

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

**MCPB**

**Item # 3**

**Date: 01/05/06**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, www.mncppc.org

**MEMORANDUM:**

**DATE:** December 30, 2005

**TO:** Montgomery County Board of Appeals

**VIA:** Rose Krasnow, Chief, Development Review Division *RK*  
Carlton W. Gilbert, Zoning Supervisor, Development Review Division

**FROM:** Elsabett Tesfaye, Senior Planner, Development Review Division *ET*  
(301) 495-1301

**SUBJECT:** **Special Exception SE-2642:** Request for approval of a special exception for a drive-in restaurant- Taco Bell/Long John Silver's

Taco Bell of America, inc.  
Taco Bell of America, inc., Applicant  
1985 Gaithersburg Vicinity Master Plan

**FILING DATE:** April 18, 2005

**PLANNING BOARD HEARING** January 5, 2006  
**PUBLIC HEARING:** January 13, 2006

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**RECOMMENDATION: Approval with the following conditions:**

1. Limit the special exception use to a restaurant of 2,924 square feet.
2. Provide directional signs and pavement markings to guide customers arriving from North Westland Drive to reach the drive-through window by using the western curb cut into the Walnut Hill Shopping Center.
3. Provide pedestrian connections that meet ADA requirements by constructing the following:

- a. A sidewalk with handicapped ramps along the western side of the proposed building that connects the sidewalk along North Westland Drive to the restaurant's main entrance on the south side.
  - b. A delineated pedestrian crosswalk across the western exit of the drive-through lane with a "pedestrian crossing" sign facing the westbound vehicular traffic.
4. Hours of operation for the restaurant shall be limited to Sunday through Thursday from 10:00 a.m. to 11:30 p.m. and Fridays and Saturdays from 10:00 a.m. to 12:30 a.m.
5. The lighting plan (last revised on 12-9-05) shall be revised to reflect the following:
  - a. Change the type of fixture for the poles from house side shield to a full cut off fixture.
  - b. Show all wall mounted lights
  - c. Label dimensions from the proposed site lights to the existing street light poles along North Westland Drive.
  - d. Break down the average, minimum, maximum and uniformity ratios for the parking area, drive aisles, and then around the building that includes the drive aisle.
  - e. Install additional pole lights in the parking area between the proposed restaurant site and the Seven Eleven store.
  - f. Show all proposed light fixtures on the lighting plan and catalog cuts for all lighting fixtures.
  - g. Identify the existing light levels from the roadway and the surrounding parking lot.
6. The site and landscape plans shall be revised to reflect the changes in the lighting plan. The revised plans shall be submitted to the Hearing Examiner and Park and Planning staff for review.
7. The site and landscape plans must be revised to show a building area of 2,924 square feet both on the drawing and in the Zoning Notes.
8. The use shall have no more than 19 employees (including a manager) with 2 shifts per day, and 8 to 10 employees per shift.

9. Before issuance of a building permit, the six-foot high wooden fence along the shopping center's eastern property line shall be repaired as proffered by the applicant and the owner of the shopping center. The trash dumpster that is currently sitting within the right-of-way for the fire hydrant and fire hydrant lead shall be screened or relocated. The applicant shall provide photographs as documentary evidence that this condition is met.
10. A variance shall be requested from the one-sign per entrance requirements of the ordinance for the proposed signs for the restaurant's façade on North Fredrick Avenue.

## **FINDINGS:**

### **A. PROJECT SUMMARY**

The applicant proposes to redevelop an existing pad site at the Walnut Hill Shopping Center with a restaurant with a drive-through window. The restaurant will replace a vacant building that was previously used as a bank branch with a drive-through. More recently, the building housed a tanning salon. With the current proposal, the existing vacant building will be demolished to make way for the proposed new restaurant building for Taco Bell/Long John Silver. The restaurant will have a total area of 2,924 square feet with 1,373 square feet of patron area (including restrooms, vestibules and hallways) and 1,551 square feet of food preparation and storage area.

### **B. Neighborhood Description**

The neighborhood in which the subject site is located is generally defined by Central Avenue to the north, Oakmont Avenue to the east, Westland Drive South to the south, and Frederick Avenue South and the City of Gaithersburg to the west.

The immediate neighborhood is characterized by a mixture of office, retail, and single-family residential uses in the C-2, R-90 and R-200 Zones. The Walnut Hill Shopping Center, with approximately 107,500 square feet of retail space, is located on an eight-acre property at the southwestern edge of the neighborhood (as defined by staff) in the C-2 Zone.



**C. Site Description**

The subject special exception site is located on the northern portion of the Walnut Hill Shopping Center, adjacent to Westland Drive North and consists of approximately 13,987 square feet of area. The shopping center is bounded by Westland Drive North to the north, Frederick Road to the west, Westland Drive South to the south, and a row of nine single-family detached dwellings (fronting on Walnut Hill Drive) to the east in the R-200 Zone. Across Westland Drive North are located a gas station, an office building, and a restaurant. The shopping center consists of the Food Lion grocery store (anchor), a Maryland Motor Vehicle express facility, a 24-hour 7-11 store and various smaller retail establishments.

**D. Land Use and Zoning History:**

The Walnut Hill Shopping Center was built in 1967 on Parcel "B", Block "A" with C-2 zoning. Parcel "B", Block "A" was recorded as a plat before January 1, 1982 and zoned for non-residential land uses. The property was retained in the C-2 Zone in the approved 1985 Gaithersburg Vicinity Master Plan and the Land Use map recommends the subject property for retail commercial uses. The property owner in 1989 registered the shopping center site as a "loophole" property under the Emergency Bill 25-89 and Subdivision Regulation 89-1 ("Loophole Legislation") in Section 8-31(a)(1), enacted on July 24, 1989, which expired 12 years later in 2001.

In the past, the subject pad site was used as a drive through bank and more recently as a tanning parlor. The existing building is currently vacant.

## **E. Elements of Proposal**

The applicant proposes to redevelop the subject site. The proposed redevelopment involves replacement of the existing building with a new restaurant building with a drive through window. A portion (1,373 square feet) of the interior of the 2,924-square-foot restaurant will be dedicated for patron area including restrooms, vestibules and hallways and the remaining 1,551 square feet will be allocated for food preparation and storage area. The last revised plan (12/9/05), submitted to staff on December 13, 2005, lists a building area of 3,018. The site and landscape plans must be revised to show a building area of 2,924 square feet both on the drawing and in the Zoning Notes. A further increase in the building area will trigger a need for a new traffic study.

The proposed redevelopment of the site also includes the elimination of one of the three curb cuts along North Westland Drive, a provision for an enclosed trash dumpster behind the restaurant, re-striping and/or repairing of the parking area in and around the special exception site, and provision of additional landscaping.

Access to the proposed restaurant will be from two existing driveways both located on Westland Drive North. There are currently three driveway access points on the Westland Drive North frontage of the shopping center. The applicant proposes the elimination of one of the three access points to ensure an organized pattern of circulation near and on the subject site. The drive-through lane is located on the north side of the building, between the proposed building and the sidewalk along North Westland Drive. The 10-foot wide, 215-foot long drive-through lane can stack up to eight cars.

The proposed time of operation for the restaurant is 10:00 a.m. to 3:00 a.m. Sunday through Thursday and 10:00 a.m. to 4:00 a.m. Friday and Saturday (staff recommends changes in the proposed time of operation in condition No. 4 of the staff report).

The applicant indicated that the restaurant will employ approximately eight to ten employees during the lunch time peak period and eight employees, exclusive of a manager, during the evening peak hours. The applicant further indicated that there will be a manager on the site at all times.

### **Parking**

Section 59-E-3.7 requires that 25 parking spaces for each 1,000 square feet of floor area be devoted for patron use within the establishment. A total of 35 parking spaces are required for the proposed use.

In a supplemental submission (e-mail dated July 5, 2005) the applicant provided the following data to establish adequacy of parking spaces in the shopping center to accommodate the parking need of the proposed restaurant.

According to the landlord (as of April, 2005) there are:

64,632 square feet of retail

5,000 square feet office

9,887 square feet of restaurant patron area (including the proposed Taco Bell)

5,926 square feet of furniture store (with 5 employees) and

5,660 square feet of auto repair (with 10 employees).

Applying these number to the chart in 59-E-3.1(a) results in the need for 617 parking spaces (give or take one or two for rounding errors); 649 are provided.



Moreover, the applicant has submitted documentation on the portion of the lease agreement that would allow the applicant to share the parking spaces (over 300) of the shopping center that are located in the vicinity of the subject special exception site.

## **Sign**

The site plan shows a 5.0-foot high, 26.67 square-foot monumental sign located on the northwestern side of the property adjacent the sidewalk along North Westland Dr. A note (No.18) on the site plan indicates that the existing sign is to be refaced with the base and foundation protected during construction. All signs, including freestanding, wall and canopy signs placed on the property, shall meet the requirements of Section 59-F-4.2 (b) in terms of number, location and area. Three building signs, one freestanding signs and one sign that would be added to the existing Monumental sign of the Walnut Hill Shopping Center are proposed. The signs meet the sign area, location and height requirements. However, the number of signs (2) proposed for the Restaurant's façade on North Fredrick Avenue exceed the allowed number for building signs by one. A variance is required from the one-sign per entrance requirements of the ordinance.

## **F. ANALYSIS**

### **Master Plan**

The 1988 Gaithersburg Vicinity Master Plan is silent on drive-through restaurants such as the one proposed in the subject application and/or other special exception uses in the subject area. The Community Based Planning Division has offered the following comments:

...Two residences are closest to the subject use; the side yard of the nearest home abuts the entrance driveway to the subject restaurant, while the rear yard of the second home adjoins this driveway. The rear portions of this entire residential block were mistakenly considered as commercially zoned when the shopping center was first built in the 1960's, resulting in the lack of any required buffer between the two uses. A corrective map amendment in 1965 placed the R-R Zone on the adjoining residential properties. (See Attachment 2) The historic Oakmont residential community, zoned R-90 and R-200 is across North Westland Road and just northeast of the subject site...

**Master Plan** - The subject site as well as the Walnut Hill Shopping Center are within the boundaries of the 1985 Gaithersburg Vicinity Master Plan. The Plan's zoning map designates C-2 zoning, and the land-use map retail commercial for the subject site, and R-200 zoning for single-family residential for the adjacent residential property, with no additional guidance on these properties.

### **CONCLUSION**

Staff finds the proposal conforms with the land-use and zoning maps of the Master Plan. Staff concerns about impacts of the proposed special exception use are briefly described in the following paragraphs.

**Incompatibility of Proposal with Adjacent Residential Neighborhood** - Due to the unusual proximity of the proposed use to its residential neighbors, impacts from the use on these neighbors would be especially evident. The entrance drive for the proposed use would be only 20 feet from the side yard property line of the closest

resident, the eight-vehicle- stacking lane for the drive-through lane is only 43 feet from this line; and the speaker box for the drive-through lane is just 120 feet from this line.

Staff believes the adjacent neighborhood would be adversely affected by the sounds of the restaurant's expected 22-to-28/hour vehicles (and their radios) entering the drive-through lane, noise projecting from the speaker box, and the sounds of patrons' socializing. Also light from light poles within 100 feet of residential property would be disruptive. (While the remaining shopping center has outdoor light poles, they are primarily on the upper center level and along the streets, and not a major impact on these residences.)

Staff notes the operating hours of the service window and speaker box operating until 3:00 or 4:00 a.m. would be disruptive to adjoining residences. Overall the impacts imposed on neighbors by the subject use would be of a much greater intensity and of a much more intrusive character than impacts of the commercial uses allowed by right in this shopping center.

Inadequate buffering exists to shield the neighboring residents from the proposed use. The subject site lacks the buffers usually provided for parking facilities with six or more vehicles. A dilapidated wood fence and a few shade trees buffers the proposed use from the adjacent residences. Typically, a twelve-foot-and a 30-foot buffer (the rear yard of the second-closest resident adjoins the driveway and parking area for the subject use) would screen parking facilities adjacent to the side and rear yards respectively of R-200-zoned residential property. A fence or similar screening in good condition would reinforce this buffer.

The proposal shows a three-foot wide grass strip separating the drive-through and pass-by lanes beside the proposed service window from the sidewalk along North Westland Drive. The standard separation for a street right-of-way (r-o-w), such as North Westland Drive and the public sidewalk within that r-o-w from the proposed restaurant's driveways along the restaurant's northwest boundary is a ten-foot landscaped buffer strip. A ten-foot rather than a three-foot landscaped buffer would better shield pedestrians on the public sidewalks from vehicles patronizing the proposed use, provide an adequate landscaping strip and also enhance the appearance of the restaurant from North Westland Drive.

**Community Concerns** – Throughout this application Planning Board staff has been in contact with three community associations; the applicant contacted property owners about the previous version of the proposal. Staff also met with representatives of the Walnut Hill Citizens' Association representatives, talked with other residents, and reviewed residents' letters about the proposal. The Walnut Hill Citizens Association met with staff on September 28, 2005, and last met with the applicant on October 14, 2005. The Association stated in their October 3, 2005 letter that they opposed the proposal, which they believed would be detrimental to their community.

The Walnut Hill Citizens' Association especially objects that the proposed restaurant's entrance drive and stacking lane for the drive-through window would be too close to their residences, that the restaurant would be open too late, that noise from traffic and patrons as well as bright lights would adversely impact them, and that insufficient mitigation measures were proposed. These residents thought the



proposal would generate too much traffic and parking, which would overflow into and adversely impact their neighborhood, and that patrons' trash would be a nuisance. Other residents' letters complained that the use would draw an undesirable late night element into the neighborhood.

**Mitigation Measures to Increase Proposal's Compatibility** –Staff recommends that compatibility of the proposal with the adjacent neighborhood could be increased through the following measures:

1. Replacing the existing thin wood fence separating the parking area and entrance driveway for the subject use and shopping center from the adjacent residential properties, with a solid masonry wall, at least six feet tall, extending from the driveway's beginning along at the North Westland Drive and extending 150 feet into the commercial center property, thus buffering the lower shopping center level that will be used for the driveway and parking for the subject use.
2. Eliminating the parking beside the two adjoining residential properties and increase the existing five-foot buffer strip from five to 12 feet. This area should be landscaped with large evergreen trees tall enough to provide a visual screen of the proposed special exception use. Ornamental shrubs should also be planted in this area.
3. Increasing the grass buffer strip separating the restaurant's pass-by and drive-through vehicular lanes from the sidewalk along North Westland Drive from three-to-ten feet wide. (Retain the proposed trees.)
4. Reducing operating hours for the drive-through window to 11:30 pm.

## **Transportation**

The Transportation Planning staff finds that the proposed special exception use satisfies the Local Area Transportation Review test and will have no adverse effect on nearby roadway conditions or pedestrian facilities based on the plans, statement of operations, and traffic study. The Transportation Planning Staff has also offered the following comments:

### **DISCUSSION**

#### **Site Location**

The Walnut Hill Shopping Center is located on the east side of Frederick Road between South Westland Drive and North Westland Drive or approximately 2,000 feet north of Shady Grove Road. This proposed lease/pad site for this special exception use is located within the northeastern parking area of the shopping center or in the southeast quadrant of the intersection of South Frederick Road (MD 355) and North Westland Drive.

#### **Master-Planned Roadways/Bikeway and Other Non-Master-Planned Roadways**

In accordance with the *Gaithersburg Vicinity Master Plan*, South Frederick Avenue is designated as a major highway, M-6, with a 120-foot right-of-way. The *Countywide Bikeways Functional Master Plan* designates a signed shared roadway, SP-64, along South Frederick Avenue.

The other adjacent and nearby non-master-planned roadways are as follows:

1. North Westland Drive is a functional primary residential street with a 70-foot right-of-way from South Frederick Avenue to Walnut Hill Road.
2. East of Walnut Hill Road, North Westland Drive is a secondary residential street with a 60-foot right-of-way.
3. South Westland Drive is a secondary residential street with a 60-foot right-of-way.
4. Walnut Hill Road is a tertiary residential street with a 50-foot right-of-way.

#### Vehicular Access Points

The vehicular access points to the Walnut Hill Shopping Center are from South Frederick Road, South Westland Drive, and North Westland Drive. The subject lease/pad site is accessed from North Westland Drive via South Frederick Road and through the shopping center. Three curb cuts from North Westland Road currently serve as access points into Walnut Hill Shopping Center. As part of the subject special exception, the middle curb cut is to be closed.

#### Vehicular Circulation

Motorists can enter the drive-through lane from the western access point from North Westland Drive as well as from the shopping center parking lot. The drive-through window is proposed to hold up to eight vehicles and is longer than the typical fastfood drive-through aisle. Staff finds that the length of queuing area is sufficient to accommodate the maximum anticipated number of "drive-through" customers. The queue of waiting motorists tends to be limited by motorists' perception of when the line becomes so long such that the convenience of staying in their vehicles is not worth extra time in line. Then it becomes more convenient to park and walk into the fastfood restaurant.

#### Non-Local Vehicular Traffic through the adjoining Walnut Hill Neighborhood

Park and Planning staff met with citizens representing the Walnut Hill Neighborhood Association to discuss their concerns regarding potential traffic impacts (i.e., including trucks and noise) and other issues. The community representatives expressed concern regarding both existing and additional non-local traffic that would be generated by the subject fastfood restaurant using the residential street, Walnut Hill Road. Walnut Hill Road provides an alternative parallel route from North Westland Drive to South Westland Drive instead of traveling through the shopping center. South Westland Drive is the preferred street to turn left onto Frederick Avenue because there is a traffic signal at this intersection, whereas none exists at the intersection with North Westland Drive. Given that these residential streets are public rights-of-way, any operational solutions to discourage non-local traffic may

be coordinated through the Montgomery County Department of Public Works and Transportation.

Vehicular counts were collected in April 2005 at the intersections of Walnut Hill Road with South Westland Drive and North Westland Drive. The observed traffic volume along Walnut Hill Road was 33 peak-hour trips during the weekday morning peak hour between 6:30 and 9:30 a.m. and 38 peak-hour trips during the weekday evening peak hour between 4:00 and 7:00 p.m. This traffic volume is considered low and is equivalent to an average of one vehicle every 1.5 to 2 minutes. Since only 17 homes front this block of Walnut Hill Road, Transportation Planning staff concludes that through traffic does use this segment of Walnut Hill Road, but that the through traffic is generated by both nearby commercial and residential land uses and would not be substantially increased by the proposed action.

#### Parking for the Subject Special Exception within the Walnut Hill Shopping Center

The parking area for the proposed fastfood restaurant includes both the spaces on the south side of the new building within the leasable area as well as all the other parking spaces within the shopping center. Parking spaces within the leasable area will not be reserved exclusively for use by this subject restaurant. The shared parking agreement between the special exception petitioner and the shopping center requires that the parking spaces within the Walnut Hill Shopping Center are not reserved for and may not necessarily be adjacent to any one store.

A parking study was conducted on July 9 and 10, 2005, Friday and Saturday, to determine the number of spaces occupied and the duration of the current parking demands in the northeast corner of the Walnut Hill Shopping Center. The current parking demand was observed to be 35 occupied parking spaces. More than 80 percent of the observed parked vehicles were parked for a duration of less than 30 minutes.

The parking demand for the proposed fastfood restaurant was projected to be 29 parking spaces based on the Institute of Transportation Engineers' *Parking Generation Report*. Adding these 29 restaurant parking spaces to the current parking demand of 35 occupied parking spaces equals a total of 64 parking spaces needed to serve the businesses within this northeastern corner. The overall parking supply would be adequate in the northeast corner because a supply of 73 parking spaces is available, leaving a surplus of 9 spaces. The Taco Bell/Long John Silver employees would probably park nearby in the underutilized northwestern area of the shopping center's parking lot to give customers priority parking in front of the main entrance. For the occasion when the parking demand exceeds the typical demand, the Walnut Hill Shopping Center has agreed to permit use of additional shared parking spaces outside the proposed special exception's lease/pad area with the other retail tenants of the shopping center.

#### Pedestrian Facilities

Sidewalks exist along South Frederick Avenue, North Westland Drive, and South Westland Drive. With the improvement described in Recommendation No. 3, the vehicular traffic that is generated by this special exception use would not adversely affect the existing pedestrian environment.

Adequate Public Transportation Facilities Review for the Special Exception Use on the Lease/Pad Site

The petitioner submitted a traffic study to satisfy APF/LATR requirements for the subject special exception case on the lease/pad site within the Walnut Hill Shopping Center. The traffic study was used to determine if there would be any adverse impact by the traffic generated during the weekday peak periods by the proposed special exception use. Based on the results of the traffic study, the table below gives the projected number of peak-hour trips generated by the proposed special exception use within the weekday evening peak period (4:00 to 7:00 p.m.). The proposed fastfood restaurant would be closed within the weekday morning peak period (6:30 to 9:30 a.m.).

Type of Trip Purpose	Peak-Hour Vehicular Trips	
	Morning	Evening
Pass-by* Trips	Closed to the Public	50
New** Trips		51
Total Trips		101

\* Pass-by trips are those for which the proposed fastfood restaurant is not the primary trip origin or destination, but secondary to other primary origins and destinations such as trips between home and work.

\*\* New trips are those for which the proposed fastfood restaurant is the primary trip origin or destination.

A traffic study was submitted to satisfy LATR because the proposed fastfood restaurant with a drive through window generates 30 or more peak-hour trips within the weekday three-hour evening peak period. The traffic study assumed conservatively that no peak-hour trips were generated from the existing building. Based on the results of the traffic study, the table below shows the critical lane volume (CLV) values in the existing, background, and total traffic conditions.

Intersection	Peak Hour	Traffic Condition		
		Existing	Background	Total
MD 355 & North Westland Drive	Morning	1,006	1,007	1,007
	Evening	1,147	1,156	1,202
MD 355 & South Westland Drive	Morning	1,251	1,256	1,256
	Evening	1,181	1,182	1,184
North Westland Drive & Walnut Hill Road	Morning	42	42	42
	Evening	53	53	53
South Westland Drive & Walnut Hill Road	Morning	96	96	96
	Evening	83	83	83

The CLV values shown in the table are lower than the congestion standard of 1,475 for the Derwood Policy Area. Thus, no improvements would be required at these intersections to satisfy LATR. The traffic study was submitted for a 2,924 square foot building whereas the petition currently requests approval of a 2,951 square foot building. Transportation Planning staff finds that the difference of 27 square feet is equivalent to one additional peak hour trip, which could result in the total future CLV values in the table above being higher by one CLV. Staff finds that this difference does not change the LATR study findings and the submitted traffic study provides sufficient information for staff to support approval of the 2,951 square foot building.

Under the *FY 2005 Annual Growth Policy*, Policy Area Transportation Review is no longer considered in the APF review.

#### Walnut Hill Shopping Center's Adequate Public Facilities Review

For the existing commercial land uses plus proposed special exception use located in the entire shopping center parcel, an APF test for the entire shopping center is not required because the net additional square footage of replacing the existing building with the larger fastfood restaurant structure does not result in exceeding the maximum approved square footage. Additional details are provided in Appendix A.

Transportation Planning staff recommends the following conditions as part of the transportation-related requirements for this special exception use within the proposed leased area within the Walnut hill Shopping Center:

1. Limit the special exception use to a fastfood restaurant with a drive through window of 2,951 square feet.
2. Provide directional signs and pavement markings to guide customers arriving from North Westland Drive to reach the drive-through windows by using the western curb cut into the Walnut Hill Shopping Center.
3. Provide pedestrian connections that meet ADA requirements by constructing the following:
  - a. A sidewalk with handicapped ramps along the western side of the proposed building that connects the sidewalk along North Westland Drive to the restaurant's main entrance on the south side.
  - b. A delineated pedestrian crosswalk across the western exit of the drive-through lane with a "pedestrian crossing" sign facing the westbound vehicular traffic.

For the special exception case within the lease/pad site, Transportation Planning staff finds that the proposed action, with staff recommended conditions, satisfies the Local Area Transportation Review (LATR) test and will have no adverse effect on area roadway conditions or nearby pedestrian facilities based on the plans, statement of operations, and traffic study.

## **Environment**

The Environmental Planning Section has indicated that it has no objection to the subject application and has offered the following Comments

The project site is part of the Walnut Hill Shopping Center, which is completely developed. The site has a Special Exceptions exemption (No.4-05250E issued March 14, 2005) from the requirements of Chapter 22A (Forest Conservation Law).

This site is not located within a Special Protection Area. There is currently no green space onsite. The proposed use is dedicating 30% (4,160 square feet) of its total land area to green space, which exceeds the 10% (1,399 square feet) that is required. This special exception use will, therefore, improve the area's immediate environment.

The property is in the Upper Muddy Branch subwatershed of the Muddy Branch watershed. The *Montgomery County Countywide Stream Protection Strategy* (CSPS, 1998) lists subwatershed, stream and habitat conditions as 'fair', based on data available at the time. Stream channels in the area are incised and bank stability is poor. There are visible signs of sediment deposition and embeddedness problems in the mainstem. These problems have resulted from high imperviousness and inadequate riparian buffers in the headwaters. Areas outside the City of Gaithersburg have been designated as Watershed Restoration Areas because of the need for restoration to address serious problems that have led to poor stream conditions.

There is adequate existing water and sewer to serve the property.

The proposed use will generate no objectionable noise, vibrations, fumes or odor that will adversely affect surrounding users.

**G. Development Standards**

The subject property is located in the C-2 Zone which permits the proposed special exception. There are no other approved special exception uses in the immediate neighborhood.

The proposal conforms to all applicable current development standards of the C-2 Zone. The following table summarizes the relevant development standards for the C-2 Zone that are applicable to the proposed special exception request:

<b>Current Development Standards</b>	<b>Required/Allowed</b>	<b>Proposed/Existing</b>
Maximum Building Height	3 stories, 42 feet	1 story, 23.5 FT to the top of the building
Green Area	10%	30%
FAR	1.5	.21
<b>Parking Spaces:</b> 1,373 SF of patron area 25 spaces per 1,000 SF	37	37+ (shared)

## H. Community Concerns:

There is strong opposition to the subject application from the community. A large number of people from the community have written letters expressing their opposition to the application. Major concerns identified by the community include:

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

Representative of the Walnut Hill Neighborhood Association met with staff and expressed their concerns. Furthermore, in a letter dated October 3, 2005, the Walnut Hill Neighborhood Association, identified the following specific issues that raised concerns for the community (Also see attached letter for full text)

### SPECIFIC ISSUES:

The following sections deal with paragraphs from the request for Special Exception prepared by Holland+Knight LLP and dated April 4, 2005, and their statements addressing:  
section III. PROPOSED USE SATISFIES SPECIFIC REQUIREMENTS OF SECTION 59-G-2.16, DRIVE-IN RESTAURANTS, and  
section IV. PROPOSED USE SATISFIES GENERAL REQUIREMENTS OF SECTION 59-G-1.21 FOR A SPECIAL EXCEPTION.

*Page 8, section IV, "F. Section 59-G-1.21(a)(6) - The proposed use will not, when evaluated in conjunction with existing or approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature.*

*Taco Bell statement from the document: "The Property is located within a C-2 zone. The closest single-family residential area to the Property is approximately 150 feet to the east of the Property. Therefore, the proposed Special Exception to allow an eating and drinking establishment in a C-2 Zone, which is designated in the Master Plan for a retail use, will not adversely affect the residential nature of this single-family neighborhood."*

Association view: The Taco Bell fast food restaurant is not suitable for this particular C-2 Zone in that it encroaches on the adjacent residential area to a far greater degree than any other like restaurant within two-miles distance from the proposed location. The Taco Bell document describes the Property as being 150 feet from the nearest residential neighbor. The main building of the restaurant may be that far away however the driveway entrance and directed flow of traffic to the drive-in window is within 30 feet of the nearest resident. The lighting and other development of the site are also much closer than the 150 ft figure indicated in the proposal.

The proposed restaurant will send drive-in traffic on the above route until at least 3 o'clock in the morning, seven days a week, at the rate of 22-28 cars and hour - *statement of Taco Bell representative, July 21, 2005*. Just as the traffic from the existing 7-Eleven and other stores use Walnut Hill Road to regain access to Route 355, the traffic from the proposed development will also. In addition to the traffic noise at these late hours, the increased traffic will be hazardous to the pedestrian traffic that uses the neighborhood streets in the absence of sidewalks in the neighborhood. While the proposal indicates the management will survey the property for cleanliness and neatness frequently, they are not indicating they will survey and clean up the neighborhood streets where some of their patrons will dispose of the wrapping material and food product not needed by them upon the neighborhood streets. This is an existing problem with the 7-Eleven patrons.

Page 4, section III, "B. Section 59-G-2.16(b) -- The use at the proposed location will not create a traffic hazard or traffic nuisance, or cause frequent turning movements across sidewalks and pedestrian ways.

Taco Bell: Taco Bell's response is limited to their control of traffic flow on-property only.

Association view: The request for exception should be rejected because the plan fails to address restaurant contributory traffic flow and safety from adjacent roadways and within the adjacent neighborhood.

This proposed restaurant is near a busy intersection that lacks a traffic light (MD 355 & North Westland Dr.). The restaurant anticipates a lot of traffic crossing that intersection to enter the drive-in restaurant. The site plan describes restaurant business coming mainly from traffic flowing north on MD 355. However, Taco Bell knows very well that this will be the closest fast food drive-in to Gaithersburg High School, located about a mile to the north, where students are excited about the proposed restaurant. This means a rush of lunch hour students driving south on MD 355 to turn left across traffic to get to the Taco Bell. Remember, there's no traffic light to assist in a safe entrance or exit from the property. There is no reasonable expectation or basis in fact that the patrons of the proposed facility will be primarily entering and leaving on the northbound lanes of Route 355. The present traffic from the shopping center places a heavy burden on the traffic light at South Westland Drive and Route 355 for the purpose of continuing south. This is particularly evident in the rush hour periods when traffic from the existing stores can have traffic backed up to the entrance to the Walnut Grove neighborhood, almost 500 feet.

The absence of a traffic light at MD 355 and North Westland will force drive-in restaurant traffic into the adjacent neighborhood as it happens today, and as traffic increases in the shopping center from a drive-in restaurant, neighborhood traffic from outsiders can only increase.

The major reason traffic enters the Walnut Hill neighborhood is to get from North Westland Drive to South Westland Drive where the traffic light allows a safe left turn to go south on MD 355. A traffic light at MD 355 and North Westland Drive would eliminate this pass-through traffic and restore quiet to the street.

Page 7, section IV, "E. Section 59-G-1.21(a)(5) - The proposed use will not be detrimental to the use, peaceful environment, economic value or development of surrounding properties or the general neighborhood, and will cause no objectionable noise, vibration, fumes, odors, dust, glare or physical activity.

1. Use, peaceful enjoyment, economic value and surrounding properties."

Taco Bell: Taco Bell describes their housekeeping policies and tells the reader they will be a good addition to the shopping center.



Association view: Like the discussion that preceded this paragraph, the Association feels the restaurant's proximity to the neighborhood, late business hours, and increased traffic will be detrimental to the use and peaceful environment of the adjacent neighborhood. As we suggested earlier the promised good housekeeping only is directed at their property and not the entire potential litter zone of the restaurants. As everyone has observed, the vicinities of drive-in restaurants are usually regions of excessive litter due to some of the patrons disposing of the unused food and wrapping material by simply ejecting it out the car window. We face this problem with existing stores due to the traffic patterns the busy traffic flow that Route 355 generates. When the shopping center hosted a Dairy Queen many years ago on the South Westland side of the shopping center, the residents of South Westland Drive were constantly picking up strewn and wind blown Dairy Queen wrappings and containers many houses down the street. We feel the effect of the proposed development will have a deleterious effect on the property values of the Walnut Hill neighborhood as the developer does not propose sufficient mitigation of traffic or visual impact to accommodate the proposed development.

Page 4, section III, "A. Section 59-G-2.6(a) -- The use will not constitute a nuisance because of noises, illumination, fumes, odors or physical activity in the location proposed.

Taco Bell statement in the document: "Taco Bell employs state-of-the art filter and ventilation systems to control odors." "...the Property will be improved with standard adjustable/directional lighting to avoid glare and spill-over onto other properties."

Association view: Visits to three area Taco Bell restaurants revealed well-illuminated restaurant areas. The exterior walls of the buildings are illuminated with lamps and the general area illuminated with light poles at about 22 feet height that permitted a strong light at a couple hundred feet. The existing building that Taco Bell proposes to replace is visible far into the neighborhood but shows no noticeable illumination. Comparisons of other Taco Bell lighting at similar distances suggests this restaurant would produce strong illumination that would shine down North Westland Drive and be visible far into the neighborhood until 3 am every day.

**CONCLUSION:** The Taco Bell fast food restaurant is not suitable for this C-2 Zone location and its Request for Exception should not be approved. Taco Bell proposes a NEW and drastic revision use of the existing retail space, and LONGER business hours than originally envisioned for the existing retail space. The drive-in nature of the restaurant necessitates much greater illumination over a larger area than a walk-in restaurant, with an extremely negative impact on the neighborhood. The visual footprint of a drive-in restaurant is not appropriate to be with 30 to 40 feet of homes and have the traffic flow directed this close as well. Traffic flow and vehicle noise at late hours and along with traffic safety concerns for a neighborhood without sidewalks should not be forced into OUR NEIGHBORHOOD because of a fast food drive-in restaurant. Our grade school children walk to school and the others wait for buses on the streets of the neighborhood including the corner of Walnut Hill Road and South Westland Drive where some of the traffic from this restaurant will pass. We hope the owners of the property can find some other type of store for this property.

One resident of the community has written a letter in support of the application.

#### **I. Inherent and Non-Inherent Adverse Effects**

**Standard for Evaluation:** Section 59-G-1.2.1 of the Zoning Ordinance specifies that **a special exception must not be granted without 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.**

As established in previous special exception cases, seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, lighting, noise, traffic, and the environment.

The inherent, generic physical and operational characteristics associated with a restaurant with a drive through include, parking facilities, lighting, noise generated by vehicles using the driving through and vehicular trips to and from the site by patrons and employees, hours of operation. There are no significant transportation impacts that would result from the proposed special exception. The Transportation Planning staff has offered the following comments on the subject proposal's fulfillment of the Local Area Transportation Review test:

...For the special exception case within the lease/pad site, Transportation Planning staff finds that the proposed action, with staff recommended conditions, satisfies the Local Area Transportation Review (LATR) test and will have no adverse effect on area roadway conditions or nearby pedestrian facilities based on the plans, statement of operations, and traffic study.

With respect to parking, the applicant's parking demand study indicates that the overall parking requirement for all existing and proposed uses (the subject special exception) on the site are adequately satisfied by the 649 parking spaces on the shopping center property. Almost all of the required parking spaces can be accommodated near the proposed restaurant, with employees probably parking nearby in the underutilized northwestern area of the shopping center's parking lot. If the projected parking demand exceeds the number of available spaces associated with the lease/pad site, the Walnut Hill Shopping Center has agreed to permit use of additional shared parking spaces outside the proposed special exception's lease/pad area with the other retail tenants of the shopping center.

With respect to noise, the proposed menu-board/OCB and the window (for the drive-through service) will be located along the northern façade of the building, facing the existing commercial development across the street. The applicant maintains that the highly efficient and modern equipment that will be used at the drive through window will eliminate excessive conversation produced by the speaker box and effectively limits noise from the drive-through operation.

The applicant also indicated that the 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.

Three building signs, one freestanding sign, and one sign that would be added to the existing Monumental sign of the Walnut Hill Shopping Center are proposed. The signs meet the sign area, location and height requirements. However, the number of signs (2) proposed for the Restaurant's façade on North Fredrick Avenue exceed the allowable number for building signs by one. A variance is required from the one-sign per entrance requirement of the ordinance.

The applicant has submitted a revised lighting plan adding some modifications to the previously submitted lighting plan. However, to ensure that potential light intrusion to the adjoining properties is sufficiently mitigated while at the same time sufficient lighting is provided on and near the site for the patrons and employees of the restaurant, staff has made a number of recommendations to which the applicant agreed to comply with (see discussion under J – Specific Special exception requirements Sec. 59-G-2.16 (f))

The removal of the existing vacant building and construction of a new one coupled with the proposed landscaping around the perimeter of the building (including the screening of the trash dumpster), adds an esthetical appeal to the site in contrast with its current condition that is characterized by a vacant, run down building in need of repair.

The proposed time of operation for the restaurant is 10:00 a.m. to 3:00 a.m. Sunday through Thursday and 10:00 a.m. to 4:00 a.m. Friday and Saturday. The applicant indicated that these hours are within the established framework for such uses. The applicant goes on to explain that “ 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.” However, staff is of the opinion that the hours of operation in special exception cases such as this should be determined on a case-by-case basis. In the case of the subject application, given the location of the restaurant on the C-2 zoned shopping center property, and in view of the fact that there is an existing 24-hour convenience store at the same general location, the proposed hours of operation for the subject drive-through restaurant will not be compatible with the adjoining residential neighborhood to the east. Therefore, staff recommends that the proposed hours of operation be cut shorter than proposed in this application in the following manner:

Sunday through Thursday from 10:00 a.m. to 11:30 p.m. and Fridays and Saturdays from 10:00 a.m. to 12:30 a.m.

Staff believes that these hours of operation are appropriate given the close proximity of the proposed restaurant to a residential neighborhood. It is also staff's opinion that hours of operation that are longer than the ones recommended by staff, coupled with the existing 24 hours operation of the convenience store, would create

incompatibility in land use that would cause harm and disturbance to the adjoining residential properties.

- J. Specific Special Exception Requirements:** A special exception may be granted for a Drive in restaurant in a C-2 Zone. **Section 59-G-2.16** sets forth the specific requirements:

**A drive-in restaurant may be allowed, upon a finding, in addition to findings required in division 59-G-1, that:**

- (a) The use will not constitute a nuisance because of noise, illumination, fumes, odors or physical activity in the location proposed.**

The proposed restaurant will not constitute a nuisance. The applicant has indicated that the proposed fast food use with the drive-through service will be a state-of-the-art facility with highly efficient and modern equipment, including grease filters and ventilation systems, to control odors associated with the restaurant. Outside improvements on the site include an enclosed trash dumpster that is screened with landscaping from the street and nearby residential development. The restaurant is designed to meet the needs of customers in a convenient and pleasant manner while complying with all Federal, State and local laws for this type of food service.

The applicant further stated that directional lighting would not create off-site illumination that will constitute a nuisance to the nearby residential properties to the east and to the adjacent roadways. The applicant has submitted a revised lighting plan adding some modification to the previously submitted lighting plan. In response to comments from Environmental Planning, the applicant is further revising the lighting plan.

The proposed menu-board/OCB and the window (for the drive-through service) will be located along the northern façade of the building, facing the existing commercial development across the street. The applicant maintains that the use of the order confirmation board (OCB), a computer monitor that displays the customer's order as entered into the register system, eliminates excessive conversation produced by the speaker box and effectively limits noise from the drive-through operation.

The applicant also indicated that the 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.

Delivery of supplies will occur only two to three times a week and is typically scheduled during off-peak hours.

- (b) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads**

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

With the recommended conditions, the proposed use will not create a traffic hazard or traffic nuisance on or near the subject site or the adjoining roads. The Transportation Planning staff has found that the vehicular traffic that is generated by this special exception use would not adversely affect the existing pedestrian environment provided that the applicant shall meet ADA requirements by constructing the following:

- A sidewalk with handicapped ramps along the western side of the proposed building that connects the sidewalk along North Westland Drive to the restaurant's main entrance on the south side.
- A delineated pedestrian crosswalk across the western exit of the drive-through lane with a "pedestrian crossing" sign facing the westbound vehicular traffic.

- (c) The use of the proposed location will not preempt frontage on any highway or public road in such manner so as to substantially reduce the visibility and accessibility of an interior commercial area zoned or proposed for commercial use which is oriented to the same highway or public road.**

The proposed use will not preempt frontage on any highway or public road.

- (d) 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 wide planting strip on the outside of such wall or fence, planted in shrubs and evergreens 3 feet high at the time of original planting and which shall be maintained in good condition. Location, maintenance, vehicle sight distance provisions, advertising and parking areas pertaining to screening shall be as provided for in the requirements contained in article 59-E.**

The Walnut Hill Shopping Center is located on the east side of Frederick Road between South Westland Drive and North Westland Drive. The proposed special exception use site is located within the northeastern parking area of the shopping center, approximately 46 feet from the eastern boundary of the shopping center that adjoins residential properties. Within the 46 feet distance between the special exception boundary line and the residential properties are located several parking spaces and a drive way

which extends north-south for the length of the shopping Center's property. The shopping center property is screened from the residential property by a 6-foot-high, sight tight wooden fence installed along the eastern property line. A site inspection by staff reveals that the fence is not well maintained by the shopping center and is in need of repair.

As indicated in the Community Based Planning comments, the rear portions of this entire residential block were mistakenly considered as commercially zoned when the shopping center was first built in the 1960's, resulting in the lack of any required buffer between the two uses. Subsequent expansion and modification activities on the property did not present the opportunity to correct the mistake with regard to provision of a buffer between the residential and the commercial uses. As a result, there exists a built in incompatibility between the two adjoining land uses, which becomes an issue or a focus of attention whenever additions or replacement of uses, including those permitted by right, are contemplated on the existing shopping center site. Until an opportunity lends itself to ratifying the error made nearly 40 years ago, it's imperative that careful consideration be given in allowing the establishment of new uses on the shopping centers property to ensure that the incompatibility that already exists is not intensified

In the case of the subject application, although the 6-foot high fence, the parking spaces and the driveway are located outside of the proposed special exception site, Staff has been urging the applicant to coordinate with the community to facilitate communication with the owner of the shopping center to address the need for maintaining and repairing the fence. The applicant has recently reported that the owner of the shopping center has agreed to repair and maintain the fence. Since the applicant proffered the repair and maintenance of the fence, staff recommends that the Planning Board include the repairing and maintenance of the fence in the conditions of approval. Furthermore, staff recommends that the repairing of the fence include the screening or relocation of the unsightly trash dumpster which appears to be sitting within the right-of-way for the fire hydrant and fire hydrant lead. The repair and maintenance of the fence as proffered by the applicant, coupled with the recommended reduction in the hours of operation for the restaurant, would help to avert the creation of any new incompatibility on the shopping center property.

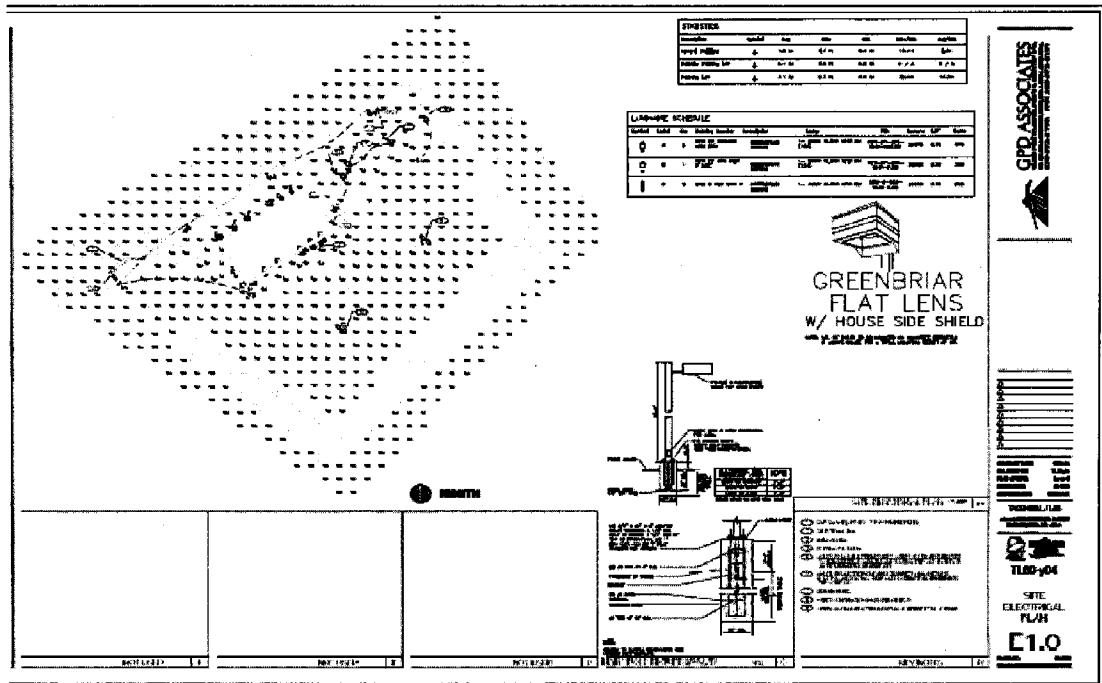
Within the boundaries of the proposed special exception, the applicant has provided adequate landscaping (30 percent green area—20 percent more than required) and screening (including screening of the trash dumpster). Relocating or screening the dumpster would also be a significant step forward. Because an escape lane and a drive through lane are not considered part of a parking facility, the proposal is not subject to the 10-foot landscape buffer requirement. However the proposal provides for a 3-foot wide landscape strip adjacent to the concrete sidewalk.

- (e) **Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or at entrances and exits to and from, such use are prohibited.**

The petitioner will not install any such obstructions.

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

As noted, the applicant is revising the lighting plan to address some deficiencies identified by Environmental Planning staff. With the recommended conditions, the proposal will be in compliance with this recommendation.



To ensure that potential light intrusion to the adjoining properties is sufficiently mitigated and enough lighting is provided on and near the site to secure the safety and security of patrons and employees, staff recommends that the applicant's lighting plan be revised to reflect the following:

- Change the type of fixture for the poles from house side shield to a full cut off fixture.
- Show all wall mounted lights
- Label dimensions from the proposed site lights to the existing street light poles along North Westland Drive.
- Break down the average, minimum, maximum and uniformity ratios for the parking area, drive aisles, and then around the building that includes the drive aisle.

- e. Install additional pole lights in the parking area between the proposed restaurant site and the seven eleven store.
  - f. Show all proposed light fixtures on the lighting plan and catalogue cuts for all lighting fixtures.
  - g. Identify the existing light levels from the roadway and the surrounding parking lot.
- (g) **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 25 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 60 feet from the centerline of any abutting street or highway.**

Ingress and egress for the restaurant is through two existing driveways along the north side of the shopping center property on its North Westland Drive frontage. The driveways are located well over 20 feet from the intersection of South Frederick Avenue and North Westland Drive. Neither one of the driveways exceed 25 feet of width. South Frederick Avenue is designated as a major highway, M-6, with a 120-foot right-of-way. North Westland Drive is a functional primary residential street with a 70-foot right-of-way from South Frederick Avenue to Walnut Hill Road.

**K. 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 subject property is located in the C-2 Zone, which permits the proposed





special exception.

- (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.**

With the recommended conditions the proposal is in compliance with the specific special exception requirements of Section 59.G-2.16 for a drive-in restaurant.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.**

As noted, the 1985 Gaithersburg Vicinity Master Plan does not have any specific guidance for drive-in restaurants or other special exception uses at the subject location. But the Plan supports the existing C-2 Zone for the subject property. As noted, drive-in restaurants are permitted by special exception in the C-2 Zone. The residential area adjacent (north) to the shopping center is identified in the Master Plan as the "Oakmont Community" (page 7) The Plan states that the Oakmont Community is somewhat unique in the Gaithersburg area because many of the homes are relatively old and are situated on large lots. The Oakmont Special Study Plan, which is a separate document, was adopted in 1982.

- (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.**

With the recommended conditions, the proposed use will be in harmony with the character of the neighborhood that consists of a mixture of office, retail and residential uses. As indicated, the proposed restaurant will be placed on an existing pad site and will replace an existing vacant building. The design, scale and bulk of the proposed structure although slightly larger than the existing building, are in harmony with the character of the neighborhood which is defined by a mixture of commercial and single family residential

uses. However, the proposed hours of operation, are too long, given the close proximity (less than 200 feet) of the restaurant to the residential development adjoining the shopping center to the east. Staff is of the opinion that unless the hours of operations cut back as recommended by staff, the use would create disharmony in the character of the neighborhood and would render itself incompatible with the adjacent residential neighborhood.

The proposal provides substantial landscaping in an area that is currently covered with impervious surface with no landscaping. New trips generated by the proposed use are not likely to have significant impact on the residential neighborhood or the roads. The proposed restaurant will be sharing parking spaces with the shopping center. The applicant has submitted adequate documentation to substantiate that adequate parking spaces are available to satisfy the restaurant's parking need. A total of 35 parking spaces are required for the proposed use.

- (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.**

There is no indication that the proposed development would be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood, provided that the applicant complies with the recommended conditions of approval of this application. As noted, the proposed restaurant building is replacing an existing vacant structure that has not been well maintained rendering the site unattractive and subject to undesirable activities. As such, the proposed redevelopment of the property would have a positive impact on existing and future development of properties in the neighborhood and would help to improve the vitality of this mixed-use neighborhood.

As noted, several residents of the immediate neighborhood and the Walnut Hill neighborhood Association have voiced opposition to the proposed restaurant, expressing concerns about traffic congestion, noise, illumination and glare intrusion. Staff has recommended a number of conditions to address the community's concern and to ensure that the balance of land use in this mixed residential and commercial neighborhood is maintained.

- (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 proposed use would not cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The applicant has indicated that the restaurant will be using a state-of-the art

filter and ventilation system to control odors. Equally modern and efficient systems will be used to limit noise from the drive-through operation. Moreover, staff has recommended that the applicant's lighting plan be revised to mitigate any potential effect while at the same time ensuring safety for patrons of the restaurant, employees and the adjoining residential properties.

- (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 is located in a commercial zone within a shopping center. There is no special exception use within the nearest residential development adjoining the shopping center to the east.

- (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**

With the recommended conditions, the proposed use will not adversely affect the health, safety security, morals or welfare of residents, visitors or workers in the area. However staff stresses the importance of reducing the hours of operation as recommended by staff. The recommended hours of operation will keep the proposed use compatible with the surrounding uses including the residential neighborhood to the east of the shopping center. Staff also has recommended conditions to facilitate safe and efficient traffic circulation near and on the subject site, and to substantially minimize potential light intrusion to adjoining properties while ensuring the safety and security of employees and patrons of the restaurant.

- (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.**

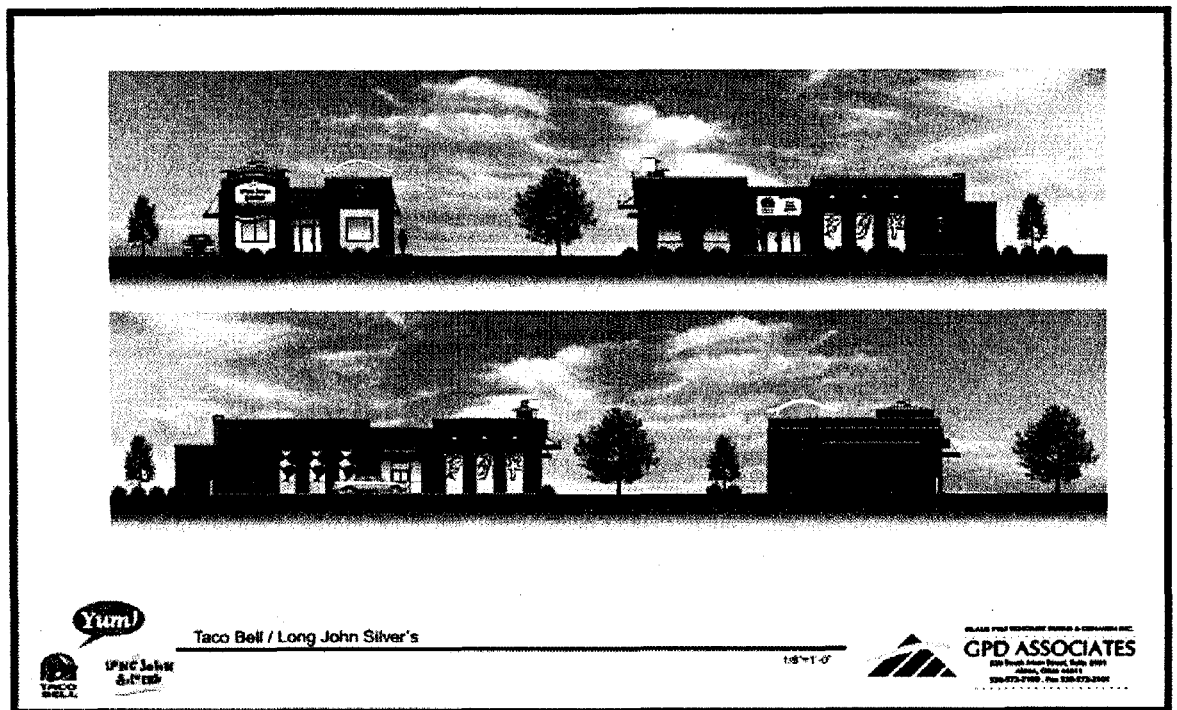
- (i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must**

include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

- (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 proposed use will be adequately served by existing public facilities. With the recommended conditions, the use is not likely to reduce the safety of vehicular or pedestrian traffic. The Transportation Planning staff has offered the following comments regarding adequate facilities review for the Walnut Hill Shopping Center:

For the existing commercial land uses plus the proposed special exception use located in the entire shopping center parcel, an APF test for the entire shopping center is not required because the net additional square footage of replacing the existing building with the larger fast-food restaurant structure does not result in exceeding the maximum approved square footage.



L. 59-G-1.25: County Need

In addition to the findings of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District

**Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:**

- (1) Eating and drinking establishments— Drive-in restaurant**
- (2) Funeral parlors and undertaking establishment**
- (3) Hotel, motel or inn**
- (4) Rifle, pistol and skeet shooting range, outdoor**
- (5) Sanitary fill, incinerator, or private solid waste transfer station.**
- (6) Public use heliport/helistop**
- (7) Conference center with lodging**

Upon reviewing the applicant's proof of need analysis, the Research and Technology Center staff has found that there is county need for the proposed use. The Research and Technology Center staff offered the following comments:

The zoning ordinance does not specify what shall constitute a needs test in special exception cases. Since January 2000, Research staff has employed a set of measures in each of the special exception cases it has handled. Staff considers these reasonable tests of "the public convenience and service...considering the present availability of such uses to that neighborhood..." as stated in Zoning Ordinance 59-G-1.24.

In making its recommendation, staff considered two factors: proximity and choice. Does the neighborhood have convenient access to quick service restaurants and particularly to Mexican and Seafood quick service restaurants? Secondly, does the proposed use, offer the residents of the neighborhood greater choice?

With respect to choice, staff reviewed the types of businesses in the neighborhood. While there are 94 restaurants in the 20877 zip code area where the proposed use will be located, we found a dearth of Mexican cuisine in that zip code area and particularly quick service Mexican. Moreover, within the Walnut Hill Shopping Center, based on databases available to staff, no quick service restaurants were listed as tenants. Thus, staff finds that neighborhood choice will be enhanced by the proposed use.

With respect to proximity, staff agrees with petitioner that customers to Walnut Hill Shopping center will benefit from a quick service Mexican/seafood restaurant on the grounds.

## **Conclusion**

With the recommended conditions, the proposed use generally conforms to all applicable requirements and regulations of the special exception provisions as specified in the Montgomery County Zoning Ordinance with the exception of a compatibility factor that

became questionable due to the length of the proposed restaurant's hours of operation. In view of the fact that there is an existing 24-hours convenient store (a use permitted by right) across from the restaurant's pad site within the shopping center, the proposed hours of the restaurant (10:00 a.m. to 3:00 a.m. Sunday through Thursday and 10:00 a.m. to 4:00 a.m. Friday and Saturday) would create an imbalance in terms of compatibility, given its location in close proximity to the residential neighborhood to the east.

Staff finds that, on the basis of a review of the applicant's site, landscape and lighting plans, with recommended revisions, and conditions the proposed project would be compatible with the surrounding neighborhood in terms of design, bulk and scale. Moreover, the transportation planning staff found that the proposed use, with staff recommended conditions, satisfies the Local Area Transportation Review (LATR) test and will have no adverse effect on area roadway conditions or nearby pedestrian facilities. As indicated, the Research and Technology Center staff has found that there is county need for the proposed use. However, there remains the issue of the hours of operation which merits serious consideration by the applicant since as proposed, it could render the project incompatible with the surrounding neighborhood. Staff believes the problem can be remedied by cutting back the hours of operation and to that end, staff has recommended the following hours of operation for the proposed restaurant:

Sunday through Thursday from 10:00 a.m. to 11:30 p.m. and Fridays and Saturdays from 10:00 a.m. to 12:30 a.m.

Staff recommends approval of Special Exception S-2642 with the conditions found at the beginning of this report.