail, industrial, institutional, research and development, residential detached dwellings
East:	Retail, office, warehouse, residential detached dwellings
West:	School, residential detached dwellings, vacant/open space

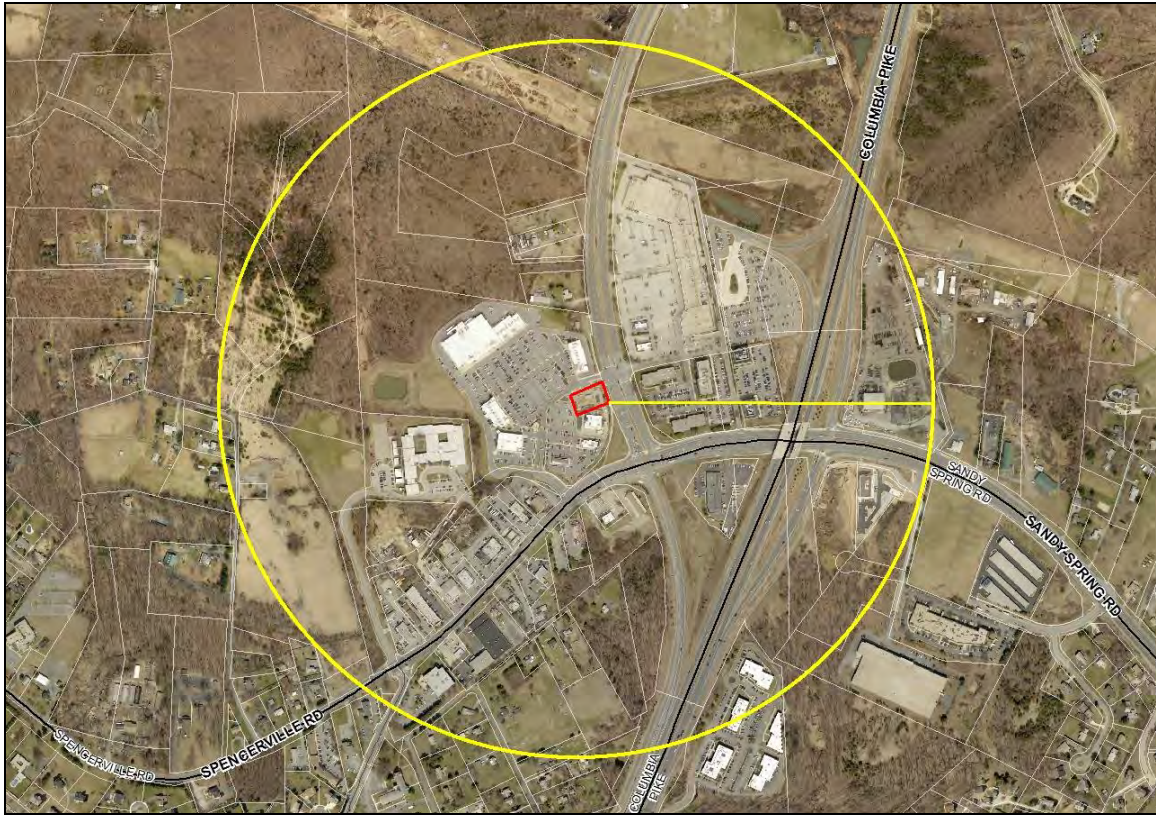
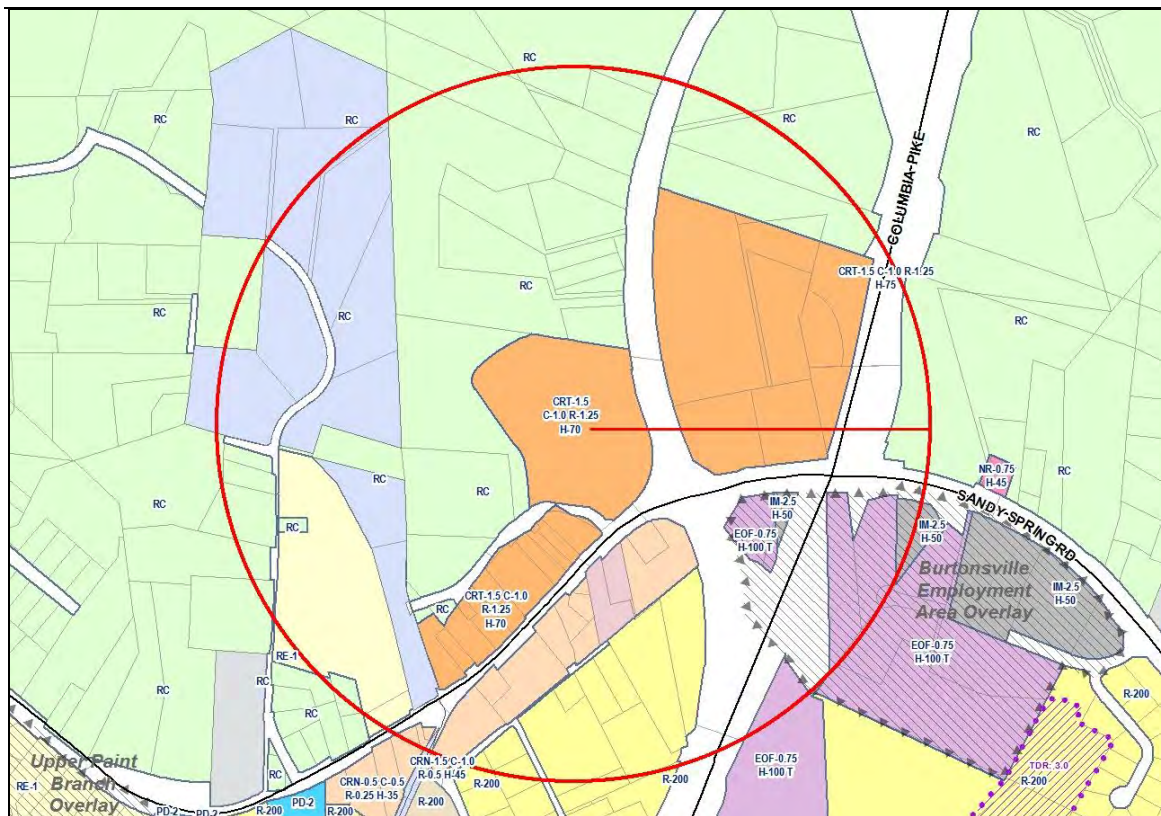


Figure 2 - 2,000 Ft. Vicinity Neighborhood Map

E. Zoning History

The Burtonsville Crossroads Neighborhood Plan was adopted in in 2012. To implement Plan recommendations, the property was zoned from C-2 (General Commercial) and RC (Rural Cluster) to CRT. The CRT zone is intended to allow a mix of residential and nonresidential uses at appropriate densities and heights, support infill, and allow development at the scale of a smaller town or neighborhood.

- In 2006, Preliminary Plan No. 12004109 authorized the development of up to 250,000 sq. ft. of retail space and 10,000 sq. ft. of other commercial/office space in the shopping center.
- In 2008 and 2009, the Planning Board approved subsequent amendment to the Preliminary Plan.
- An amendment to the final Forest Conservation Plan No. 12004109C for the shopping center was approved by the Planning Board in 2014.
- In 2012, the Board of Appeals approved Special Exception No. S-2839 which authorized a drive-thru restaurant (Roy Rogers). This restaurant is located on the same shopping center property and is adjacent to the Project. There are no other known previous special exception or conditional use cases associated with the property.



F. Proposed Use

The Project consists of the operation of a drive-thru service window as an accessory use to a new Starbucks restaurant on an existing building pad at an existing shopping center. (See site plan figures below.)

The Project will feature an existing single drive-thru lane that will accommodate six vehicles at once. The drive-thru lane is located within the existing paved driveway aisle, located to the north and east of the new building. Pedestrian access is provided directly from the sidewalk along Old Columbia Pike and by marked crosswalks from within the shopping center parking lot. Vehicular access is provided through existing driveways located internal to the shopping center. Proposed are additional sidewalks to facilitate improved pedestrian connections to the restaurant.

The drive-thru service may operate seven days a week, between the hours of 5:30 a.m. and 11:00 p.m. The indoor seating capacity is approximately 40 persons. The outdoor seating capacity is approximately 15 persons. The restaurant may employ up to 20 persons with a maximum of eight persons working at a time.



Figure 4 – Northwesterly view towards existing building pad (grassy area) from parking area



Figure 5 – Easterly view of existing building pad (grassy area) from shopping center parking area towards Old Columbia Pike

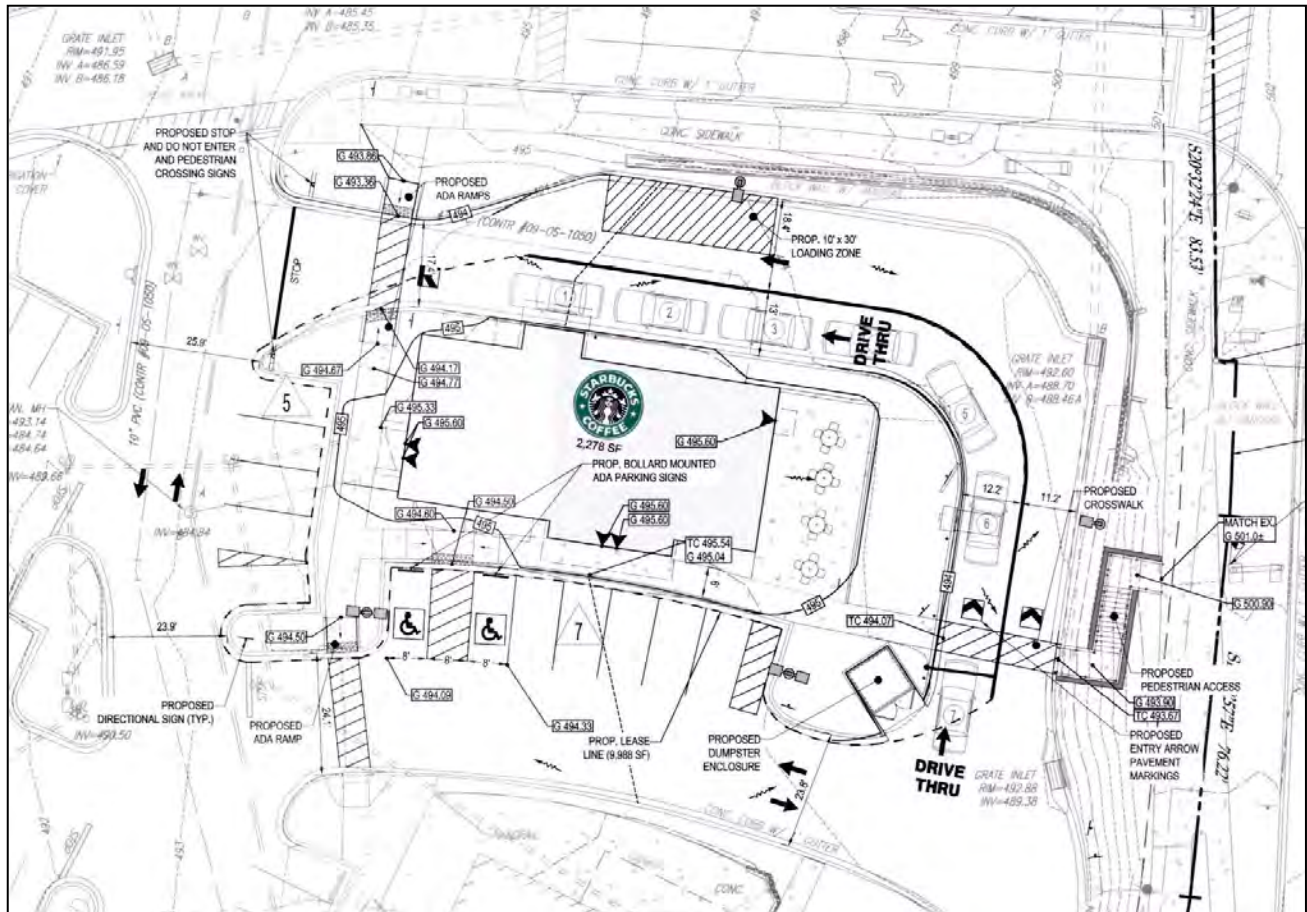


Figure 6 - Proposed site plan with new restaurant building and existing building pad, drive-thru lane, and parking.

Section III: Analysis and Findings

1. Development Standards

As discussed in Section II A above, the proposed Starbucks restaurant building is not part of this review. Also, the drive-thru lane is not part of this review because it is clearly grandfathered under section 59-7.7.1.A.1. Photographs document that the drive-thru lane existed prior to the effective date of the 2014 zoning ordinance and the drive-thru lane conforms to the definition of “site design” that is grandfathered under section 59-7.7.1.A.1 of the 2014 zoning ordinance.

Therefore, the development standards contained in section 59-6.2.7 (Queueing Design Standards) of the 2014 zoning ordinance are not part of this review because the drive-thru lane presently exists and it is a grandfathered site design. This report will analyze only the requested drive-thru use as an accessory use to the Starbucks restaurant.

2. Master Plan:

Burtonsville lies in the eastern corner of Montgomery County and is centered at the crossroads of highways US 29 and MD 198. The property is located within the Burtonsville Crossroads Neighborhood Plan and the Village Center Business 29 Neighborhood subarea—approximately ten miles northeast from downtown Silver Spring. The subarea consists of larger-sized properties including the Burtonsville Crossing Shopping Center, Burtonsville Office Park, a publicly-owned commuter park-and-ride lot, and the Burtonsville Town Square Shopping Center.

The Master Plan discusses interrelated themes to address challenges and opportunities with land development to create a more complete, connected, and sustainable community. The Project is compatible with the following themes (policies) contained in page seven of the Master Plan:

- *Connectivity—create an expanded network of streets, bikeways, and pedestrian routes.*

To facilitate improved pedestrian connections, the Project (as an accessory use to restaurant) will provide additional pedestrian connections. Additional sidewalks will link the Project to an existing walkway located parallel to the shopping center driveway entrance. Further, the Project will provide a stairway at the eastern boundary of the property to provide a new, direct pedestrian link from Old Columbia Pike. Accordingly, the Project supports this policy.

- *Economy—improve the local economy with a mix of uses and new implementation tools.*

The Project will complement the existing mix of uses in the Village Center Business 29 Neighborhood subarea and the shopping center. Uses include a Giant supermarket, Dunkin Donuts, Petco animal supplies, Capital One Bank, Montgomery County Liquor and Wine, hair salon, and various other services and restaurants. Also, an existing vacant building pad within the shopping center will be developed and utilized as planned. The Project will contribute to the local economy and provide employment opportunities, and contribute to the County's tax base. As such, the Project supports this policy.

Environment—preserve tributary headwaters and maintain rural character.

The Project complies with approvals issued by the stormwater management plan approved by the Dept. of Permitting Services (DPS) in 2009 for the shopping center development. The Project is located within the limits of disturbance shown on the approved stormwater management plan. The property is highly disturbed and not located in a rural edge area. Therefore, the Project supports this policy.

3. Transportation

The Project site is situated in the Burtonsville Town Square shopping at the northwest quadrant of Old Columbia Pike and MD 198 in Burtonsville. Vehicular access to the restaurant and drive-thru is internal to the shopping center. The existing vehicular and pedestrian configurations were approved and built as part of Preliminary Plan No. 12004109. The drive-thru service window is situated in the northwest section of the building pad such that drive-thru operations will have adequate queuing area. Pedestrian access is by way of internal walkways through the parking lots within the shopping center. Also, the applicant proposes to provide direct pedestrian access from the walkway adjacent to Old Columbia Pike. As shown on the site plan, new stairs are provided to link the pedestrian walkway to the restaurant. Therefore, there would be no significant impact to transportation.

4. Parking

Parking is not part of this review because the parking and drive-thru lane were approved and built as part of Preliminary Plan No. 12004109. As such, this standard is not applicable.

5. Landscaping

Landscaping is not part of this review because the landscaping plan was approved and planted as part of Preliminary Plan No. 12004109. As such, this standard is standard is not applicable. However, it should be noted the existing shopping center landscaping provides partial screening of the Project from Old Columbia Pike. The land slopes down

from the Old Columbia Pike roadway to the building pad by about seven feet., which provides screening of the drive-thru lane. Additionally, the applicant proposes two shade trees to further screen the drive-thru lane from off-site views. Upon maturation of the shade trees, the tree foliage is expected to provide adequate screening. Other landscaping proposed includes additional shade trees, deciduous shrubs, evergreen shrubs, perennials, and ornamental grasses, as indicated on the applicant's landscape plan.

6. Outdoor Lighting Requirements

Outdoor lighting requirements are not part of this conditional use application. Outdoor lighting requirements associated with the Project will be reviewed pursuant to the conditions and requirements of Preliminary Plan No. 12004109.

7. Signs

Signs are not part of this conditional use application. As such, this standard is not applicable.

8. Environment and Forest Conservation

The property site is currently developed with a shopping center and parking lots. The Project consists of a use within an existing building pad area. The site contains no wetlands, streams, protected soils, endangered species, seeps, or other natural features. The Project site is not located within a Special Protection Area. A Final Forest Conservation Plan (FCP) was approved for the shopping center on February 19, 2014. The Project is within the approved limits of disturbance of the FCP and no additional approvals are required.

On June 3, 2009, the Stormwater Management Plan was approved. The Project is included within the limits of disturbance shown on the approved Stormwater Management Plan and no additional approvals are required.

9. Community Concerns

At the time of the publication of the staff report, no communication has been received by Montgomery County Planning Department from community organizations or members of the public.

Section IV: Compliance with Necessary Findings

1. Section 59.7.3.1. Conditional Use

E. Necessary Findings

1. *To approve a conditional use application, the Hearing Examiner must find that the proposed development:*

- a. *Section 59.7.3.1.E.1.a: Satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

Staff Response: This finding is satisfied. Currently, the overall property is developed in substantial conformance with Preliminary Plan No. 12004109B as a shopping center. As discussed in Section II above, the existing drive thru lane is grandfathered under section 59-7.7.1.A.1. The Project consists of drive-thru use at a new Starbucks restaurant. Therefore, with the approval of the conditional use, the Project complies with the applicable requirements under the approved preliminary plan.

- b. *Section 59.7.3.1.E.1.b: Satisfies the requirements of the zone, use standards under Article 59-3 (Uses and Use Standards), and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6 (General Development Requirements);*

Staff Response: This finding is satisfied. The Project satisfies applicable provisions under Article 59-3 (Uses and Use Standards) as shown in Section IV of this report. Section 59-6 (General Development Requirements) is not applicable because the drive-thru lane exists and is built as authorized by the approved preliminary plan for the shopping center.

- c. *Section 59.7.3.1.E.1.c: Substantially conforms with the recommendations of the applicable master plan.*

Staff Response: This finding is satisfied. The Project is located within the Burtonsville Crossroads Neighborhood Master Plan. The Master Plan provides guidelines for the design and development of public and private land. As discussed in Section III 2 above, the Project substantially conforms with the applicable policies and recommendations contained in the Master Plan.

- d. *Section 59.7.3.1.E.1.d: Is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan.*

Staff response: This finding is satisfied. The Project is harmonious with, and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan because it is located on an existing building pad site with a drive-thru lane, adequately buffered with landscape, and sufficiently located away from any sensitive land uses or dwelling units. The drive-thru use is consistent with the nature of surrounding commercial uses and neighborhood.

- e. *Section 59.7.3.1.E.1.e: Will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area.*

Staff Response: This finding is satisfied. As discussed in Section III of this report, the Project substantially conforms to the policies and recommendations contained in the Master Plan. Further, the Master Plan recognizes that the shopping center is unlikely to be redeveloped during the life of the plan (pg. 42). A drive-thru use associated with a restaurant is customary with similarly designed and located shopping centers. There are no residential areas that would be adversely affected or altered by the Project because the Project site is sufficiently located away from residential uses to the north and it is buffered by the existing shopping center buildings.

- f. *Section 59.7.3.1.E.1.f: will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*

- i. *If a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public facilities, including schools, police and fire protection, water, sanitary sewer, public roads, or storm drainage; or*

- ii. *If a preliminary plan of subdivision is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage.*

Staff Response: This finding is satisfied. The Project is not subject to a preliminary plan of subdivision because the subject property is platted as Parcel B Burtonsville Shopping Center. The adequacy of the public facilities for the shopping center buildout was determined by Preliminary Plan No. 12004109B. Therefore, a new adequate public facilities test is not required for the Project because the Project is a use that will not cause an increase in square footage or development beyond the approved preliminary plan.

- g. *Section 59.7.3.1.E.1.g: will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
 - i. *The use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
 - ii. *Traffic, noise, odors, dust, illumination or lack of parking; or*
 - iii. *The health, safety or welfare of neighboring residents, visitors or employees.*

Staff Response: This finding is satisfied. The inherent physical and operational characteristics associated with a drive-thru use will not cause undue harm to the neighborhood. There are no non-inherent conditions as a result of this application. The inherent characteristics include:

- Vehicle and pedestrian trips to and from the restaurant;
- Circulation system for the drive-thru facility;
- Parking for customers and employees;
- Varied hours of operation;
- Noise or odors associated with vehicles and a drive thru facility; and
- Lighting.

These characteristics are inherent and typically associated with drive-thru uses and do not exceed what is normally expected. Residential uses adjoining the shopping center site to the north are well-buffered from the Project in distance and by existing shopping center buildings. Further, the Project must comply with the County Noise Control Ordinance (Chapter 31B of the County Code), and as such would not create excessive

noise. The Project would cause no adverse effect with regard to inherent or non-inherent characteristics, or combination thereof, or in any of the following categories: the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; traffic, noise, odors, dust, illumination or lack of parking; or the health, safety or welfare of neighboring residents, visitors or employees.

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

Staff Response: This finding is not applicable. The Project is not located in a Residential Detached zone.

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

Staff Response: Acknowledged by the applicant.

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

Staff Response: This finding is not applicable. The Project site is in the CRT zone and is not surrounded by agricultural or rural residential zoned land.

5. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:*
 - i. *Filling Station;*
 - ii. *Light Vehicle Sales and Rental (Outdoor);*
 - iii. *Swimming Pool (Community); and*
 - iv. *the following Recreation and Entertainment Facility use: swimming pool, commercial.*

Staff Response: The finding is not applicable. The Project is not a Filling Station, Light Vehicle Sales and Rental (Outdoor), Swimming Pool (community); or a swimming pool, commercial. The Project is a drive-thru use.

6. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:*

- i. Funeral Home; Undertaker;*
- ii. Hotel, Motel;*
- iii. Shooting Range (Outdoor);*
- iv. Drive-Thru*
- v. Landfill, Incinerator, or Transfer Station; and*
- vi. a Public Use Helipad, Heliport or a Public Use Helistop.*

Staff Response: This finding is satisfied. The applicant submitted a needs analysis report dated July 6, 2016 by Valbridge Property Advisors, a qualified real estate consulting and appraisal firm with principal offices located in Columbia, Maryland. The report concludes that a public need exists for the Project due to an insufficient number of similar drive-thru uses presently serving the existing population and market area of Burtonsville. Further, the report states, the Project will not result in a multiplicity or saturation of similar uses in the Burtonsville neighborhood.

2. Section 59.3.5.14 Conditions for Approval of Drive-Thru Facility

E. Drive-Thru Facility

1. Defined

Pursuant to section 59-3.5.14.E.1 (Drive-Thru Facility) a drive-thru facility “means a facility where the customer is served while sitting in a vehicle. drive-thru includes drive-thru restaurants, banks, and pharmacies, but does not include Filling Station (see Section 3.5.13.C, Filling Station.”

Staff Response: The Project meets the definition of drive-thru facility.

2. Use Standards

b. *Where a Drive-Thru is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*

- i. *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 and intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic patterns from such buildings or cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity.*

Staff Response: This standard is satisfied. The application submitted a traffic statement prepared by Lenhart Traffic Consulting, Inc., a qualified traffic engineering firm with offices located in Severna Park, Maryland. The report concludes that the Project “satisfies the requirements of the underlying Preliminary Plan of Subdivision and provides more than enough on-site queuing and site circulation to accommodate the peak period of traffic generation.” Additionally, a proposed pedestrian connection will provide a convenient and safe access to the restaurant from Old Columbia Pike. Therefore, the Project will not create a traffic hazard or traffic nuisance or cause frequent turning movements across sidewalks and pedestrian ways, disrupting pedestrian circulation within a concentration of retail activity.

- ii. *The use of the proposed location will not preempt frontage on any highway or public road in a way that reduces the visibility and accessibility of an interior commercial area zoned or proposed for commercial use that is oriented to the same highway or public road.*

Staff Response: This standard is satisfied. The Project is proposed on an existing building pad site with a drive-thru lane. The Project will not preempt frontage on any highway or public road in a way that reduces the visibility and accessibility of an interior commercial area zoned or proposed for commercial use that is oriented to the same highway or public road because the Project is consistent with the site plan approved under Preliminary Plan No. 12004109B for a shopping center. Therefore, there would be no impact.

- iii. *Product displays, parked vehicles, and other obstructions that adversely affect visibility at intersections, or at entrances and exits to and from the Drive-Thru are prohibited.*

Staff Response: This standard is satisfied. The applicant does not propose product displays, parked vehicles, or other obstructions that would adversely affect visibility at intersections, or at entrances and exits to and from the drive-thru. The drive-thru access lane is clearly marked on the site plan and is free of obstructions. The drive-thru lane is accessed from the internal shopping center parking lot. As such, there would be no impact to street intersections or to the drive-thru entrance/exit.

Section V: Conclusion

The proposed drive-thru use, as recommended in Section I of this report, satisfies all applicable requirements for the approval of a conditional use as specified in the Montgomery County Zoning Ordinance and is consistent with the recommendations of the Burtonsville Crossroads Neighborhood Master Plan. There are no known unacceptable land use or environmental impacts associated with the Project as submitted by the applicant and as recommended by staff.

Attachments:

1. Hearing Examiner's order determining applicable zoning and development standards (12/28/2016)
2. Applicant's conditional use plan, sheets 1-7

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for
MONTGOMERY COUNTY**

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CASE NO. CU 17-06

APPLICATION OF BURTONSVILLE TOWNE CENTER LLC

**ORDER DETERMINING APPLICABLE
ZONING AND DEVELOPMENT STANDARDS**

The subject application seeks a conditional use to allow a drive-thru restaurant, under Section 59-3.5.14.E of the Montgomery County Zoning Ordinance, for property located at 15600 Old Columbia Pike, Burtonsville, MD 20866. The property is further described as Parcel B, Burtonsville Shopping Center subdivision, consisting of a portion of 26.25 acres in the CRT (Commercial/Residential/Town) 1.5 C-1.0 R-1.25 H-70 Zone. The application proposes construction of a Starbucks restaurant on a pad site within the shopping center.

On November 2, 2016, the Applicant filed a “Motion to Determine Applicable Zoning and Development Standards” (Motion) with the Office of Zoning and Administrative Hearings (OZAH). The Motion requested one of two alternative rulings from OZAH in advance of the public hearing. It requested that the application be reviewed under the development standards of the C-2 Zone, which was in effect when a preliminary plan of subdivision was approved for the shopping center in 2006, and the current conditional use standards for a drive-thru restaurant under the 2014 Zoning Ordinance. Alternatively, the Applicant requested that the application be reviewed under the both the C-2 development standards and the special exception standards of the 2004 Zoning Ordinance. Exhibit 26, p. 2.

The Applicant sought a determination on what development standards will apply to the proposed drive thru restaurant because the site design and building do not meet certain development standards in the 2014 Zoning Ordinance (effective on October 29, 2014). The Applicant lists these as follows:

1. Section 59-4.1.7.B.2.b: This section prohibits locating a drive aisle within the “build-to” area of a lot. The Applicant proposes to locate the drive aisle within the build-to area.
2. Section 59-4.5.3.C.3: This section requires that (1) 70% of the building façade be located within the build-to area of the property, and (2) that the building be no more than 20 feet from the right-of-way. The proposed drive-thru restaurant does not meet these requirements.

3. Section 59-4.5.3.C.3: This Section requires that surface parking be located behind the front building line of the drive-thru restaurant.

Factual Background

The Motion includes the following relevant facts, which have been supplemented by the Hearing Examiner:

1. On March 21, 2006, the Planning Board approved a preliminary plan for development of the property under the C-2 Zone. At the time, approximately 11 acres of the site was zoned RC (Rural Cluster) because of its location within the Patuxent River Primary Management Area (PMA). The preliminary plan approval permitted 250,000 square feet of retail and 10,000 square feet of commercial office.
2. On July 2, 2009, DPS approved a Storm Drain and Paving Plan for the entire site.
3. At some point in 2010, the applicant constructed the pad site. Construction included installation of curbs, sidewalks, handicapped ramps, utilities, storm drains, stormwater recharge area, driveways (including the drive-thru lane), parking areas, parking lights, fire lanes, nearby retaining walls and landscaping (outside the curb line). The perimeter buildings of the shopping center faced inward “in accord with Park Planning staff’s pedestrian friendly concept.” Exhibit 33, p. 2. Modifications to the pad site were made in 2014 to accommodate truck movements for the adjacent Green Turtle pad site. *Id.*
4. In 2013, the subject property was rezoned from the C-2 Zone to the CRT Zone under the 2004 Zoning Ordinance. According to the Applicant, the small portion of the property zoned RC was also rezoned to the CRT Zone. The Applicant states that this was to ensure that the future development could be built under the development standards of the C-2 Zone. The Applicant argues that the development standards of the C-2 Zone applied to future buildings because the CRT Zone (at the time) grandfathered C-2 development. The 2004 Zoning Ordinance stated (in Section 59-C-15.9(d)):

A project which has had a preliminary or site plan approved before the application of the CRT, CRN, or CR zone to the property may be built or altered at any time, subject to either the full provisions of the previous zone or this Division, at the option of the owner. If built under the previous approval, it will then be treated as a conforming building, structure, or use and may be renovated, continued, repaired, or reconstructed under Subsection (a) above. If built with an incremental increase over the previous approval, only that incremental increase must comply with this Division.

5. On March 4, 2014, the Council adopted a new Zoning Ordinance, effective on October 30, 2014. *Montgomery County Ordinance, 17-43, Zoning Text Amendment 13-04.* The CRT

Zone did not repeat the grandfathering language from the prior Zoning Ordinance that explicitly permitted the development under the standards of the C-2 Zone.

6. On July 8, 2014, DPS approved a building permit for the Greene Turtle Restaurant under the C-2 development standards of the 2004 Zoning Ordinance.
7. Of the 260,000 square feet of development that was approved by the 2006 preliminary plan, 119,532 square feet has been constructed. Exhibit 37.

Aerial photographs submitted by the Applicant show the subject pad site in 2012, 2014, and 2016 (Exhibit 37):



Google Earth Image
October 12, 2012



Google Earth Image
Dated October 7, 2014



Google Earth Image
2016

Analysis

The Applicant argues that the C-2 development standards apply to the building (although not necessarily the use) for several reasons. It argues that (1) the Applicant has spent considerable amounts of time and money developing the property under the C-2 standards, (2) that the grandfather provision of the 2004 Zoning Ordinance still applies to development of the property, (3) that DPS determined that the C-2 development *and special exception* standards apply to the property, (4) that development of the Green Turtle pad site under the C-2 development standards serves as precedent for this use, (4) that the Applicant was reassured by Planning Staff in 2013 that future development would be grandfathered under the C-2 Zone, and (5) that the application is grandfathered under §59-7.7.1.B of the Zoning Ordinance. Exhibit 28.

DPS and Planning Staff disagree on what standards should be applied to the use. Planning Staff determined that the development standards of the C-2 Zone apply to physical improvements to the site and the use standards of the 2014 Zoning Ordinance apply to the proposed use. Exhibit 39(a). DPS concluded that the use should be reviewed completely under the 2004 Zoning Ordinance (i.e., both the physical improvements and the special exception standards applicable to the use.) Exhibit 41.

Planning Staff bases its conclusion on §§59-7.7.1.A.1 and B.1 of the 2014 Zoning Ordinance. §59-7.7.1.A.1 grandfathers “existing site design,” which is defined as, “[T]he external elements between and around structures that give shape to patterns of activity, circulation, and form. Site design includes landforms, driveways, parking areas, roads, sidewalks, trails, paths, plantings, walls or fences, water features, recreation areas and facilities, lighting, public art, or other external elements.” *2014 Zoning Ordinance*, §59-1.4.2. Section 59-7.7.1.B.1 grandfathers existing approvals and any further “required” steps necessary to develop the property:

Any development plan, schematic development plan, diagrammatic plan, concept plan, project plan, sketch plan, preliminary plan, record plat, site plan, special exception, variance, or building permit filed or approved before October 30, 2014 must be reviewed under the standards and procedures of the property's zoning on October 29, 2014, unless an applicant elects to be reviewed under the property's current zoning. Any complete Local Map Amendment application submitted to the Hearing Examiner by May 1, 2014 must be reviewed under the standards and procedures of the property's zoning on October 29, 2014...The approval of any of these applications or amendments to these applications under Section 7.7.1.B.1 will allow the applicant to proceed *through any other required application or step in the process within the time allowed by law or plan approval*, under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014. The gross tract area of an application allowed under Section 7.7.1.B.1 may not be increased.

Planning Staff reasoned that the physical improvements to the pad site constitute "site design" grandfathered under §59-7.7.1.A.1. While these were grandfathered, Staff determined that the building itself is not grandfathered under that section because it does not exist. However, Staff stated:

Read together with Section 7.7.1.A.2.a, which expressly prohibits the expansion of a nonconforming use, we do not read Section 7.7.1.B.1 to grandfather a new conditional use. But under Section 59-7.7.1.B.2.b, "[a]ny allowed use...may be located in a building or structure deemed conforming under section 59-7.7.1.A.1. Thus a new conditional use can be located in a grandfathered structure.

Exhibit 39. Staff apparently presumes that, because a building could have been built at this location (even though it wasn't) under the preliminary plan approval, a building housing a new conditional use may also utilize the standards of the old zoning. *Id.*

DPS found that both the development standards and the special exception (now conditional use) standards of the 2004 Zoning Ordinance applied to the development. They consider that the conditional use is a "required application or stop in the process" necessary to implement the preliminary plan approval. Exhibit 41.

The Hearing Examiner finds that the development standards of the C-2 Zone should be applied to the building, but the conditional use standards of the 2014 Zoning Ordinance should be applied to the proposed use, although not entirely for the same reasons stated by Planning Staff.

The drive-thru lane is clearly grandfathered under §59-7.7.1.A.1 because (1) the aerial photographs demonstrate that it existed prior to the effective date of the 2014 Zoning Ordinance, and (2) it falls within the definition of “site design” that is grandfathered under §59-7.7.1.A.1 of the current Zoning Ordinance.

The more difficult question is whether the building, which admittedly is not built, may be developed under the standards of the former Zoning Ordinance. This case is unusual because it involves a pad site. The physical improvements grandfathered as “site design” include curbs, parking spaces, drive aisles, utilities and storm drainage. The pad site as constructed (including the location of the drive aisle) necessarily constrains the placement of the building on the subject site so that it cannot comply with the requirements of the current Zoning Ordinance. Thus, in order to recognize the Applicant’s rights to the “grandfathered” portions of the site design, the placement of the building must, *a fortiori*, deviate from the “placement” standards of the current Zoning Ordinance.

The Hearing Examiner holds that, in this circumstance, the placement of the building may conform to the development standards of the prior zoning to the extent necessary to accommodate the grandfathered site design. The site design was constructed under the development standards of the C-2 Zone. Because the site design dictates the location of the building, the building may be completed under the standards of the C-2 Zone as well.

The Hearing Examiner further determines, however, that the conditional use standards of the current Zoning Ordinance apply to the proposed use. Section 59-7.7.1.B.1 grandfathers

existing *approvals* under the 2004 Zoning Ordinance and permits the developer to obtain all further approvals necessary to implement the approvals existing as of October 30, 2014. In this case, the “approval” grandfathered under the Zoning Ordinance is the 2006 preliminary plan. A conditional use, however, is not an approval “required” to implement the preliminary plan.

The purpose of the grandfathering clause was to permit completion of projects that were caught in “mid-stream” by the changes to the new Zoning Ordinance. Mid-stream meant projects that were working toward an approval or projects that had received one approval, but needed others before they could be completed. By allowing owners to finish out with “required approvals,” the Council intended to permit those projects already in the development process to be implemented under the standards of the old Zoning Ordinance. The grandfathering was intended, however, to apply to particular approvals or plans that were pending or approved. Staff explained the intent:

- 1) Allow every approved and pending plan submitted X months after the ordinance is approved (development plan, concept plan, project plan, sketch plan, preliminary plan, site plan, special exception and building permit) to complete that approved plan without regard to the requirements of the new zone;

PHED Committee Packet, September 13, 2013 Worksession, pp. 14-15.

Preliminary plans and special exceptions are listed as two separate approvals in Staff’s memorandum to the PHED Committee and there are distinctions between the two. A preliminary plan does not approve specific uses, particularly conditional uses, or even the layout of buildings. In this case, the 2006 preliminary plan approval states, “[T]he layout of the buildings on the property is conceptual and is shown as a number of building pads within the parking lots to provide flexibility for future tenants.” Exhibit 33(a), p. 2. In a preliminary plan, the *uses* are generally described for the purpose of determining the adequacy of public facilities (i.e., whether roads, schools, and utilities are sufficient to serve the use), but are not specified. In this case, the uses

proposed in the preliminary plan are described only as 250,000 square feet of retail and 10,000 square feet of office uses. *Id.* at 5.

A conditional use, however, is not permitted by right in a zone and is not vested by the preliminary plan approval. A conditional use requires approval of a specific plan showing the layout and operation of the particular use sought. The court in *Peoples Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 71-72 (2008), described the difference between a conditional use (or special exception) and a permitted use as follows:

The special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a “middle ground” between permitted uses and prohibited uses in a particular zone. Permitted and prohibited uses serve as binary, polar opposites in a zoning scheme. A permitted use in a given zone is permitted as of right within the zone, without regard to any potential or actual adverse effect that the use will have on neighboring properties. A special exception, by contrast, is merely deemed *prima facie* compatible in a given zone. The special exception requires a case-by-case evaluation by an administrative zoning body or officer according to legislatively-defined standards. That case-by-case evaluation is what enables special exception uses to achieve some flexibility in an otherwise semi-rigid comprehensive legislative zoning scheme.

Because approval of the 2006 preliminary plan did not include approval of this conditional use nor is the conditional use required to implement the approved preliminary plan, the Hearing Examiner finds that the conditional use is *not* grandfathered under Section 59-7.7.1.B.1 of the Zoning Ordinance and must comply with the use standards in §59-3.5.14 of the 2014 Zoning Ordinance.

The Hearing Examiner does not find the balance of the Applicant’s arguments for reaching the same conclusion compelling. DPS issued the permit for the Green Turtle pad site *before* the effective date of the new Zoning Ordinance and there is nothing in the record to indicate that it required a conditional use approval.

The Applicant does assert that it made significant financial investment in developing the property under the old C-2 Zone. This suggests a constitutional argument that the Applicant has

acquired “vested rights” to finish development of the entire center under the C-2 development standards. Because the Applicant did not specifically make this argument, however, the Hearing Examiner does not reach the issue in this case.

Order

Upon review of the Applicant’s Motion to Determine Development Standards, and all responses thereto, it is hereby

ORDERED, that the development standards of the former C-2 Zone (§59-C-4.35 of the 2004 Zoning Ordinance) should be applied to physical improvements to the subject property, and it is further

ORDERED, that the use standards of §59-3.5.14.E of the 2014 Zoning Ordinance shall apply to the proposed use.

Issued this 28th day of December, 2016.



Lynn A. Robeson
Hearing Examiner

COPIES TO:

Stacy Silber, Esquire
Cynthia Bar, Esquire
Charles Frederick, Esquire, Associate County Attorney
Diane Schwartz-Jones, Director, Department of Permitting Services
Phil Estes, Planning Department
Greg Nichols, Manager, SPES at DPS
Washington Suburban Sanitary Commission
State Highway Administration
Montgomery County Public Schools
Abutting and Confronting Property Owners
(or a condominium’s council of unit owners or renters, if applicable)
Civic, Renters’ and Homeowners’ Associations within a half mile of the site
Any Municipality within a half mile of the site



15600 OLD COLUMBIA PIKE, BURTONSVILLE
TAX MAP KS62, GRID 0000, PARCEL N703
MONTGOMERY COUNTY, MARYLAND



LOCATION MAP

COPYRIGHT 2003
DELRME STREET ATLAS 2004 PLUS USA
SCALE: 1"=2000'

OWNER/APPLICANT

BURTONSVILLE TOWNE SQUARE, LLC
10411 MOTOR CITY DRIVE, SUITE 402
BETHESDA, MD 20817-1090
CONTACT: CHRISTOPHER T. JONES

DEVELOPER

SCM SOLUTIONS, LLC
1281 E. MAGNOLIA STREET, SUITE D, UNIT 186
FORT COLLINS, CO 80524
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CONTACT: LISA SUNDERLAND

CIVIL ENGINEER

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16701 MELFORD BOULEVARD, SUITE 310
BOWIE, MD 20715
PHONE: (301) 809 - 4500
CONTACT: MATTHEW K. JONES, P.E.

PREPARED BY



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BOWIE, MARYLAND 20715**

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REFERENCES

BOUNDARY & TOPOGRAPHIC/ALTA SURVEY
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16701 MELFORD BLVD, SUITE 310
BOWIE, MD 20715
DATED: 10/05/15

UTILITIES

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DRAWN BY:	AK
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DATE:	07/18/16
SCALE:	AS NOTED
CAD I.D.:	SSO

PROJECT:
**CONDITIONAL
USE PLAN**

— FOR

STARBUCKS



LOCATION OF SITE
15640 OLD COLUMBIA PIKE
MONTGOMERY COUNTY
BURTONSVILLE, MARYLAND



**16701 MELFORD BLVD , SUITE 310
BOWIE, MARYLAND 20715**
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M. K. JONES



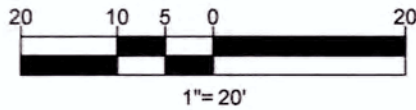
SHEET TITLE:

COVER SHEET

SHEET NUMBER:

1
OF 7

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THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER
UNDER THE LAWS OF THE STATE OF MARYLAND,
LICENSE NO. 39999, EXPIRATION DATE: 3/15/2017



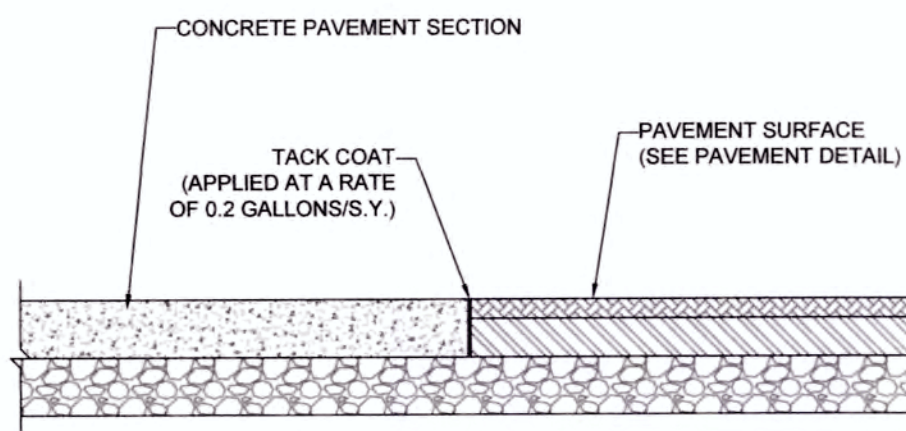
LOCATION MAP
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ZONING INFORMATION IS PER MONTGOMERY COUNTY ZONING CODE AND SHOULD BE VERIFIED PRIOR TO USE TO CONFIRM IT REPRESENTS CURRENT INFORMATION.

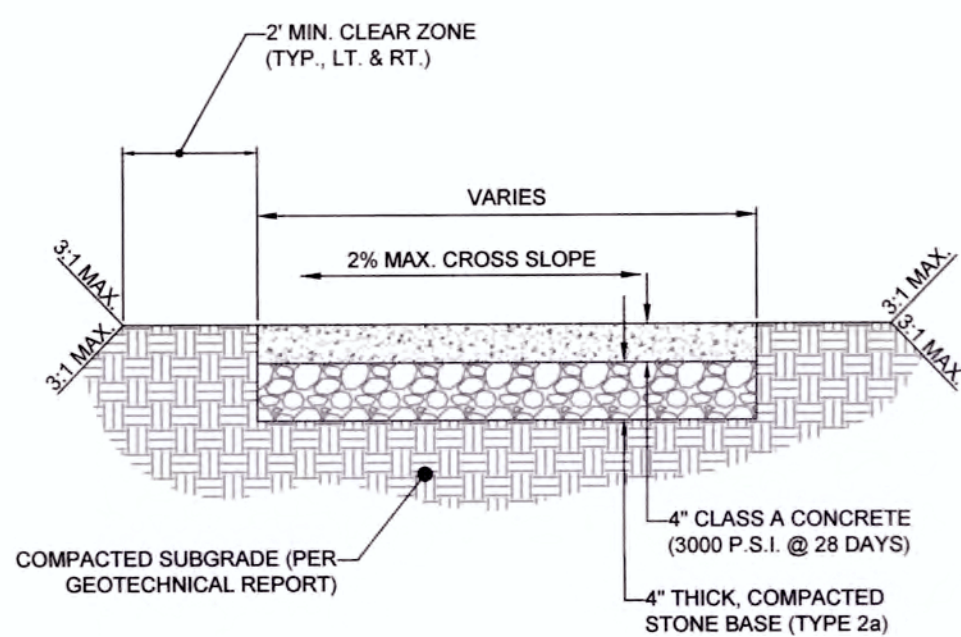
A. OBTAINING ALL REQUIRED PERMITS AND MAINTAINING THE SAME ON SITE FOR REVIEW BY THE ENGINEER AND OTHER PUBLIC AGENCIES HAVING JURISDICTION THROUGHOUT THE DURATION OF THE PROJECT, SITE WORK AND DEMOLITION WORK.

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DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND
THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER
UNDER THE LAWS OF THE STATE OF MARYLAND,
LICENSE NO. 39999, EXPIRATION DATE: 3/15/2017

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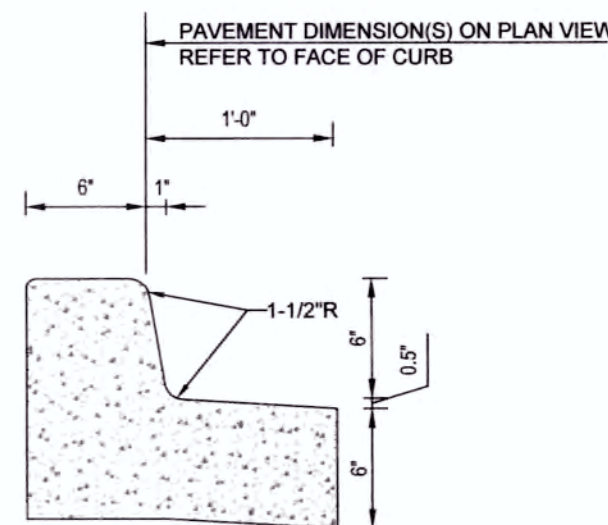


CONCRETE-TO-ASPHALT DETAIL
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NOTE:
1. EXPANSION JOINTS 1/2" WIDE PREMOLDED BIT MATERIAL SHALL BE INSTALLED AT 30' INTERVALS. CRACK CONTROL JOINTS TO BE SPACED AT INTERVALS EQUAL TO SIDEWALK WIDTH.

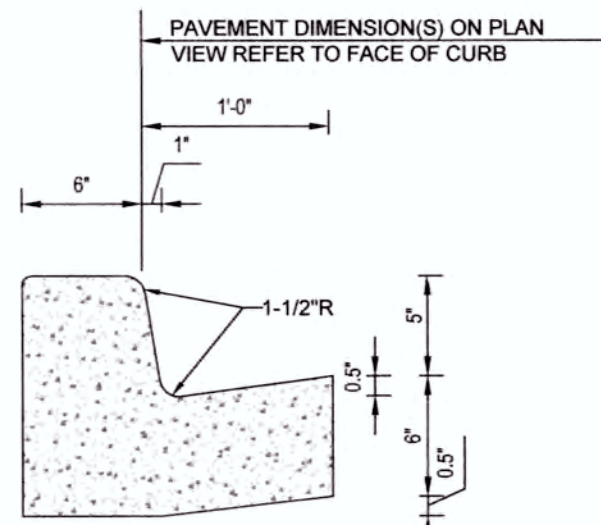
CONCRETE SIDEWALK DETAIL
NOT TO SCALE



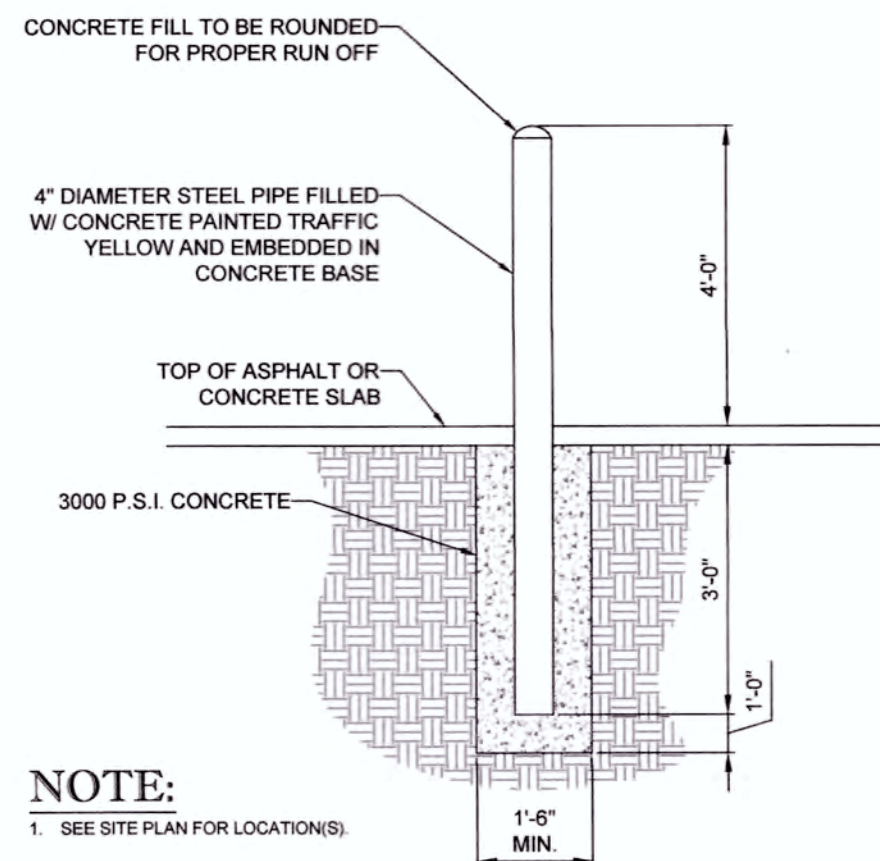
SPILL CURB & GUTTER

NOTES:
1. CONCRETE FOR CURBING SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH OF 3,000 P.S.I. @ 28 DAYS.
2. CONSTRUCTION STAKING FOR CURB INSTALLATION SHALL BE REFERENCED (CUT OR FILL) TO THE TOP OF CURB.
3. AT CONTRACTOR'S OPTION, THE GUTTER THICKNESS MAY BE INCREASED AT THE EDGE OF PAVEMENT TO MAKE BOTTOM OF GUTTER CONTIGUOUS WITH BOTTOM OF ASPHALT PAVEMENT.
4. CONTRACTION JOINTS SHALL BE PLACED @ 10'-0" O.C. TOOLED 1/4" (±1/16") WIDE, 1" DEEP. EXPANSION JOINTS SHALL BE PLACED @ 40'-0" INTERVALS, MAXIMUM, AND ALL P.C.'S.

CONCRETE CURB & GUTTER DETAIL
NOT TO SCALE

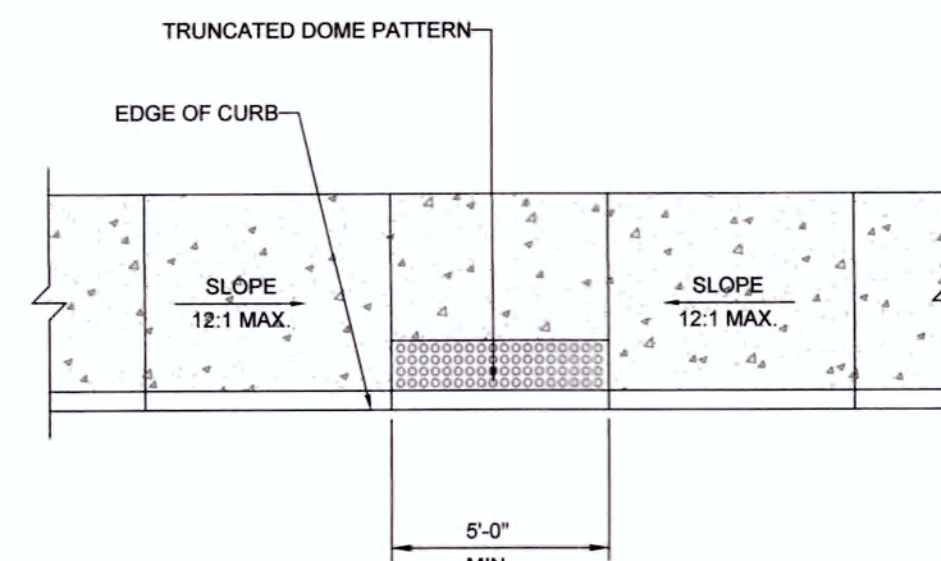


COLLECTOR CURB & GUTTER



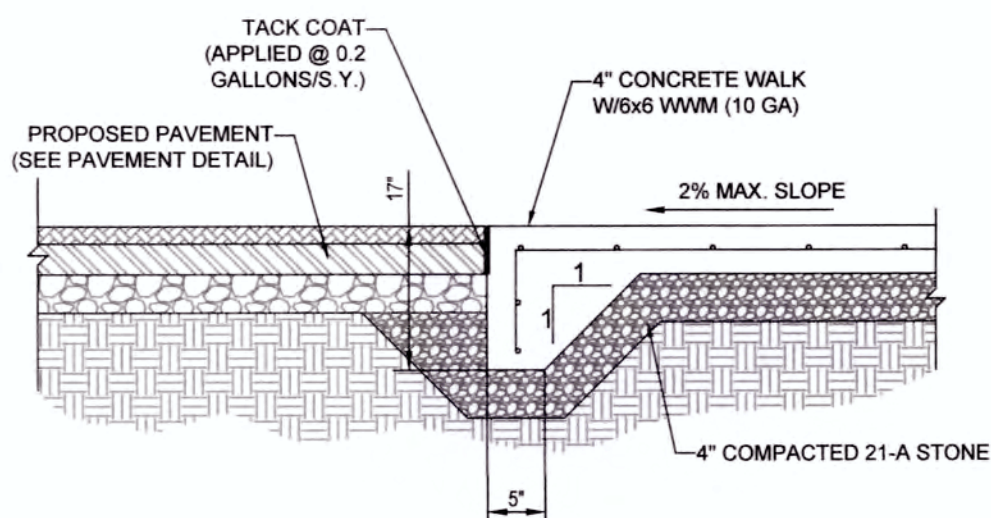
NOTE:
1. SEE SITE PLAN FOR LOCATION(S).

BOLLARD DETAIL
NOT TO SCALE



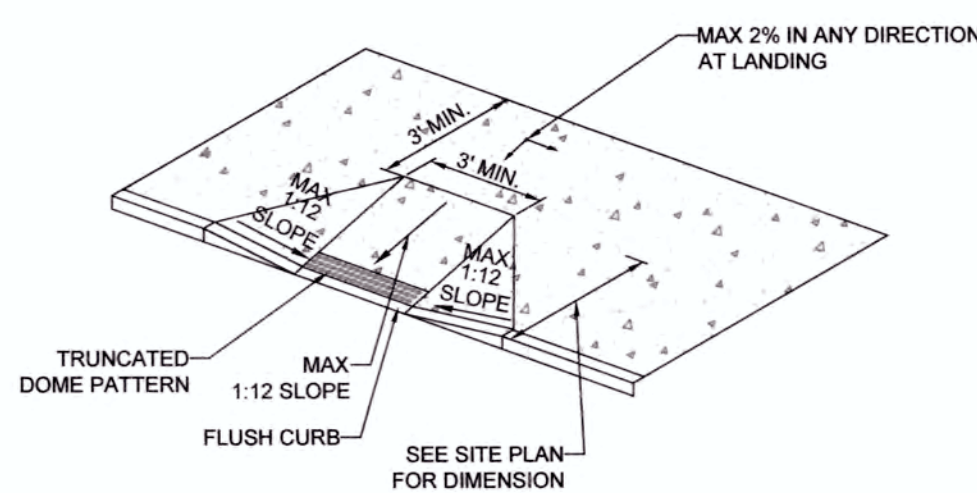
NOTE:
ADA ACCESSIBLE RAMP CONSTRUCTION SHALL CONFORM TO CURRENT ADA ACCESSIBLE GUIDELINES.

ADA ACCESSIBLE RAMP DETAIL
NOT TO SCALE



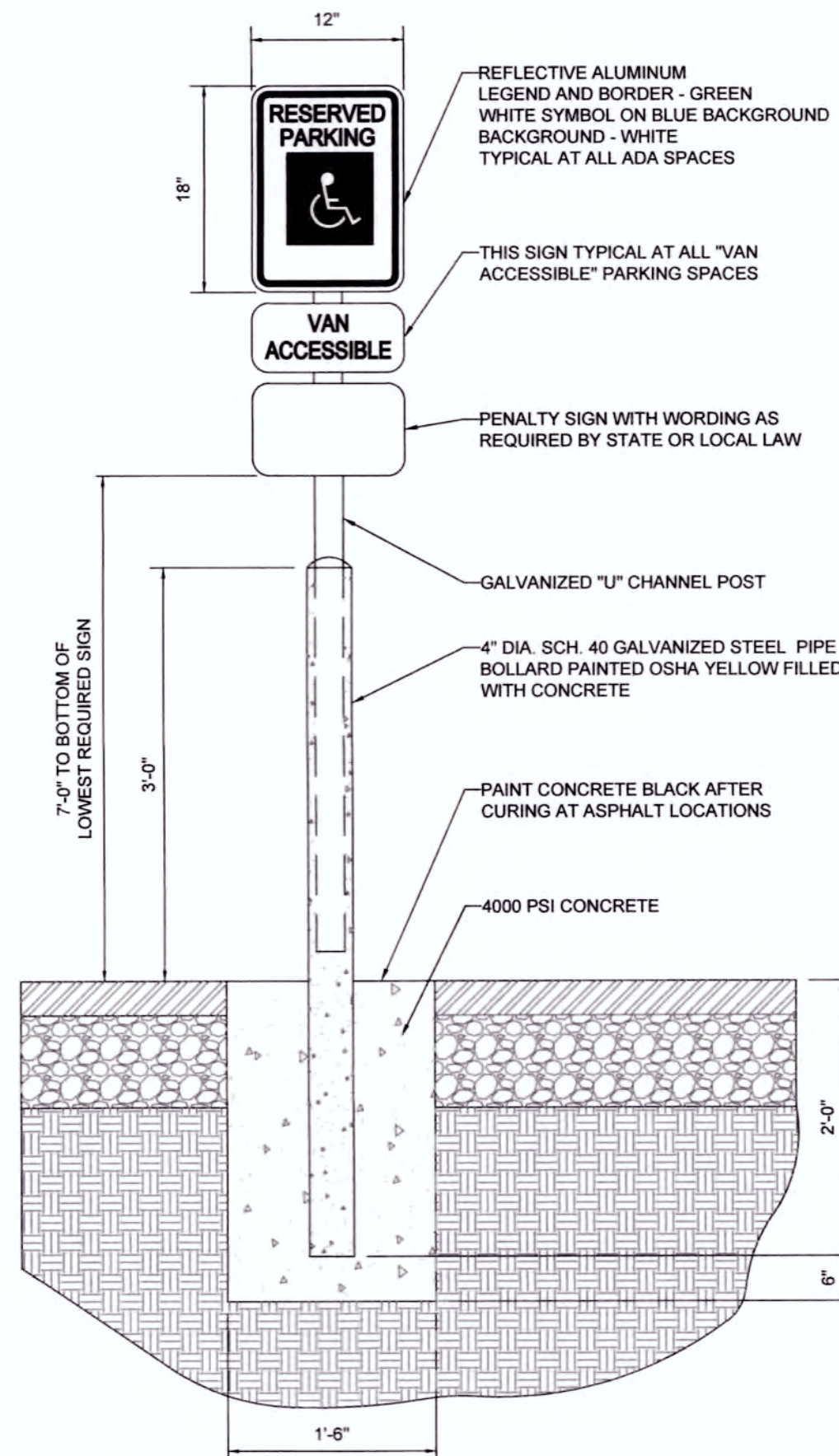
NOTE:
1. CONCRETE TO BE 4000 P.S.I. @ 28 DAYS.

MONOLITHIC CURB & FLUSH SIDEWALK
DETAIL
NOT TO SCALE



NOTE:
1. ADA ACCESSIBLE RAMP CONSTRUCTION SHALL CONFORM TO CURRENT ADA ACCESSIBLE GUIDELINES.

ADA ACCESSIBLE RAMP DETAIL
NOT TO SCALE



NOTE:
ONE AT EACH ADA SPACE. WHERE ADA SPACES FACE EACH OTHER WITHOUT WALKWAY, THERE SHALL BE ONE POST WITH SIGNS MOUNTED BOTH SIDES

BOLLARD MOUNTED ADA PARKING SIGN DETAIL
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1	08/15/16	PER INTAKE COMMENTS	HH

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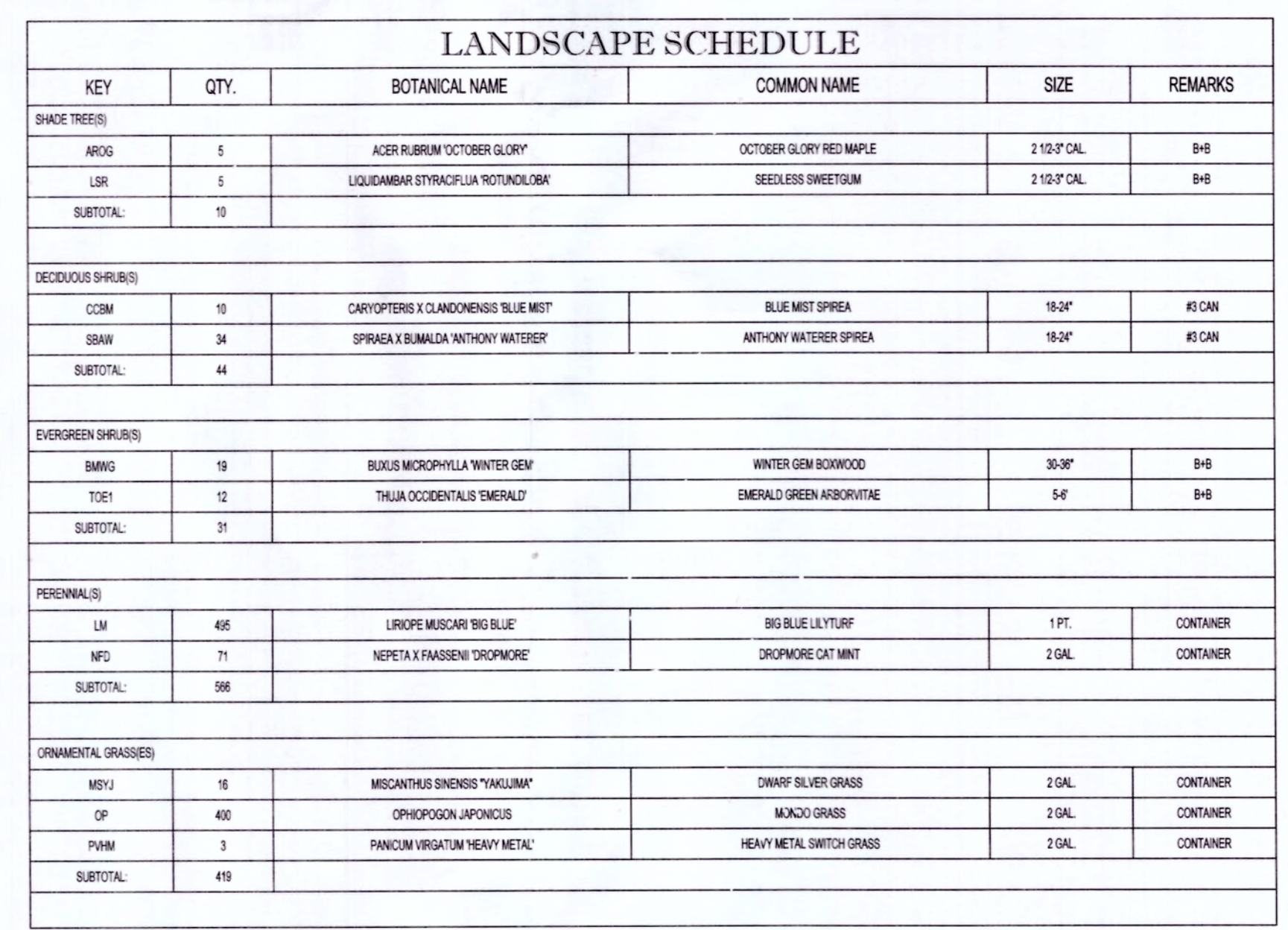
CONDITIONAL USE PLAN
FOR
STARBUCKS
LOCATION OF SITE
15640 OLD COLUMBIA PIKE
MONTGOMERY COUNTY
BURTONTVILLE, MARYLAND

BOHLER ENGINEERING
16701 Melford Blvd., Suite 310
Bowie, Maryland 20715
Phone: (301) 809-4500
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M. K. JONES
PROFESSIONAL ENGINEER
9/15/16

CONDITIONAL USE PLAN DETAILS
SHEET NUMBER:
4
OF 7

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PROJECT No.:	MB15205501
DRAWN BY:	ALG
CHECKED BY:	ERM
DATE:	05/27/16
SCALE:	1" = 20'
CAD I.D.:	LPO

PROJECT:
**CONDITIONAL
USE PLAN**
— FOR —
STARBUCKS

LOCATION OF SITE
15640 OLD COLUMBIA PIKE
MONTGOMERY COUNTY
BURTONSVILLE, MARYLAND



**16701 MELFORD BLVD , SUITE 310
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SHEET TITLE:

LANDSCAPE
PLAN

SHEET NUMBER: 5

