

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 21 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case number S-2642

Dear Mr. Berlage:

I recommend DISAPPROVAL of the Request for Exception in Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- Incompatibility with the neighborhood
- Increased traffic
- Proximity to homes
- Increased and intrusive lighting
- Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

I do not dislike "Taco's", but it being too close
to a residential area. The staying open until
2:00 AM during the week and 1:00 AM on weekends
is ridiculous for this area. Cars will be driving
down N. Westland or S. Westland to get out
Please, Please, do not allow this "drive in" move here!

Printed name: Col and Mrs. Michal J. Dabrowski

Signature: Francis Dabrowski and Michal Dabrowski

Street: 940 N Westland Drive

City, State, Zip: Gaithersburg, Md. 20877

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
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- Incompatibility with the neighborhood
- Increased traffic
- Proximity to homes
- Increased and intrusive lighting
- Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

Since this will be the closest and easiest to get to drive thru to Gaithersburg High, students will be racing to get to and from lunch, increasing left-hand turns onto N. Westland dramatically. Left hand turns are dangerous especially for inexperienced teenagers. Please don't approve this drive thru!

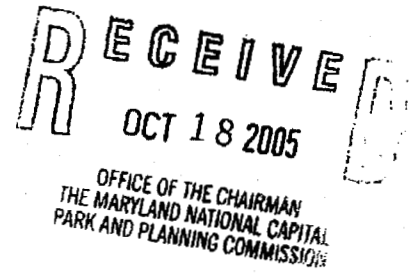
Printed name: Kathleen Shea

Signature: Kathleen Shea

Street: 16716 Shea Lane

City, State, Zip: Gaithersburg MD 20877 1230

October 17, 2005



Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Re: Case #S-2642

Dear Mr. Berlage:

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- o Incompatibility with the neighborhood
- o Increased traffic
- o Proximity to homes
- o Increased and intrusive lighting
- o Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

see attached letter

Printed name: Alice K. Johnson
 Signature: Arthur E. Johnson *Alice K. Johnson*
 Street: 16524 Walnut Hill Road
 City, State, Zip: GAITHERSBURG, MD 20877

October 17, 2005

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Re: Case S-2642 Taco Bell/Long John Silver Restaurant

Dear Mr. Berlage:

We have lived on Walnut Hill Road since 1960 and have witnessed neighborhood growth since that time.

The traffic on our street has increased significantly since the opening of the supermarket (now Food Lion), 7-Eleven, and Goodwill. Drivers of vehicles (patron and delivery) go south on Walnut Hill Road to South Westland Drive to the traffic light on Route 355 where they can enter Route 355. Vehicles include school buses, 18-wheelers (Goodwill, Food Lion, and others) WSSC trucks and trailers, large utility trucks, and many, many others.

Having a carryout restaurant can only increase this traffic flow and further endanger small children as well as adults living in our neighborhood.

We need efforts to decrease traffic from traveling through our neighborhood not increase it!

Sincerely,



Alice and Arthur Johnson
16524 Walnut Hill Road
Gaithersburg, Maryland 20877

301-948-6570

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 16 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case #S-2642

Dear Mr. Berlage:

I recommend **DISAPPROVAL** of the Request for Exception in the matter of Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- o Incompatibility with the neighborhood
- o Increased traffic
- o Proximity to homes
- o Increased and intrusive lighting
- o Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

THERE IS NO TRAFFIC LIGHT AT N. WESTHARD AND
FREDERICK Rd. (355) THAT MEANS CUSTOMERS LEAVING
TACO BELL WILL BE TRAVELING THROUGH OUR NEIGHBORHOOD
TO GET TO THE LIGHT AT S. WESTHARD & 355, WE
HAVE NO SIDEWALKS - PEDESTRIANS WILL BE IN GREAT
DANGER.

Printed name: Edward A. Sandoz

Signature: [Handwritten Signature]

Street: 8787 Georgia Ave.

City, State, Zip: Frederick, MD 21701

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 18 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case #S-2642

Dear Mr. Berlage:

I recommend **DISAPPROVAL** of the Request for Exception in the matter of Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- o Incompatibility with the neighborhood
- o Increased traffic
- o Proximity to homes
- o Increased and intrusive lighting
- o Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

Mr Berlage, will you please help
in getting our beloved neighborhood
from added pollution - it all starts
and spreads even across our
I thank you for your support!

Printed name: Barbara - Marie Schuster

Signature: [Handwritten Signature]

Street: [Handwritten Address]

City, State, Zip: [Handwritten City, State, Zip]

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 18 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case #S-2642

Dear Mr. Berlage:

I recommend **DISAPPROVAL** of the Request for Exception in the matter of Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- Incompatibility with the neighborhood
- Increased traffic
- Proximity to homes
- Increased and intrusive lighting
- Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

MR. BERLAGE,

Would you approve of a Taco Bell Restaurant at the end of your residential street?

We already have 18 wheelers and random trucks parked at the end of NORTH WESTLAND Dr.

Printed name: NANCY J. BROWN

Signature: Nancy J. Brown

Street: 8901 N. WESTLAND DR.

City, State, Zip: Caithersburg, MD 20817

Some of us have lived here for 20 years. Our houses are our investment. This would be a huge value in this neighborhood!

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 18 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case #S-2642

Dear Mr. Berlage:

I recommend **DISAPPROVAL** of the Request for Exception in the matter of Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- o Incompatibility with the neighborhood
- o Increased traffic
- o Proximity to homes
- o Increased and intrusive lighting
- o Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

I CAN NOT FOR THE LIFE OF ME
SEE HOW ANOTHER FAST FOOD PLACE
WILL ADD NOTHING GOOD TO
THIS AREA. I AM HIGHLY
OPPOSED TO THIS

Printed name: EDWARD MELISH

Signature: [Handwritten Signature]

Street: 16619 CHESTNUT ST.

City, State, Zip: GAITHERSBURG, MD 20878-1213

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 17 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
FORWARD PLANNING COMMISSION

Re: Case #S-2642

Dear Mr. Berlage:

I recommend **DISAPPROVAL** of the Request for Exception in the matter of Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- o Incompatibility with the neighborhood
- o Increased traffic
- o Proximity to homes
- o Increased and intrusive lighting
- o Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

Printed name: Mary Grabh

Signature: Mary Grabh

Street: S. Woodland Drive

City, State, Zip: Northumbury, MD 20877

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 17 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case #S-2642

Dear Mr. Berlage:

I recommend **DISAPPROVAL** of the Request for Exception in the matter of Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- o Incompatibility with the neighborhood
- o Increased traffic
- o Proximity to homes
- o Increased and intrusive lighting
- o Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

AN EXCEPTION DEMANDS EXCEPTIONAL CIRCUMSTANCES. ZONING HAS BEEN ESTABLISHED FOR GOOD REASON AND SHOULD BE EXCEPTED ONLY FOR BETTER REASON. ECONOMIC BENEFIT TO THE SHOPPING CENTER OR DROPS IS NOT A GOOD REASON. PUBLIC DEMAND FOR ANOTHER DRIVE-IN RESTAURANT (IF IT COULD BE PROVED) IS NOT A GOOD REASON. WE, THE PUBLIC (AND THE NEIGHBORHOODS), DO NOT NEED OR WANT A DRIVE-IN RESTAURANT IN WALNUT HILL. WE DO NEED OUR CURRENT ZONING TO BE UPHOLD - EVEN IF THE DEFECTS ABOVE CAN BE AMELIORATED AND THE PLANNING BOARD COULD GUARANTEE THEY WOULD BE.

Printed name: RAYMOND COAKLEY, JR

Signature: Raymond Coakley, Jr

Street: 16620 SHEA AVE

City, State, Zip: GAITHERSBURG MD 20877

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 17 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case #S-2642

Dear Mr. Berlage:

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- o Incompatibility with the neighborhood
- o Increased traffic
- o Proximity to homes
- o Increased and intrusive lighting
- o Trash, odors, and vermin

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

Safety - I don't want
people loitering or running thru
the neighborhood!
The hours are assinine & I
would not feel safe at night.

Printed name: Dana J. Trumble

Signature: Dana J. Trumble

Street: 16624 S. Westland Dr.

City, State, Zip: Gaithersburg, MD 20877

WALNUT HILL HOMEOWNERS ASSOCIATION

When: Tuesday, October 18, 2005 7:00 – 8:30 pm

**Where: Washington Grove Elementary School
All Purpose Room**

Who: All Walnut Hill Residents

Dear Neighbor:

As you may be aware, Taco Bell/Long John Silver wishes to build a drive-thru restaurant on the site of the former Hollywood Tans in Walnut Hill Shopping Center. The proposal is to tear down the existing structure, and build a new, larger building with drive-thru lanes, remote ordering from those lanes, and increased lighting. The Walnut Hill Neighborhood Association recommends disapproval of this Request for Exception which has been put before the Department of Parks and Planning, for the following reasons:

1. Incompatibility with the neighborhood

A drive-thru restaurant this close to residential housing is highly unusual in this county. The traffic flow will bring cars within 50 feet of homes in our neighborhood.

2. Increased traffic

The flow of traffic through the neighborhood will certainly increase, with most of the increase occurring on Walnut Hill Road. We expect that there will also be increased traffic on surface streets in the rest of the neighborhood. Since we do not have sidewalks in the neighborhood, everyone who walks in the neighborhood – adults and children alike – must walk in the street. People unfamiliar with the neighborhood will be unaccustomed to our habits, and may present a danger to us. It is anticipated that many leaving the

restaurant will travel on Walnut Hill Road to get to the intersection at Rte. 355 and South Westland Drive.

Additionally, we anticipate increased traffic in the Rte. 355-North Westland Drive intersection. This restaurant will be the closest fast food restaurant to Gaithersburg High School, which has an Open Lunch (allowing students to leave campus during their lunch period). Since the lunch period is fairly short, it is anticipated that the students would have to travel via car to get to the restaurant on their lunch period.

3. Lighting

The proposed lighting for the Taco Bell/Long John Silver is quite bright. While there may be those who feel that this is a plus, people living nearby will be disturbed by the intrusive lighting. The proposed hours of operation are 10 am to 3 am Sun-Thur and 10 am to 4 am Fri-Sat – with the lights being on the entire time.

4. Trash

Taco Bell/Long John Silver have stated that they will patrol their property several times a day, and clean up any litter which has accumulated. However, there is no plan to clean up the surrounding area of trash thrown out of windows, or trash blown off of the property.

Because of these reasons, we ask you to complete the attached form, fold per the directions, seal with tape, and mail it. We need your help to fight against this drive-thru, to help keep our neighborhood clean, safe, and stable. Thank you.

The Walnut Hill Neighborhood Association

Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RECEIVED
OCT 24 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Case number S-2642

Dear Mr. Berlage:

I recommend DISAPPROVAL of the Request for Exception in Case S-2642 to locate a Taco Bell/Long John Silver drive-thru restaurant in the Walnut Hill Shopping center for the following reason(s):

- Incompatibility with the neighborhood!
- Increased traffic
- Proximity to homes
- Increased and intrusive lighting
- Trash, odors, and vermin
- Non-resident loitering in neighborhood

Additionally, I am opposed to the Taco Bell/Long John Silver restaurant because:

My husband and I moved here two years ago because we thought this would be a safe, quiet, family-friendly neighborhood. We would like to raise a family here and stay for a long time. Please do not approve this exception or any other action that would increase

Printed name: Kristine Lynch

Signature: Kristine Lynch

Street: 10701 Chestnut St.

City, State, Zip: Springfield, MD 20781

traffic, noise, trash, non-resident loitering, and other impacts that are not family-friendly.
Thank you,
Kristine Lynch

Re: Case No. S-2642

10/18/05

Dear Mr. Berlage:

The drive-in restaurant would be built immediately adjacent to our residential neighborhood. Representatives of the restaurant stated that it would be open until 4:00 am on weekends, and to 2:00 other nights. Another important fact is that customers would often exit on to North Westland, which does not have a traffic light where it intersects with Maryland 355. Our neighborhood does not have sidewalks.



For several reasons, the proposed drive-in restaurant and a residential neighborhood are not compatible land uses. First, because there is not a traffic light on North Westland, it is very likely that its customers will drive through our neighborhood to turn on to 355 at the traffic light on South Westland. Many of these drivers will likely be rushing. The combination of many drivers, not familiar with our neighborhood and possibly in a hurry, and people walking and playing in the streets will likely lead to serious accidents. Another problem that would be caused by traffic from a drive-in restaurant is trash. It is very likely that certain individuals will throw paper cups, sacks, and taco wrappings in the neighborhood. We can be sure that the restaurant will not clean our streets and yards on a regular basis.

Second, the bright lights from the outside lights at the restaurant and the car lights and loud stereos from its customer's cars will make sleep difficult for the residents that border Walnut Hill Shopping Center.

In summary, the proposed drive-in restaurant is a safety and quality-of-life concern. It is also likely that these issues will decrease our property values.

Thank you for considering the concerns of the residents of our neighborhood.

Sincerely,



Carol and Howard Chalker

QUIK – Memo

From the desk of Walt Lees

October 17, 2005

Attn: Mr. Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Subject: Case #S-2642 Standard properties – Taco bell/Long John Silver/Dunkin Donuts Site Proposal

Dear Mr. Berlage,

Your help is requested to ensure that the pending Request for Exception (Case # S-2642) submitted by Standard Properties to locate fast food/drive-thru's at Walnut Hill Shopping Center is **DISAPPROVED**. This shopping center has gradually transitioned from a retail shopping mall for convenience of the neighborhood to a recreation center. The banks (2), drug store, and other retail outlets are being pushed out to accommodate more profitable ventures in fast food and entertainment.

Please do not permit **APPROVAL** of the Taco Bell, Long John Silver, and/or Dunkin Donuts applications for the following reasons:

- There are several day care programs in close proximity at Casey's Barn, the three churches across the street from Walnut Hill, and directly behind the shopping center in residential homes.
- The traffic/parking issue was greatly exacerbated with the addition of the New Fortune restaurant and will become intolerable with a drive-in venue.
- The current landlord has not been a good neighbor. Reports of trash, odors, and vermin have been ignored. The neighborhood desires a bank; yet the landlord refused to negotiate in earnest with several inquiries that would have returned a bank to the shopping center. They own several vacant parcels off N. Westland and S. Westland streets which have had problems. When a dead body was discovered in an overgrown area, the city asked them to clean up the lot. After a long delay, they mowed the lot; and cut down the trees to about 3 feet. It looks awful; and is referred to as the "stump farm". Standard Properties has threatened in deeds if not words that if the neighborhood doesn't cooperate, then "worse" things might happen.

As you know, several long time residents have moved or plan to move due to the changing character of Walnut Hill Shopping Center. We have been an open and welcoming community. There is a group home that has been an excellent neighbor for more than 20 years. The high density development, town homes, hospitality business, and MPDU's have joined this neighborhood without any problem and have been good neighbors. However, the shopping center has put profits over compatibility and created many of their own problems via aggressive marketing. They have demonstrated through "broken promises" that they cannot be trusted to act in their own or the neighborhood's best interest. I am opposed to their current plans.

Walter A. Lees
Walter A. Lees
16800 Chestnut Street
Gaithersburg, MD 20877
(301) 963-3571 (H)

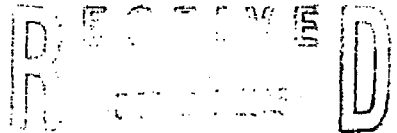
(301) 929-3456 (F)

RECEIVED
OCT 21 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Louis Conter
8903 North Westland Drive
Gaithersburg, MD 20877

conter@hotmail.com
cell 301 523-8439



OFFICE OF THE CHAIRMAN
MONTGOMERY COUNTY PLANNING BOARD
PARK AND PLANNING DEPARTMENT

October 20, 2005

Mr. Derick Berlage
Chairman, Montgomery County Planning Board
8787 Georgia Av
Silver Spring, MD 20910

Reference: S-2642, Taco Bell/ Long John Silver restaurant request for exception for a drive-in restaurant.

Mr. Berlage

I am opposed to approval of the drive-in restaurant application number S-2642.

The request for exception says the drive-in restaurant would be located in the Walnut Hill Shopping Center. While technically accurate, the actual planned location is on N. Westland Drive, set back about 200 feet from MD Highway 355. I live on N. Westland Drive. I do not want a drive-in restaurant as the gateway to my home.

The Walnut Hill Shopping Center abuts the residential neighborhood. There is no separation distance between the shopping center and the back yards of the neighborhood. A wooden fence is all that divides the yards of the adjacent houses from the parking spaces and driveway of the shopping center. Drive-in restaurant traffic and activity will come within 40 feet of that fence.

There are 35 homes on N. Westland Dr. and another 12 homes on two cul-de-sacs off of North Westland Drive. I feel we deserve a better gateway to our homes than a drive-in restaurant that is open until 3 AM every morning.

This is not the right business for this location. I request your support in opposing approval of the drive-in restaurant application.

Sincerely,

Lou Conter

APPLICANT'S STATEMENT

Memorandum

Date: December 8, 2005

To: Ms. Elsabett Tesfaye

From: Erica A. Leatham

Cc: Office of Zoning and Administrative Hearings
Martin Klauber, Esquire

Re: Second Supplement to Statement of
Justification
Petition for Special Exception, Taco Bell of
America, Inc., S-2642
16575 Frederick Road

Erica A. Leatham
301 664 7620
erica.leatham@hklaw.com

Although noted differently in the October 27, 2005 Memorandum with respect to the above-referenced Special Exception, please note that the Applicant has returned to its original proposal for a combination Taco Bell/Long John Silver's restaurant.

In response to the issues discussed at our meeting of November 22, 2005, we have prepared the following summary and associated plans:

1. Parking, Circulation and Access

The pedestrian/handicap crossing was relocated from the eastern end of the drive-through area to the westernmost area, along with the associated curb cuts and ramps, consistent with discussions at the November meeting. Appropriate signage, such as a "yield for pedestrians" sign, will be placed by the access point to alert drivers require drivers to allow pedestrian crossings. The relocated crosswalk is shown on the attached plan, as is the proposed directional signage package.

2. Lighting

Pursuant to comments from Environmental Staff, the lighting plan was modified to feature: (1) full-cut off fixtures with a flat lens; (2) light poles ten feet lower than originally proposed, at 12 feet, plus a two foot base; and (3) wall-mounted lights in the photometric plan. In addition, the dimensions from the proposed site lights to the existing light poles along North Westland Drive have been labeled. Please note, however, that due to lower height of the light poles, an additional light was added to maintain safe lighting levels throughout the property.

The lighting layout and details are shown on the attached revised Photometric Plan. Lighting details for the other areas of the Shopping Center were not able to be included, nor can any changes be made, because they are located outside of the Applicant's leased area. An informal survey of the site reveals building lighting along the northern face of the Shopping Center.

3. Hours of Operation

The Applicant is not proposing a change to the original hours of operation. As stated at the meeting, the suggested hours are the minimum necessary to maintain competitive in the subject market, particularly in light of the fact that there are 24 hour drive-through operations in nearby areas of the County.

4. Fumes and Odors

The Applicant's proposal includes a state of the art ventilation system designed to minimize any odors associated with the restaurant, including an exhaust hood system incorporating six 16X20 UL listed grease filters designed to minimize any odors associated with the restaurant. This ventilation system is in use throughout the country, including Montgomery County, and has proved reliable and effective.

5. Signs

The Special Exception proposal includes signs on three of the four building façades (the façade facing the residential area does not include any signage), as well as the resurfacing of the existing free-standing sign on the Special Exception property and the addition of a Taco Bell/Long John Silver's logo to the monument sign advertising the entire Walnut Hill Shopping Center. Combined, all the signs meet the County Code sign area and location requirements. However, because the restaurant will be multi-branded, two distinct signs are required on the façade facing North Frederick Avenue and, therefore, the Applicant is required to seek a variance from the Code requirement of one sign per entrance if the Special Exception is approved.

6. Other Issues

The Special Exception is proposed to cover only a portion of the Record Lot comprising the entire Walnut Shopping Center, as is typical with Special Exceptions of this nature. The County Code sections governing Special Exceptions anticipates such circumstances by requiring "drawings showing boundaries, dimensions, area, topography and frontage of the property involved" (Section 59-A-4.22(a)(2)) Therefore, the Code permits Special Exceptions to be located on a portion of a lot, provided that a complete description of the area subject to the Special Exception is expressly delineated. This language specifically does not require that the entirety of a Record Lot be used to support a single Special Exception, and, in practice, Special Exceptions have been located on "portions" of Record Lots throughout the County based on this language (such as Special Exceptions in other shopping centers, accessory apartments, etc.). Therefore, there is no prohibition on a Special Exception use from locating on a portion of a larger property, as is proposed here.

In the instant case, the Applicant has a lease only over a distinct portion of the overall Shopping Center, similar to any other tenant within the Shopping Center. This area is described on the Site Plan by a line coded with the letters "LL" (representing the Lease Line) and was identified in the original Special Exception submittal as the area proposed to support the Special Exception. As a result, the Applicant has control over only the property subject to its lease and cannot affect

December 8, 2005

Page 3

activities or improvements undertaken or managed by the other tenants or the owner. The Applicant does, however, have an easement over the northern half of the Center's parking area to provide shared parking spaces between its customers and those of the other Shopping Center tenants.

3434984_v1

Memorandum

Date: October 27, 2005

To: Ms. Elsabett Tesfaye

From: Erica A. Leatham

Cc: Montgomery County Office of Zoning
and Hearing Examiner

Re: Supplement to Statement of
Justification
Petition for Special Exception, Taco
Bell of America, Inc., S-2642
16575 Frederick Road¹

Erica A. Leatham
301 664 7620
erica.leatham@hklaw.com

As described in the April 4, 2005 Memorandum from Holland & Knight LLP on behalf of the above-referenced Petition for Special Exception, the Petitioner proposes a Taco Bell Restaurant for the Walnut Hill Shopping Center.²

The operational aspects of the restaurant remain as described in the April Memorandum, with the exception that the Long John Silver's brand has been eliminated and the restaurant will solely represent the Taco Bell brand.³ This Memorandum serves to expand upon and clarify certain elements to respond to concerns raised by individuals within the Walnut Hill Civic Association, as well as the letter from a representative of the Association. The Petitioner has, in response to the stated concerns, revised certain aspects of the use, as described below.

The proposed restaurant has been planned to operate as efficiently as possible and, therefore, have minimal impact on the neighboring residential community. Under the applicable standard of review, only non-inherent adverse impacts are to be considered in the analysis of the proposed Special Exception. Given the standard characteristics of the Special Exception – ancillary sound, visual and traffic impacts from vehicles utilizing the drive-through as well as operating a restaurant – and the use of the C-2 Zone as an transition zone between commercial and residential areas, providing a range of permitted convenience commercial uses, this Petition does not present any non-inherent adverse impacts. Neither the Walnut Hill Shopping Center, nor the Special Exception area, contain any “unusual characteristics” in topography, location, use or other elements to justify a finding of non-inherent adverse impacts.

¹ Please note this is the address for the proposed Taco Bell restaurant.

² The April Memorandum describes the shopping center as “approximately 100,000 square feet of retail space.” The exact square footage of retail and restaurant space, including the existing building which will be replaced by the proposed restaurant, is 107,504 square feet.

³ As noted on the Site Plan, the footprint of the building has increased slightly, from 2,924 square feet to 2,951 square feet.

Specifically, the proximity of the proposed restaurant to the residential area is an inherent characteristic of the Special Exception in the C-2 Zone. The Zone is primarily mapped adjacent to residential areas and, therefore, any Special Exception for this use in the Zone is necessarily within hundreds of feet of residential areas.⁴ Additionally, any existing concerns with vehicle traffic traveling through the neighborhood streets is a condition generally associated with commercial centers of this type (notwithstanding this fact, as described below, the Petitioner is taking actions to discourage such traffic). Finally, the use and operation of the restaurant are consistent with the similar establishments and the hours are within the established framework for such uses – the trend for these restaurants is a 24 hour drive-through, with dining room hours opening to capture breakfast traffic (not a factor in this case) and closing at midnight.

A. Site Design

The site design was based on maintaining, as closely as possible, the existing building layout within the Shopping Center. Therefore, the new restaurant will replace the existing building in roughly the same location, but will reconfigure the parking layout to provide for the drive-through lane. The new building will be no closer to the residential area to the east than the existing building and utilizes the existing curb cut along North Westland Drive for entrance and exit to the restaurant (and the other uses in the Shopping Center).

Rather than utilize the standard Taco Bell building design with a primarily EIFS façade, the Petitioner has elected to upgrade to a brick façade for compatibility with the rest of the Shopping Center. Additional landscaping has been added since the original submission to provide additional screening of the rear of the building (see Plans attached as **Exhibit A**).

Finally, several lights are proposed to illuminate the restaurant and immediate parking area. As shown on the Photometric Plan originally submitted with the Petition for Special Exception, the lighting has been designed to avoid any spill-over onto the right-of-way or the residential area. (Please note that this Petition does not involve any light poles located outside of the Special Exception area.) The illumination proposed for this site, an average of 2.35 footcandles, is far lower than the average for these types of restaurants (7 – 15 footcandles) and is consistent with the rest of the Shopping Center.⁵ Therefore, without compromising the safety or security of the site or the restaurant, its customers and employees, the lighting has a minimal impact on the nearby residential area.

B. Parking and Circulation

The Shopping Center, as it exists today, exceeds the parking required for the variety of uses within the Shopping Center; excess parking will still be present with the addition of the Taco Bell restaurant, as shown in the chart attached as **Exhibit B**. Ample parking also exists in the immediate vicinity of the proposed restaurant to serve the restaurant and the three uses in the

⁴ There are several examples of similar operations separated from the residential community by less than that proposed for the subject site. See, for example, S-68, 514 Randolph Road, Silver Spring.

⁵ The proposed light poles and fixtures were selected and design to match the existing Shopping Center lighting program.

Shopping Center opposite the proposed building,⁶ per the requirements of the Zoning Ordinance. In order to determine the actual use of these parking spaces, a parking analysis was conducted. The analysis, attached as **Exhibit C**, reveals that the actual usage of the parking areas is less than that required by the Zoning Ordinance, generally, because the hours of peak usage for the operations do not overlap. As a result, the proposed use will not create any parking issues within the Shopping Center.

The circulation has been designed for efficient movement on site and within the Shopping Center, as well as to discourage patrons from entering the Walnut Hill community. The drive-through is designed for eastbound cars to enter from the westernmost curb cut and proceed counter-clockwise around the restaurant and into the drive-through lane. Westbound travelers (likely, residents of the Walnut Hill community) can enter from the easternmost curb cut and turn directly into the drive-through lane (eastbound traffic can also enter through this access point, but such movements would be discouraged by signage as described below). The drive-through lane itself accommodates up to eight vehicles,⁷ though the Petitioner expects queues of four or fewer cars. In order to provide circulation completely through and around the site, an "escape lane" is located immediately adjacent to the drive-through queue to allow patrons not wishing to wait in line to "escape" and exit the site.

To accomplish the circulation pattern described above, directional signs will be located throughout the property, as shown on the original Site Plan. Signs will direct eastbound cars to enter at the locations described above and proceed to the restaurant or the drive-through. In addition, signs will be located to discourage patrons of the restaurant (and, likely, the larger Shopping Center) from traveling through the Walnut Hill community to reach South Frederick Avenue.⁸ It is anticipated that, if patrons feel a southbound movement would be difficult from North Westland Drive onto South Frederick Avenue, the patrons will instead travel through the Shopping Center to South Westland Drive to proceed south on MD 355. The character of the drive aisles in the rest of the Shopping Center can accommodate any of these trips. (We note that the traffic analysis submitted with the Special Exception did not identify the situation at North Westland and MD 355 as described by the individuals in the community.)

C. Use and Operation

As described in the original Memorandum, the restaurant will maintain a schedule for the survey of the property and removal of any litter or debris found on the site, or in the immediate vicinity, including the street. Deliveries will be scheduled outside of the peak periods to avoid conflicts with residential traffic to and from work. In addition, because this is a corporate store, the truck routes can be controlled to ensure that no truck traffic enters the residential community. Finally, as a Special Exception, the restaurant will be subject to greater scrutiny and governmental

⁶ The terms of the lease between Taco Bell and the owner of the Shopping Center provide for a common easement over the parking in the immediate vicinity of the restaurant; therefore, Taco Bell does not have the right to restrict any parking spaces for restaurant use.

⁷ Generally, an industry standard is for a queuing capacity of five to eight cars.

⁸ Under the terms of Taco Bell's lease, Taco Bell does not have the authority to post "No Right Turn" signs at either North Westland Drive access point. However, we have communicated this suggestion to the landlord.

controls than the existing by-right uses in the Shopping Center and, therefore, has greater incentive to fulfill these obligations.

The proposed hours of operation are the minimum necessary to serve the market. The restaurant is competing against a number of local restaurants with 24 hour drive-through operations (a new standard for the Quick Service Restaurant industry), as well as the 24 hour 7-11 within the Shopping Center. The Dining Room will close at 11:00 p.m. Sunday through Thursday and midnight on Fridays and Saturdays. As stated in the original Petition, the drive-through is proposed to remain open until 3:00 a.m. Sunday through Thursday and 4:00 a.m. Friday and Saturday. These hours of operation capture customers leaving other businesses at the close of the retail workday, as well as people exiting the late night movie. (Importantly, there are no nightclubs in the area from which to draw traffic.) After 2:00 a.m., Taco Bell's analysis of similar operations in similar areas anticipates approximately ten cars per hour, which presents very little impact on the neighborhood, and does not rise to the level of a non-inherent adverse impact given that drive-through traffic is an inherent impact of the proposed Special Exception.

In order to mitigate the impact of the late-night/early-morning traffic, the proposal (1) includes an Order Confirmation Board that effectively minimizes the noise from the speaker box (more fully described in the April Memorandum – essentially, little amplified sound comes from the speaker box); (2) directs traffic away from the residential area; (3) minimizes the restaurant lighting and screens the building and parking areas and (4) includes monitoring of the area to ensure no disruptive activity takes place.

The restaurant desires to maintain a clean, safe location and has programs in place to ensure maintenance of the building and surrounding area. The restaurant actively discourages loitering on the premises and security monitoring devices will be installed. Additionally, the restaurant will have a "hot-line" to the Police Station to immediately report any suspicious activities in the area.

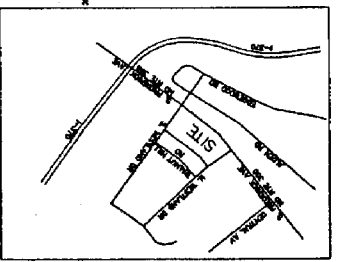
GEOMETRIC POINTS AND COORDINATES FOR TWO (2) BUILDING CORNERS WILL BE PROVIDED TO THE CONTRACTOR PRIOR TO CONSTRUCTION. NOTIFY ENGINEER 2 DAYS PRIOR.



LEGEND table with various symbols and their corresponding descriptions for construction elements like concrete, masonry, and landscaping.

LEGEND table with various symbols and their corresponding descriptions for construction elements like concrete, masonry, and landscaping.

LEGEND table with various symbols and their corresponding descriptions for construction elements like concrete, masonry, and landscaping.



CONSTRUCTION NOTES: 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF WASHINGTON, DISTRICT OF COLUMBIA, ZONING REGULATIONS AND ALL APPLICABLE ORDINANCES...

SITE PLAN NOTES: 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF WASHINGTON, DISTRICT OF COLUMBIA...

C2.0 SITE PLAN

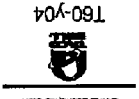


Table with columns for CONTRACTOR, DESIGNER, and other project information.



GPD ASSOCIATES
CLAUDE P. GARDNER, ARCHITECT
330-272-2100, FAX 330-272-2101



NO.	DESCRIPTION
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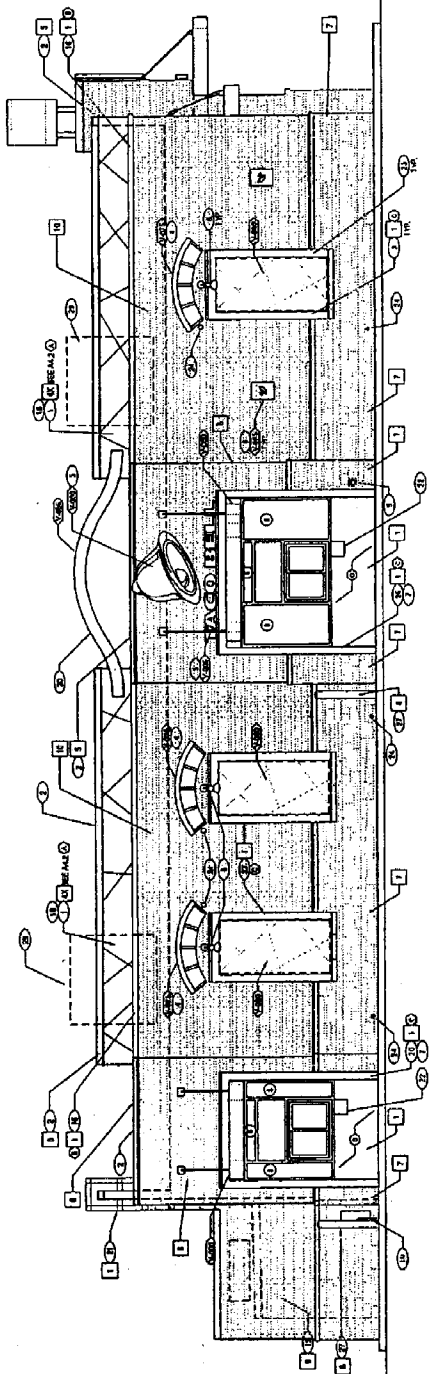
TACO BELL
1001 BOUNTYFIELD AVENUE
CHANDLER, AZ 85007
TACO BELL
1001 BOUNTYFIELD AVENUE
CHANDLER, AZ 85007

T60-Y04

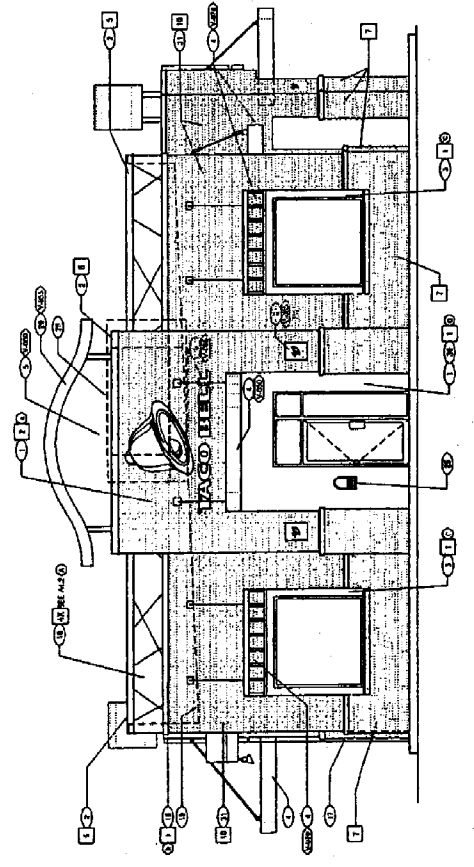
EXTERIOR
ELEVATIONS

A4.1

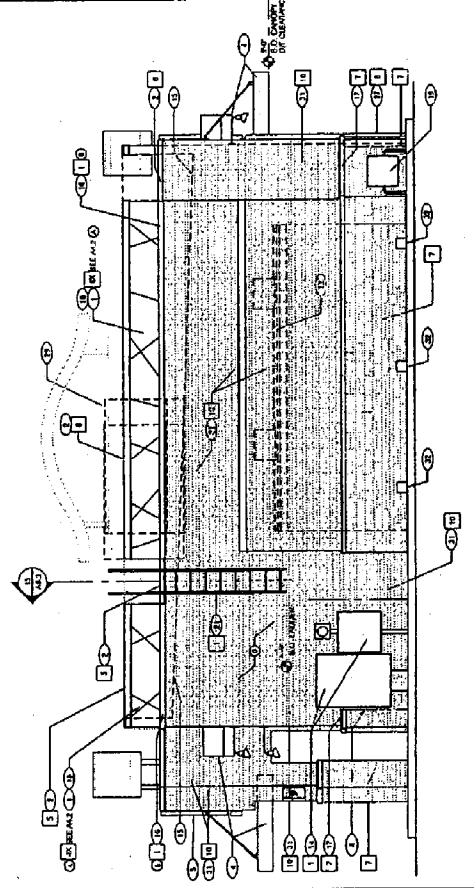
ACT DATE: 8/14/04
PROJECT NO: T60-Y04
SHEET NO: A4.1



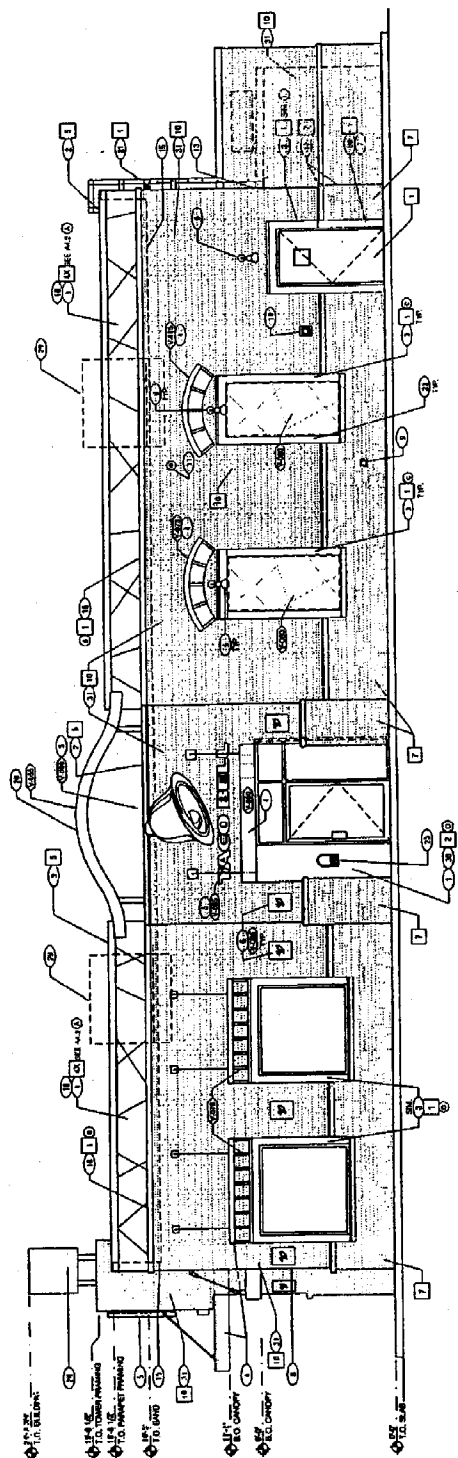
LEFT SIDE ELEVATION 1/4" = 1'-0"



FRONT ELEVATION 1/4" = 1'-0"



REAR ELEVATION 1/4" = 1'-0"



RIGHT SIDE ELEVATION 1/4" = 1'-0"

SIDE ENTRY DOOR ELEVATION 1/4" = 1'-0"

ITEM DESCRIPTION

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT
1	TACO BELL TOWER CANOPY	1	EA
2	TACO BELL TOWER CANOPY	1	EA
3	TACO BELL TOWER CANOPY	1	EA
4	TACO BELL TOWER CANOPY	1	EA
5	TACO BELL TOWER CANOPY	1	EA
6	TACO BELL TOWER CANOPY	1	EA
7	TACO BELL TOWER CANOPY	1	EA
8	TACO BELL TOWER CANOPY	1	EA
9	TACO BELL TOWER CANOPY	1	EA
10	TACO BELL TOWER CANOPY	1	EA

SIGN/AWNING/CANOPY SCHEDULE

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT
1	TACO BELL TOWER CANOPY	1	EA
2	TACO BELL TOWER CANOPY	1	EA
3	TACO BELL TOWER CANOPY	1	EA
4	TACO BELL TOWER CANOPY	1	EA
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8	TACO BELL TOWER CANOPY	1	EA
9	TACO BELL TOWER CANOPY	1	EA
10	TACO BELL TOWER CANOPY	1	EA

MATERIALS ADHESION/FASTENING

ITEM NO.	DESCRIPTION	ALTERNATE FIN.	ALTERNATE COLOR
1	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR
2	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR
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10	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR

KEY NOTES

1. SEE GENERAL NOTES.
2. SEE GENERAL NOTES.
3. SEE GENERAL NOTES.
4. SEE GENERAL NOTES.
5. SEE GENERAL NOTES.
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GENERAL NOTES

1. SEE GENERAL NOTES.
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9. SEE GENERAL NOTES.
10. SEE GENERAL NOTES.

EXTERIOR FINISH SCHEDULE

ITEM NO.	DESCRIPTION	ALTERNATE FIN.	ALTERNATE COLOR
1	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR
2	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR
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10	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR

TACO BELL
 160-704
 160-704

E.I.F.S. THICKNESS

1. 1/2" MINIMUM THICKNESS FOR ALL EXTERIOR WALLS.
2. 3/4" MINIMUM THICKNESS FOR ALL EXTERIOR PARTITIONS.
3. 1" MINIMUM THICKNESS FOR ALL EXTERIOR ROOFS.
4. 1 1/2" MINIMUM THICKNESS FOR ALL EXTERIOR FLOORS.
5. 2" MINIMUM THICKNESS FOR ALL EXTERIOR FOUNDATIONS.
6. 4" MINIMUM THICKNESS FOR ALL EXTERIOR RETAINING WALLS.
7. 6" MINIMUM THICKNESS FOR ALL EXTERIOR CURBS.
8. 8" MINIMUM THICKNESS FOR ALL EXTERIOR DRIVEWAYS.
9. 10" MINIMUM THICKNESS FOR ALL EXTERIOR SIDEWALKS.
10. 12" MINIMUM THICKNESS FOR ALL EXTERIOR PATHS.

GENERAL NOTES

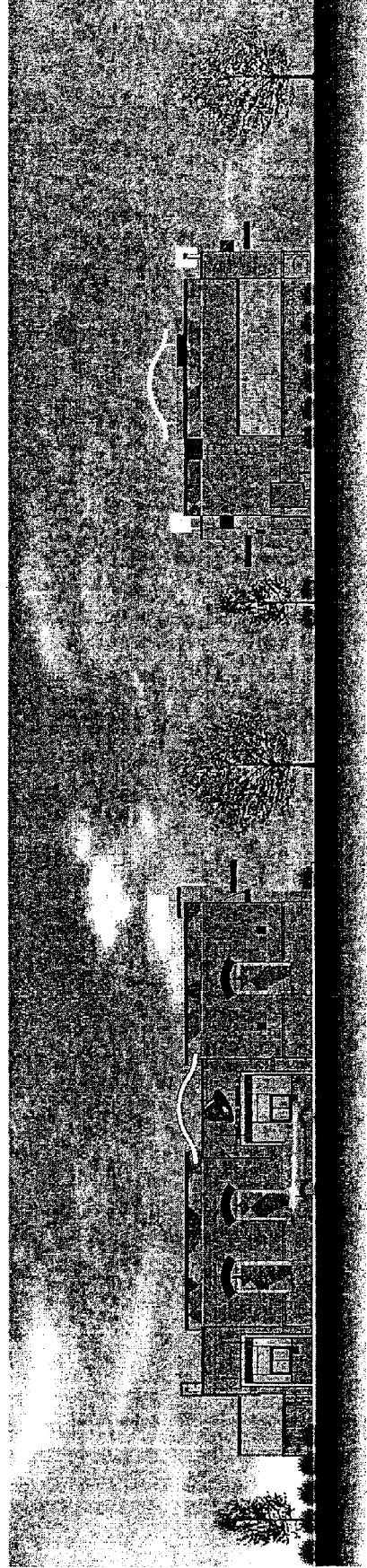
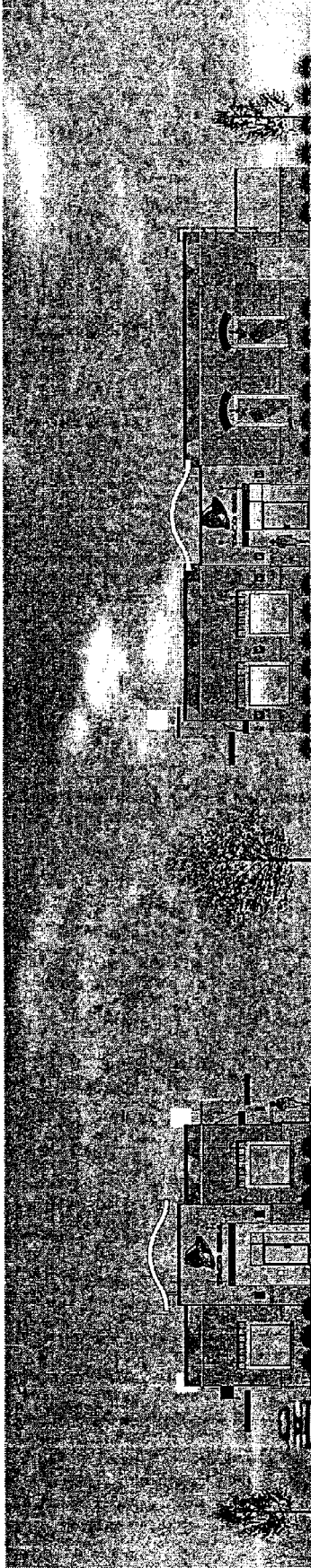
1. SEE GENERAL NOTES.
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10. SEE GENERAL NOTES.

EXTERIOR FINISH SCHEDULE

ITEM NO.	DESCRIPTION	ALTERNATE FIN.	ALTERNATE COLOR
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EXTERIOR FINISH SCHEDULE

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8	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR
9	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR
10	TACO BELL TOWER CANOPY	ALTERNATE FIN.	ALTERNATE COLOR



Taco Bell

1/8" = 1'-0"



CLAUDE PYLE SCHOMER BURNS & DEBAVIN INC.
GPDA ASSOCIATES
520 South Main Street, Suite 2151
Akron, Ohio 44311
330-373-3100, Fax 330-373-1011

MIXED USE/SHARED PARKING MATRIX (Section 59-E-3.1)					
	Weekday		Weekend		Nighttime
	Day	Evening	Day	Evening	
Office/Industrial	15	1	1	1	1
General Retail	194	291	323	226	16
Hotel/Motel/Inn	0	0	0	0	0
Restaurant	124	247	247	247	25
Indoor/Legit Theater/Commercial Recreational Establishment	0	0	0	0	0
Meeting Center	0	0	0	0	0
MF dwellings in Commercial Districts	0	0	0	0	0
Personal Living Quarters	0	0	0	0	0
All Other Uses	41	41	41	41	41
	373	580	612	515	82
					Highest co
PARKING PROVIDED			649		
Parking Standards:			sf		rate
Office/Industrial	15		5,000		2.9/1000
General Retail	323		64,632		5/1000
Hotel/Motel/Inn					
Restaurant	247		9,887	total sf*	25/1000
Indoor/Legit Theater/Commercial Recreational Establishment					
Meeting Center					
MF dwellings in Commercial Districts					
Personal Living Quarters					
All Other Uses	41		5,926		2/1000
			5,660		3.3/1000
					5 employee
					5 employee
				*excluding non-patron areas	

EXHIBIT B



Street Traffic Studies, Ltd.

July 28, 2005

Mr. Bharat Parikh
Construction Manager
Yum! Brands, Inc.
7250 Parkway Drive, Ste. 310
Hanover, Maryland 21076

RE: Taco Bell/Long John Silvers
Gaithersburg
STS Lob No.: 4846

Dear Mr. Parikh:

Street Traffic Studies, Ltd. (STS LTD) conducted a parking evaluation of the proposed Taco Bell/Long John Silvers restaurant site. Specifically, the evaluation focused on the area to be leased at the Walnut Hill Shopping Center, located in Gaithersburg, Maryland.

To conduct the study, a data research person was stationed on-site and instructed to patrol the parking area (See attached lot layout), at five (5) minute intervals and record the number of parked vehicles throughout the count period. Currently, there are 85 spaces in the area to be leased by Yum! Brands and the adjoining parking area. The person stationed on-site also recorded the license plate number of the vehicles observed, in order to derive parking durations and turnover for the lot. The study was conducted on Friday, July 8, 2005 between the hours of 4:00 - 7:00 PM, and Saturday, July 9, 2005 between the hours of 11:00 AM - 2:00 PM. These hours were selected to reflect the peak periods for all users; i.e., Friday dinner period and Saturday lunch/mid day peak period. The results of the parking accumulation are presented in Table 1.

As shown in table 1, the maximum number of spaces occupied was 35 on Saturday, July 9, 2005, at 12:30 PM. Based on the available 85 spaces, there were some 50 spaces open for use within the area expected to serve the proposed restaurant (i.e.: only 35 spaces are utilized for the existing three uses). In addition to observing the number of occupied spaces, STS LTD also calculated the average duration of vehicles parked on the lot. These calculations were averaged for vehicles staying 30 minutes or less, one hour or more, and overall average. The results are presented in Table 2.

Table 2 indicates, for the majority of vehicles, an average duration of 13.5 minutes during Friday observations, and 18.4 minutes during Saturday observations. Table 1 illustrates the availability of spaces (turnover) for each five minute increment. A review

EXHIBIT C

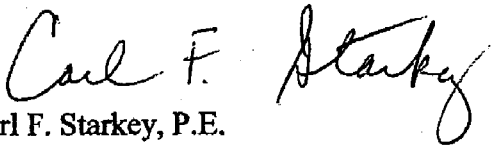
Mr. Bharat Parikh
Page Two
July 28, 2005

of parking generation rates established by the Institute of Transportation Engineers (ITE) in its publication *Parking Generation*, indicates a weekday demand of 29 spaces for a drive-thru restaurant. Therefore, the combination of existing peak demand of 35 spaces plus 29 spaces (for the restaurant) is easily accommodated by the 73 spaces within the area under study.

Based on the results of the parking observations, it can be concluded that adequate parking is currently available, and will be after construction of the proposed restaurant.

If you have any questions, or if I can be of further assistance, please do not hesitate to call.

Sincerely,



Carl F. Starkey, P.E.
Sr. Transportation Engineer

CFS
Attachment

cc: Erica Leatham

**TABLE 1
PARKING LOT ACCUMULATION**

Friday, July 8, 2005

Saturday, July 9, 2005

<u>TIME</u>	<u>SPACES OCCUPIED</u>	<u>TIME</u>	<u>SPACES OCCUPIED</u>
4:00 PM	23	11:00 AM	23
4:05	18	11:05	26
4:10	20	11:10	23
4:15	19	11:15	25
4:20	21	11:20	20
4:25	16	11:25	15
4:30	16	11:30	17
4:35	13	11:35	19
4:40	17	11:40	22
4:45	16	11:45	21
4:50	17	11:50	20
4:55	18	11:55	16
5:00 PM	16	12:00 PM	25
5:05	16	12:05	29
5:10	17	12:10	31
5:15	19	12:15	29
5:20	16	12:20	32
5:25	15	12:25	31
5:30	14	12:30	35
5:35	20	12:35	34
5:40	21	12:40	31
5:45	19	12:45	31
5:50	16	12:50	26
5:55	14	12:55	25
6:00 PM	13	1:00 PM	23
6:05	18	1:05	25
6:10	15	1:10	26
6:15	11	1:15	25
6:20	11	1:20	23
6:25	10	1:25	21
6:30	12	1:30	22
6:35	13	1:35	20
6:40	16	1:40	21
6:45	14	1:45	22
6:50	13	1:50	22
6:55	12	1:55	18
7:00 PM		2:00 PM	
Average	16		24
Maximum	23		35

**TABLE 2
PARKING DURATIONS**

	Friday, July 8, 2005 <u>4:00 - 7:00 PM</u>	Saturday, July 9, 2005 <u>11:00 AM - 2:00 PM</u>
Less than 30 min.	75 of 93 vehicles (81%) 13.5 minutes	146 of 162 vehicles (90%) 18.4 minutes
Greater than 60 min.	2 hours, 4.6 minutes	2 hours, 37.5 minutes
Overall (1 min. to 180 min.)	31.5 minutes	26.3 minutes

Notes: Each count period, at least 8 vehicles parked for a minimum of 2 hours. It is assumed that these were employees of the retail businesses.