



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB 6/12/03  
Item # 4

## MEMORANDUM

**DATE:** June 4, 2003  
**TO:** Montgomery County Planning Board  
**VIA:** John Carter, Chief, Community-Based Planning \*  
**FROM:** Eastern Montgomery County Team  
William Barron, Team Leader 301-495-4558 B  
Calvin Nelson, Jr. 301-495-4619 cu  
Piera Weiss, 301-495-4728

**REVIEW TYPE:** Special Exception  
**APPLYING FOR:** Automobile Filling Station  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance  
**MASTER PLAN:** Cloverly

**CASE NUMBER:** S-2476  
**APPLICANT:** Safeway, Inc.

**FILING DATE:** April 13, 2001  
**PLANNING BOARD:** June 12, 2003  
**PUBLIC HEARING:** June 17, 2003

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## STAFF RECOMMENDATION

Approval of the proposed special exception with the following conditions:

1. The applicant shall be bound by all of its submitted statements, plans and exhibits, including details of decorative wall, mounted decorative lighting, bus shelter and kiosk.
2. Stormwater management concept, which DPS approved on March 9, 2001, to be reconfirmed by DPS or revised for DPS review and approval prior to the submission of site plan application.
3. Approval by the Planning Board of a preliminary plan of subdivision in accordance with the Subdivision Regulations Chapter 50 of the County Code.
4. Approval by the Planning Board of a site plan in accordance with Division 59-D-3 of the Zoning Ordinance.

5. Approval by the Planning Board of an amended site plan for the Safeway Grocery Store (8-99004) to reflect changes resulting from this special exception.

## **PROPOSAL DESCRIPTION**

**Introduction** -The applicant has requested a special exception to permit the construction and operation of an automobile filling station on a property located in the northeast quadrant of the intersection of Briggs Chaney Road and New Hampshire Avenue and classified in the C-1 Zone. The development includes a kiosk, six multi-product dispensers on six islands covered by a canopy and two parking spaces for employees. The facility will be staffed by a maximum of two Safeway employees and will be open during the normal hours of the grocery store, currently 6:00 a.m. to midnight, seven days a week.

## **BACKGROUND**

### **a) Previous Proposal**

On September 6, 2001, staff brought this special exception application to the Planning Board with a recommendation for denial on the basis that it is was not consistent with the *1997 Approved and Adopted Cloverly Master Plan*, was not in harmony with the general character of the neighborhood and had non-inherent adverse effects on the adjacent Cloverly Town Center development and the Safeway grocery store. The Planning Board voted 4-0 to recommend denial of the application. (See Circle 1, the Planning Board letter to the Board of Appeals.)

### **b) Revised Proposal**

The applicant has met with staff for the last year and a half to reconsider those aspects of the proposed use (size, circulation, street-oriented urban design, structures and curb cuts) enumerated in staff's August memorandum as being inconsistent with the Master Plan, not in harmony with the neighborhood and having non-inherent adverse effects on the adjacent properties.

The applicant also met with the community on several occasions to discuss the proposal. At the community meetings, certain circulation problems at the Safeway grocery store were brought to the attention of the applicant and staff. These problems were: 1) problems at the entrance to Safeway on New Hampshire Avenue; and 2) conflicts on the main drive aisle in the Safeway parking lot.

The community pointed out that customers park their cars along the main drive aisle for the grocery store. This creates conflicts for turning and through movements. Although the drive aisle is marked as a fire lane, it is not sufficiently marked or may be too wide to deter illegal parking. They also pointed out that

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the main drive aisle along the front of the store does not continue through to the Town Center project and Cloverly Street, so much of the traffic must exit through the section where cars are parking illegally thereby creating friction on the main drive aisle.

Safeway revised the plan in accordance with staff and community concerns and submitted a new set of drawings and architectural details to the Board of Appeals in April 2003. The revised plan addresses the circulation problems and the master plan consistency issues described in the earlier staff memorandum. The layout and circulation were completely redesigned to address vehicle movements and conflicts. The size of the gas station has been reduced, the number of pump islands has been reduced from eight to six, the kiosk has been reduced from 396 square feet to 363 square feet and the canopy has been reduced from 5,796 square feet to 3,009 square feet.

### *Circulation*

- The plan isolates the gas station circulation from general traffic circulation in the commercial area, a critical feature missing from the earlier design.
- A median has been placed on the main drive aisle to separate turning movements to and from New Hampshire Avenue.
- The access to the grocery store parking lot off the main drive aisle has been moved a few hundred feet away from New Hampshire Avenue. This eliminates the conflicts for turning movements in to parking lot occurring at the intersection of the drive aisle and New Hampshire Avenue.
- The plan has direct access between Cloverly Street and the main grocery store parking lot.
- The development is not adding any more curb cuts to Cloverly Street than already exist.
- The plan has aligned curb cuts on opposite sides of Cloverly Street where possible.
- The parking spaces previously allocated to Safeway have been consolidated and located closer to the store, and the layout and circulation have been improved.
- The plan provides additional on-street parking.

### *Main Street Concept*

- The plan coordinates the architectural details with the existing Safeway store.
- The plan locates the kiosk along Cloverly Street rather than in the middle of the gas station.
- The plan proposes a decorative wall along New Hampshire Avenue and Cloverly Street to define and frame the streets.

- The plan incorporates the same landscaping features and streetscape elements used in the Cloverly Town Center along Cloverly Street.
- The plan provides an architectural treatment for the bus shelter and incorporates it into the streetscape.
- The plan downsizes the canopy and reduces the number of pumps.

The revised plan also indicates Safeway's intent, if the adjoining party (Kramer Enterprises) is willing, to connect the parking lot of the Cloverly Town Center project to the drive aisle for the Safeway grocery store. This connection would provide direct access between Cloverly Street and Briggs Chaney Road by forming an internal grid. The community discussed the importance of this connection. It would provide for "interconnected parking lots and coordinated driveways between independently owned properties" as recommended in the master plan. This connection should have been accomplished during the review and approval of the Cloverly Town Center project, but the two parties were unable to come to an agreement at that time.

**Subject Property** - The subject property, Parcel N-5, contains 33,399 square feet located in the southeast quadrant of the intersection of New Hampshire Avenue and Cloverly Street. The property is rectangular and has approximately 130 feet of frontage on New Hampshire Avenue and 250 feet of frontage on Cloverly Street. The site is currently improved with a one-story, 1,750 square-foot vacant building and a parking lot with 48 parking spaces. Forty-one of the parking spaces fulfill the parking requirements for the approved Safeway Grocery Store Site Plan (8-99004).

**Surrounding Neighborhood** - The subject property is centrally located within the Cloverly Commercial Area, defined in the Cloverly Master Plan as the commercial uses along New Hampshire Avenue and Gallaudet Avenue (the north-south streets) and between Bryant's Nursery Road and Briggs Chaney Road (east-west streets). (See Circle 2.) Properties along the east side of New Hampshire Avenue north of Cloverly Street include an off-price service station, a shopping center, a 7-eleven store, and a second service station. These properties are zoned C-1. Both gas stations are non-conforming uses. There is a veterinarian clinic in a single-family home at the intersection of Snider's Lane/New Hampshire Avenue. The clinic has an approved special exception and is zoned RE- 1. The Cloverly Commercial Area on the west side of New Hampshire Avenue includes the Cloverly Village Center (a shopping center) and seven properties between the shopping center and Bryant's Nursery Road. The shopping center and four adjacent properties are zoned C-1. The properties between the C-1 Zone and Bryant's Nursery Road are zoned R-60 and are recommended in the master plan for CT zoning if assembled. Properties on the north side and south side of Cloverly Street, owned by Kramer Enterprises, are in the beginning stages of redevelopment as the Cloverly Town Center. The Safeway store and parking are located south and east of the subject site.

**Elements of Proposal** - The applicant summarizes the proposed use as follows:

*The proposed filling station will provide Safeway brand gasoline and it is envisioned that customers will be able to utilize their Safeway saving cards for added purchasing convenience. The Filling Station will include six pump islands, each with two (2) multipump dispenser units, totaling twelve fueling positions, and a 363 square-foot walk-in kiosk for an attendant, all located under a 3,009 square-foot canopy. There will be two (2) 20,000-gallon underground storage tanks located outside the canopy area. The proposed parking spaces on the Property will satisfy the two (2) space requirement for the Filling Station and will continue to provide 41 parking spaces for the Grocery Store as the Property currently does per Site Plan No. 8-99004*

*The proposed Safeway Gas Station will provide a street oriented development that would achieve the "main street" concept envisioned for the Cloverly Commercial Area at the time of the Cloverly Master Plan. In response to the original concerns that the pumps, canopy and kiosk would not provide a continuous facade of street oriented buildings to give definition to Cloverly Street, Safeway has revised the plans to create street definition and building mass, and incorporate a facade similar to those in the Cloverly Commercial Center. The kiosk was separated from the canopy to the street edge, the canopy size and number of pumps have been reduced, and a wall treatment and bus shelter have been added to the plans, which in combination with the landscaping and seating areas, will all provide the recommended pedestrian friendly, street-oriented character.*

*Further, the Safeway Gas Station has been designed to match the architectural elements and materials used on the existing Safeway Food Store on the adjacent property. The sloping roof elements of the canopy, kiosk and bus shelter will be silver colored, standing seam roofs that mirror the sloping entrance elements on the food store. The proposed masonry walls will be comprised of a red brick base, intermediate band of beige and red brick above and matching beige smooth faced block with intermittent red brick banding continued to the roof. All masonry materials for the kiosk, bus shelter and canopy will match those used on the Safeway grocery store.*

**Zoning History** - The property is zoned C-1. The property was zoned from the R-R Zone to the C-1 Zone by local map amendment in 1964 (Case C-1382). Both subsequent sectional map amendments, G-337, which implemented the 1981 Eastern Montgomery County Master Plan - Cloverly, Fairland and White Oak, and G-749, which implemented the 1997 Cloverly Master Plan, confirmed the C-1 zoning.

## ANALYSIS

**Master Plan** - The subject property lies within the Cloverly Commercial Area that is discussed at length in the *1997 Approved and Adopted Cloverly Master Plan*. Community-Based Planning staff has summarized the *1997 Approved and Adopted Cloverly Master Plan* recommendations for the Cloverly Commercial Area and the Main Street concept and has analyzed the revised plan for compliance with the specific design recommendations of the Master Plan.

The Cloverly Master Plan describes the potential for redevelopment within the Cloverly Commercial Area and addresses the circumstances under which redevelopment could and should occur. Because different parties owned properties within the commercial area, redevelopment was unlikely to occur simultaneously. The plan therefore recommended an urban design concept, Main Street, to coordinate development since Cloverly Street, built as a business street with sidewalks and streetlights, was reminiscent of a main street. The existing buildings were already oriented toward the street so a main street scheme could successfully incorporate the existing and new and retain a sense of place.

*The Cloverly Commercial Area has served as the center of Cloverly for decades. Plan recommendations provide opportunities for the modernization and expansion of the grocery store, seek to improve the selection of goods and increase the amount of commercial zoning, provide guidance for redevelopment, street improvements and propose a park adjacent to the commercial area to make the center a more attractive shopping and gathering place for Cloverly residents. (Page xii)*

*Encourage street oriented development along Cloverly Street to provide a walkable, pedestrian-friendly commercial area that encourages social gathering. Street oriented development is achieved by locating buildings close to the street with on-street parking. Sidewalks are to be enhanced with tightly spaced street trees, seating areas, special paving and lighting... (Page 23)*

*Allow the use of a smaller front-yard setback to maintain a minimum of 15 feet from the face of curb to provide a "main street" type of development... (Page 23)*

*Improve vehicular access and circulation... by providing interconnected parking lots and coordinated driveways between independently owned properties. (Page 25)*

The County Council approved zoning text amendments for the C-1 Zone to allow different standards if a main street type development were recommended in the

Master Plan and to require site plan review where there were 15 or more acres of C-1 zoning at any one location.

The following section quotes the main street elements described in the Master Plan (in italics) and discusses how the elements have been incorporated into the proposed special exception.

### Streetscape Elements

*Encourage street-oriented development along Cloverly Street to provide a walkable, pedestrian-friendly commercial area that encourages social gathering.*

The Master Plan recommends sidewalks, seating, street trees, lighting and special paving along both sides of Cloverly Street. The approved site plan for the Cloverly Town Center established a specific cross-section for Cloverly Street including street trees, lighting, benches and on-street parking.

The applicant proposes extending a cross-section similar to that approved for the Town Center project and includes seating, lighting, and the same species of street trees along Cloverly Street. The bus shelter is incorporated into the streetscape elements and will have the same architectural treatment as the kiosk.

The proposed streetscape design provides for continuity of the streetscape elements and space for on-street parking spaces. The on-street parking spaces will add parking within the Commercial Area but will not count as fulfilling the parking requirement.

The proposed decorative wall provides an architecturally defined edge for the streetscape on both Cloverly Street and New Hampshire Avenue. The wall includes mounted decorative light fixtures that enhance the streetscape and provide a vertical element.

### Circulation, Interconnected Parking Lots and Coordinated Driveways

*Provide interconnected parking lots and coordinated driveways between independently owned properties.*

The circulation for the gas station has been isolated from general traffic. The curb cuts for the gas station have been located sufficiently away from New Hampshire Avenue so as to eliminate friction for turning movements in and out of the site. In the previous design, customers would have to drive through the gas station to get to the main Safeway parking lot.

There will be three curb cuts on the north side of Cloverly Street, one for the existing gas station and two for the Cloverly Town Center. The south side of



Cloverly Street currently has two curb cuts for the existing vacant building and will have two more curb cuts for the Town Center parking lot and loading dock. The revised special exception plan will relocate the existing curb cuts but will not add curb cuts. The gas station curb cut lines up somewhat with that for the Town Center. The parking lot curb cut will provide access to the 41 parking spaces already designated for the Safeway store and will also line up with the entrance to the main parking lot for the grocery store thereby providing a direct link from Cloverly Street to the grocery store.

The revised plan also indicates an intent, if the adjoining party is willing, to connect the Town Center parking lot to the main drive aisle in front of the Safeway grocery store. This connection would provide direct access from Cloverly Street to Briggs Chaney Road by forming an internal grid. This added connection allows redundancy in the circulation pattern without increasing conflicts in turning movements. When a commercial area is located on well-traveled highways, the more options customers have to reach a signalized intersection (Briggs Chaney and New Hampshire) the better. This connection should have been accomplished during the review of the Cloverly Town Center, but the two parties were unable to come to an agreement at that time.

#### Street Oriented Development

*Street oriented development is achieved by locating buildings close to the street with on-street parking. Sidewalks are to be enhanced with tightly spaced street trees, seating areas, special paving and lighting and visible and safe connections to the proposed park.*

In the previous proposal, the architectural elements consisted of a 5,796 square foot canopy centered on the site with the kiosk and eight pump stations located under the canopy. A bus shelter was also included in the plan. In the revised proposal, there are more architectural elements and the structures have been reduced. The proposed 75'x35' canopy is much smaller, 3,009 square feet, and covers six pump islands. The kiosk has been redesigned as a 30'x12' freestanding 363 square foot building, the long side oriented toward Cloverly Street. The bus shelter is relocated at the corner of New Hampshire Avenue and Cloverly Street. A decorative brick wall with an ornamental rail has been placed along the length of Cloverly Street and New Hampshire Avenue. The kiosk and bus shelter have been coordinated with the decorative wall. The wall is high enough to screen the cars in the gas station and has vertical elements, pilasters and streetlights, which provide an architectural edge along the streets. The bus shelter, kiosk and canopy have been designed with coordinated rooflines and materials thereby lending a defined architectural character along the public street.

The staff concludes that the proposed circulation improves the existing conditions and provides improved access to the Safeway grocery store. Staff further

concludes that the proposed architecture and streetscape elements of the gas station and the realigning of the curb cuts and treatment of Cloverly Street are consistent with the main street concept of the Master Plan.

**Parking** - The proposed special exception use requires two parking spaces. The applicant is providing 44 parking spaces, 41 of which fulfill the parking requirement for the grocery store. The applicant is providing two on-street parking spaces along Cloverly Street; however, these parking spaces do not fulfill any parking requirement.

**Landscaping** - The proposed landscaping plan includes a streetscape along the frontage on New Hampshire Avenue and Cloverly Street. The streetscape includes sidewalks within the right-of-way, street trees, sitting areas and plantings in front of the decorative wall.

**Lighting** - The lighting plan includes street lamps mounted on the decorative wall, area lighting on 30-foot poles and canopy lighting. The area lights will be relocated from the existing Safeway parking lot. The canopy lights provide illumination levels that are less than originally submitted. This gas station is located over 460 feet from any adjoining residential lot. The gas station is located within a commercial area for which lighting plans have already been approved by the Planning Board. The lighting plan for the gas station and any amendments to the Safeway grocery store will go through the site plan review process (59-D-3). At that time, the Planning Board will approve the appropriate refinements to the lighting plan(s).

**Development Standards and Review** - The special exception would comply with all relevant development standards for the C-1 Zone found in Division 59. C. 4 (Commercial Zones) of the Zoning Ordinance and those requirements which are specific to automobile related uses in the C-1 Zone. The following table indicates compliance with the relevant standards.

**Table 1 – Standards of the C-1 Zone**

Category	Required Minimum/Maximum	Provided
Building Height	30 feet (maximum)	29.5 feet
Setbacks from ROW	No setback if master plan recommends "main street" development	0-main street development
Green Space	10%	10%
Parking	500 feet from entrance of establishment (maximum)	40 feet
Combined Aisles and Drives	20 feet wide (minimum)	20 feet
Landscaping Strip	10 feet strip adjacent to ROW	10 feet
Plantings	One tree per 40 feet of frontage 3 feet hedge for perimeter	Yes
Internal Landscaping	5%	5%

Parking Spaces	1 space per employee	2 (2 employees)
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The special exception would comply with all relevant development standards related to access, circulation and parking found in Article 59-E, Off-Street Parking and Loading, of the Zoning Ordinance. Access would be from Cloverly Street and the Safeway Grocery Store drive aisle.

Subdivision Review

The Development Review staff notes that according to Section 50-20B of the Subdivision Regulations, a building permit may not be approved for the construction of any new structure that is located on the unplatted remainder of a resubdivided lot. The subject property is an unplatted remainder, therefore, prior to release of any building permits, the applicant will be required to get Preliminary Plan approval and record a new plat in the land records pursuant to Chapter 50 of the Subdivision Regulations.

Site Plan Review

Site plan review under Section 59.D.3 of the Zoning Ordinance is required if there are more than 15 acres in the C-1 Zone at one location. There are more than 15 acres around the subject site; therefore, the site is subject to site plan review. If the special exception is approved, the applicant must obtain site plan approval for the subject site and amend the approved site plan (8-99004) for the Safeway grocery store to include any changes on that site resulting from approval of this special exception.

**Transportation** - The Transportation Planning staff recommends the following conditions at preliminary plan review as part of the adequate public facilities test for transportation requirements. (See Circles 12-17 for memorandum.)

1. Limit land-use on Lot N5 to:
  - a) An automobile filling station with 6 pumps or 12 fueling positions and no convenience store, car wash, or service bays, and
  - b) a separate parking area with 2 parking spaces for the automobile filling station employees and 41 parking spaces to serve the adjoining Safeway store per Site Plan No. 8-9904 (Safeway at Cloverly).
- 2) Coordinate with the adjoining property to the east (Cloverly Town Center) to address future traffic and pedestrian circulation, connecting driveways and sidewalks and streetscaping through the properties, as well as grading for Cloverly Street.

- 3) Revise Preliminary Plan No. 1-98001 and amend Site Plan No. 8-99004, Safeway at Cloverly, to reflect the different land use on Lot N5.

Policy Area Transportation Review (PATR) /Local Area Transportation Review (LATR)

Under the FY 2003 Annual Growth Policy (AGP), the Cloverly Policy Area has a remaining transportation staging ceiling capacity of negative 49 jobs as of April 30, 2003.

Since the proposed development would replace the 1751.5 square foot bank with a smaller 419 kiosk, using the generic multipliers will result in a net reduction of six jobs with the Cloverly Policy Area. Therefore the development satisfies the PATR test.

The operation of the nearby intersection for the weekday morning and evening peak periods for existing, background and total traffic conditions as analyzed and presented in a traffic study for the proposed development indicated the intersections will operate well below the congestion standard of 1,525 for the Cloverly Policy Area and therefore satisfies the LATR.

The State Highway Administration (SHA) concurred with the findings found in the applicant's Traffic Impact Analysis Report, prepared by The Traffic Group, Inc.

Site Access and Vehicular/Pedestrian Circulation and Safety

Compared to existing conditions and plans previously submitted, the on-site vehicular circulation as shown on the current site plan has several refinements that improve traffic circulation within the site, to Cloverly Street and the adjacent Safeway store. Internally, within the site, vehicles can easily access the fuel pumps via the 30 foot two way drive-aisle, which extends between the Safeway parking area and Cloverly Street. The site plan provides for future improvements to overall traffic circulation within the Cloverly Commercial Area as envisioned in the Cloverly Master Plan through coordination with the adjacent property.

In addition to existing five-foot sidewalks along Lot N5 and Safeway frontage on MD 650, the site plan provides for a four-foot sidewalk along the southern property line (adjacent to the Safeway parking area) and a five-foot sidewalk along the northern property line (along the south-side of Cloverly Street) of Lot N5 for on-site pedestrian connectivity and possible future connections to the adjacent Cloverly Town Center property. Designated pedestrian crosswalks are marked across the internal drive between the different sidewalk paths to minimize pedestrian-vehicular conflicts.

The Master Plan also recommends considering "...a future signalized intersection at New Hampshire Avenue and Cloverly Street. With redevelopment of the east side of the Cloverly Commercial Area, more pedestrians and vehicles will be crossing, or wishing to cross, New Hampshire Avenue between the retail areas. When redevelopment of the commercial area occurs, the DPW&T and SHA should review the warrants for a traffic signal to make vehicular and pedestrian crossings easier and safer. "

#### Master Plan Roadways and Bikeways

According to the Cloverly Master Plan, the nearby master-planned roadways and bikeways are as follows:

1. Cloverly Street is designated as a commercial business district street (B-2), with a 70-foot right-of-way.
2. New Hampshire Avenue (MD 650) is designated as a major highway (M-12), with a 120-foot right-of-way south of Cloverly Street and a 100-foot right-of-way north of Cloverly Street with a Class II bikeway, PB-23. No dedication is required from the subject property.

**Environmental** - The Environmental Planning staff (See Memorandum, Circles19-21) provided the following information regarding the site:

#### Forest Conservation

The subject property has been granted an exemption to the forest conservation under the small property provision.

#### Storm Water Management/Watershed Protection

The subject property is in the Bryant's Nursery Tributary of the Northwest Branch watershed. Northwest Branch is a tributary of the Anacostia River and has been designated a Regular Protection Area in the Countywide Stream Protection Strategy. The Montgomery County Department of Permitting Services (DPS) conditionally approved a stormwater management concept plan for the proposed project on March 9, 2001. The gas station site would use the existing underground stormwater management quantity and quality control structures (underground storage pipes and stormceptor) that were installed when the adjacent grocery store was reconstructed.

This approved stormwater concept will most likely have to be reconfirmed or revised because of new state and county stormwater management requirements. IF DPS does not reconfirm the concept, it must be revised to meet new criteria. The stormwater management concept should be reevaluated by DPS prior to site plan submission for early coordination between DPS and M-NCPPC site plan reviewers.

## Environmental Guidelines

The subject property is not located within a Special Protection Area or within the Patuxent River Primary Management Area. There are no streams or stream valley buffers within the property. The Safeway grocery store is within the Upper Paint Branch Special Protection Area.

## Air Quality

All installations that are potential sources of air pollution are regulated and require permits of approval from county and state authorities. State regulations (COMAR 26.11.24 and COMAR 26.11.13.04C) require the use of both Stage I and Stage II systems. Storage I vapor recovery systems trap gasoline vapors emitted during refilling of storage tanks by a tank truck, while Stage II vapor recovery systems capture gasoline vapors emitted during vehicle refueling. Using Stage I and Stage II Recovery creates a closed system that recovers all gasoline vapors and returns them to the gasoline storage tank for eventual return to the fuel processing plant.

Fuel storage and fuel pump installations and use must comply with the control guidelines and air quality permitting requirements of the Maryland Department of the Environment (MDE). In particular, the applicant must install, maintain and use Stage I and Stage II Vapor Recovery systems and a vapor balance line properly and must obtain applicable air quality permits to construct.

**Inherent and Non-Inherent Adverse Effects** - The first step in analyzing the inherent and non-inherent adverse effects of a special exception is to define the boundaries of the surrounding neighborhood. In this case, the neighborhood is described as the commercial uses along New Hampshire Avenue and Gallaudet Avenue and between Bryant's Nursery Road and Briggs Chaney Road.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. It is understood that every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is where these effects are acceptable or would create adverse impacts sufficient to result in denial. To that end, inherent adverse effects associated with the use must be determined. In addition, non-inherent effects must be determined as this effect may, by themselves or in conjunction with inherent effects, form a sufficient basis to deny a special exception.

The inherent adverse effects associated with automobile filling station include the amount of impervious surface and its effect on stormwater management, the potential environmental impact from spillage of oils and other automotive fluids, fumes associated with start-ups and idling, queuing of vehicles entering the

fueling islands, noise from outdoor activities and deliveries, lighting and signage. The staff finds that the physical and operational characteristics of the proposed use are no different than what is typically encountered with an automobile filling station. Fuel storage tank and fuel pump installation and use must comply with the control guidelines and air quality permitting requirements of the state.

**Community Concerns** - From the transcripts of testimony and the earlier special exception hearing with the Planning Board, the community expressed a number of concerns regarding the functioning of the Safeway store and the relationship between the gas station and store. During meetings with staff and the developer, the community described two circulation problems:

#### Conflict at New Hampshire Avenue Entrance

The circulation for the Safeway grocery store consists of entrances at New Hampshire Avenue and Briggs Chaney Road. A drive aisle curves around the front of the store and connects the two entrances. Cars turning into the site from New Hampshire Avenue must make a quick right to enter the Safeway parking lot. Cars frequently stop just beyond the entrance looking for parking spaces closer to the store, causing cars behind them to back up onto New Hampshire Avenue. The cars backing onto New Hampshire Avenue restrict the line of sight for cars attempting to exit the site. Left turning exiting cars pulls out and stop beyond the curb lane for a clearer line of sight blocking through traffic.

#### Conflicts on Drive Aisle

Customers park their cars along the main drive aisle for the grocery store. This creates conflicts for turning and through movements. Although the drive aisle is marked as a fire lane, it is not sufficiently marked or may be too wide to deter illegal parking. The revised plan addresses these existing circulation issues.

The community has other concerns and will articulate them during the public hearing.

**General and Specific Special Exception Provisions** -The staff has reviewed the petition for compliance with the applicable special exception provision, As noted, all general and specific requirements for an automobile filling station found in Sections 59-G-1.21 and 59-G-2.06 of the Zoning Ordinance would be satisfied. In addition, the special exception conforms to the neighborhood need requirement for the proposed use in conformance with Section 59-G-1.24 and Article 59-E, Off-Street Parking and Loading of the Zoning Ordinance.

**Conclusion** - The staff finds that the special exception satisfies all of the applicable special exception provisions for an automobile filling station found in the Zoning Ordinance. Therefore, staff recommends approval with the conditions as stated at the beginning of the report.

## MONTGOMERY COUNTY ZONING ORDINANCE

### **Sec 59-G-1.2.1. Standard for evaluation.**

- a) A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the 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. Non-inherent adverse effects are physical and operational characteristics 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 adverse effects, are a sufficient basis to deny a special exception.

*Analysis of inherent and non-inherent adverse effects considers size, scale scope light noise traffic and environment. It is understood that every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is where these effects are acceptable or would create adverse impacts sufficient to result in denial.*

*The inherent adverse effects association with automobile filling station includes the amount of impervious surface and its effect on stormwater management, the potential environmental impact from spillage of oils and other automotive fluids, fumes associated with start-ups and idling, queuing of vehicles entering the fueling islands, noise from outdoor activities and deliveries, lighting and signage. The staff finds that the physical and operational characteristics of the proposed use are no different than what is typically encountered with an automobile filling station. Fuel storage tank and fuel pump installation and use must comply with the control guidelines and air quality permitting requirements of the state.*



**59-G-1.21. General conditions.**

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

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

*The automobile filling station is an allowed special exception in the C-1 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.

*The proposed gas station would satisfy all the standards and requirements set forth in Division 59-G-.20.6*

- (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 special exception must be consistent with any recommendation in an approved and adopted 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 finds that the revised site plan for the gas station is consistent with the "Main Street" concept recommended in the 1997 Approved and Adopted Cloverly Master plan with respect to street-oriented buildings, coordinated architecture elements and streetscape, and development of Cloverly Street as Main Street.*

- (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.

*The architectural features (bulk, height, and scale) of the proposed gas station, canopy and kiosk have been designed to coordinate*

*with the Safeway grocery store architecture and adjacent Town Center and the streetscape elements. The decorative wall defines the street edge and ties together the architectural elements along Cloverly Street and New Hampshire Avenue. There is adequate queuing and parking provided on site.*

- (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.

*The use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, irrespective of any adverse effects the use might have elsewhere in the zone.*

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

*The use would not cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity or any other adverse effects irrespective of any adverse effects the use might have elsewhere in the zone.*

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

*The proposed use would not increase the number, intensity or scope of special exception uses in the surrounding neighborhood.*

- (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. The use would have no such effect on the area. Pedestrian and vehicular access would be safe.

*The use would have no such effect on the area. Pedestrian and vehicular access would be safe.*

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.
  - (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

*Although the subject property was included in a record plat, it appears that that record plat has been superseded by a record plat that included some but not all of the subject property. Therefore, the property is considered a remainder and will have to be rerecorded through the subdivision process prior to issuance of any building permits.*

- (ii) With regard to findings relating to public roads, The Board, the Hearing Examiner or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

*The staff has found no evidence that the proposal would reduce the safety of vehicular or pedestrian traffic.*

**Sec 59-G-1.22. Additional requirements.**

- (a) The Board, the Hearing Examiner, or the District Council, as the case may be, may add to the specific provisions contained in this Article, any others necessary to protect nearby properties and the general neighborhood.
- (b) Pursuant to guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with the provisions of Division 59-D-3, "Site Plan," if:
  - (1) The property is in a zone requiring site plan approval or
  - (2) The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.

*Sec 59-C-4.341.2 requires site plan review where development or redevelopment of any portion of land zoned C-1 where C-1 zoning is in excess of 15 acres at one location. The subject property is part of an area where C-1 zoning exceeds 15 acres and is therefore subject to the requirements of Section 59-D-.3, Site Plan Review. If this application is granted, then Site Plan review of the subject site will involve amending the existing site plan for the Safeway store since 41 spaces allocated to the store have been relocated from the location shown in the original approved site plan.*

**Sec 59-G-1.24. Neighborhood need.**

In addition to the findings required in section 59-G-1.21 and division 59-G-2, 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, for the public convenience and service, a need exists for the proposed use for service to the population in the general neighborhood, considering the present availability of such uses to that neighborhood:

- (1) Automobile filling station.

*Research & Technology Center staff has reviewed the proof of need analysis for a Safeway Gas Station to determine if the applicant's report complied with the Montgomery County Zoning Ordinance (59-G-1.24), which requires an applicant to prove neighborhood need when seeking a special exception for an automobile filling station. (See attached memorandum, Circles 22-25 for full discussion.) Staff concludes the applicant's station, if constructed, will fit into the overall retail environment already existing on New Hampshire Avenue in Cloverly.*

*"It will bring an additional brand of gasoline to the area and could expand price options. It will be competing with two other nearby stations and with those stations found on major commuter paths to the south of Cloverly. However, all of the commonly used measures used to determine potential demand for gasoline sales indicate that another filling station can be supported in Cloverly."*

**Sec 59-G-2.06. Automobile filling stations.**

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

*The fumes and odors generated by the use would be reduced by the use of vapor recovery nozzles. The physical activity is limited to the use of the multi-product dispensers.*

- (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.

*An automobile filling station at the proposed location will not create a traffic hazard or nuisance in relation to turning movements and improves circulation in the overall traffic pattern generated by all users of the commercial area.*

- (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 finds that the proposed filling station will not affect and retard the logical development of the general neighborhood or commercial area.*

- (b) In addition, the following requirements must be complied with:

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

*The site does not abut a residential or institutional use recommended for classification to commercial or industrial zone.*

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

*There are no displays or other obstructions that would adversely affect visibility.*

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

*There will be no effect into any residential zone. This gas station is located over 460 feet from any adjoining residential lot. The gas station is located within a commercial area for which lighting plans have already been approved by the Planning Board. The proposed lighting plan will not increase the ambient lighting already existing in the Safeway parking lot.*

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

*The proposed use complies with this condition. The driveway access off Cloverly Street is located 95 feet from the New Hampshire Avenue intersection. Avenue. The driveway access off Safeway's ingress/egress driveway is located 40 feet from its intersection with New Hampshire Avenue. Both driveway widths are not greater than 30 feet.*

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

*The gasoline pumps are located a minimum of 25 feet from the building line. There will be no service storage associated with the use. There is at least 20 feet between the driveways and all driveways are perpendicular to the curb.*

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

*This application does not propose to offer automobile repair work.*

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

*There are no parking spaces that overhang the public-right-of way.*

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

*No such uses are proposed.*

Special Exception No. S-2476  
Safeway Gas Station

Attachments

- Circles 1-2: Planning Board Letter dated September 10, 9001 to Board of Appeals
- Circle 3: Vicinity Map
- Circle 4: Cloverly Commercial Area (Master Plan)
- Circle 5: Existing Conditions
- Circle 6: Original Site Plan (August 2001)
- Circle 7: Proposed Site Plan
- Circle 8: Overall Plan
- Circle 9: Landscape Plan
- Circle 10: Lighting Plan
- Circle 11: Elevations
- Circles 12-17: Transportation Planning Memorandum
- Circle 18: Letter from SHA
- Circles 19-21: Environmental Planning Memorandum
- Circles 22-25: Research and Technology Memorandum on Needs Assessment