




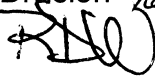
MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION


MCPB
Item # 11
April 5, 2007

MEMORANDUM: MODIFICATION TO EXISTING SPECIAL EXCEPTION

DATE: March 21, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief, Development Review Division 
Ralph Wilson, Development Review Division 

FROM: Dan Janousek, Zoning Analyst 

RE: Auto Filling Station - Board of Appeals Case No. CBA-2740-A
Mid-Atlantic Petroleum properties, LLC, Petitioner

SUBJECT: Adequate Public Facilities (APF) and Local Area Transportation Review (LATR).

LOCATION: 12301 Darnestown Road, Gaithersburg.

ZONE: C-1 with an approved special exception

FILING DATE: June 2, 2005

PLANNING BOARD: 01/11/07 - Planning Board - Approval

PUBLIC HEARING: April 13, 2007

RECOMMENDATION: APPROVAL

I. SUMMARY

This application returns to the Planning Board for a review of the applicant's Traffic Study and Adequate Public Facilities (APF) and Local Area Transportation Review (LATR). Although the Planning Board approved this case on January 11, 2007, the Traffic Study had not yet been sent to the Maryland State Highway Administration (SHA) for comments and LATR was not completed. After careful review of the traffic study, transportation staff concludes that the application satisfies the LATR test and it will not have an adverse effect on the nearby road system, subject to conditions. Staff proposes several new conditions to be added to the Planning Board's January 11, 2007 approval recommendation for this case.

In order to mitigate the unacceptable congestion level at the MD 28/Riffle Ford Road intersection during the weekday PM peak hour, the applicant proffered to pay an additional fee equal to 50% of the transportation impact tax in lieu of physical intersection improvements. Staff, however, recommend that the applicant construct a separate southbound right-turn lane on Riffle Ford Road since this improvement is feasible and will improve the traffic operations at this intersection. Now, the applicant has accepted staff's recommendation. The State Highway Administration and DPWT concur with the staff.

The modification to the current special exception No. 2740 will include the replacement of the existing building and canopy, construction of a new car wash, installation of two vacuum stations and one air pump, additional hours of operation, additional employees, additional parking spaces, installation of an ATM on the exterior of the building, and additional lighting and signage.

II. STAFF RECOMMENDED NEW CONDITIONS

1. Total development under this special exception must be limited to a gas station with 12 fueling positions, a 2,728 square-foot convenience store, and a car wash, and;
2. The applicant must provide a separate southbound right-turn lane from Riffle Ford Road onto Darnestown Road (MD 28), and;
3. The applicant must construct the master planned shared use path across the property frontage on MD 28.

III. CONDITIONS THAT WERE APPROVED BY THE PLANNING BOARD ON JANUARY 11, 2007 (not contested):

1. All evidence, testimony and exhibits of record are binding on the petitioners.
2. Compliance with Chapter 50 (Subdivision Regulations) of the County Code.
3. Compliance with Local Area Transportation Review requirements.
 - a. Total development under this special exception is limited to 4,549 square feet.
4. Compliance with Chapter 22A (Forest Conservation)
5. Lighting will be no taller than the lighting that will be placed on the existing 16-foot high poles currently around the perimeter of the site.
6. The hours of operation for the auto filling station and convenience store will be twenty four (24) hours per day seven (7) days per week.
7. The hours of operation for the car wash will be between the hours of 7:00 a.m. and 8:00 p.m. seven (7) days per week.
8. There will be no rental storage of automobiles, other vehicles or trailers on the subject property.
9. Compliance with the Montgomery County Sign Ordinance

10. There will be no fluttering banners, pennants, spindles, or other similar objects displayed on the subject property, and there shall be no sales and or advertising signs attached to the light standards or the monument signage.
11. No major repairs, spray-paint operation, body or fender repair work are permitted on the subject property.
12. Trash must not be allowed to accumulate on site, and be disposed of at regular intervals.
13. The driveways must not be wider than 30 feet.

IV. PROJECT DESCRIPTION

This special exception pertains to a pre-existing auto filling station located at 12301 Darnestown Road, Darnestown, MD. The Petitioner is requesting approval as part of the acquisition of the subject filling station business and brand change. The proposed modernization of the filling station includes the replacement of the existing building and canopy, construction of a new car wash, installation of two vacuum stations and one air pump, expanded hours of operation (24/7), additional employees, additional parking spaces, installation of an ATM on the exterior of the building, and additional lighting and signage. In the C-1 Zone a car wash may be permitted as part of an auto filling station.

V. BACKGROUND

Although the Planning Board recommended on January 11, 2007, that the case be approved, the traffic study had not been sent to the Maryland State Highway Administration or reviewed by technical staff. So when the case went to the Office of Zoning and Administrative Hearings, the hearing examiner notified technical Staff that the traffic analysis was not complete. Once technical staff became aware of the review issue, the applicant's traffic study was sent to the Maryland Department of Transportation's State Highway Administration and Montgomery County DPW&T for review and comment. The State Highway Administration and DPWT concur with current the staff position, as indicated in the attached correspondence.

VI. TRAFFIC CONDITIONS (Source – Transportation Planning Division)

As shown in the attached table, the subject development proposal will create an unacceptable level of traffic congestion at the intersection of MD 28 and Riffle Ford Road during the weekday PM peak hour.

VII. CONCLUSION

Transportation Planning staff concludes that the granting of the requested special exception to allow the proposed gas station expansion on the site next to the existing Quince Orchard Marketplace shopping center with the improvement conditions recommended in this memorandum satisfies the LATR test and would not have an adverse effect on the nearby road system.

The proposed filling station and car wash will not adversely affect the physical development of the district or the health and safety of residents or workers in the area and will not be detrimental to the use or development of adjacent properties or the general neighborhood. The use will not constitute a nuisance because of noise, fumes or odors, or physical activity in the location proposed. Therefore, staff recommends approval of the subject major modification proposal.

ATTACHMENTS:

Transportation Division Memorandum



DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

February 26, 2007

Mr. Ki Kim, Planner Coordinator
Transportation Planning
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Local Area Traffic Impact Study
Special Exception No. CBA-2704-A
12301 Darnestown Road

Dear Mr. ^{ki}Kim:

We have completed our review of the applicant's Local Area Traffic Impact Study prepared by Lenhart Traffic Consulting, Inc. for this project. We accept Mr. Lenhart's conclusion that, with the exception of the intersection of MD 28 and Riffle Ford Road, all studied intersections will operate below the master planned CLV threshold upon completion of the renovation project.

With respect to the intersection of Riffle Ford Road and MD 28, we have concluded that construction of a southbound right turn will improve operations at that location.

Thank you for your cooperation and assistance. If you have any questions regarding this letter, please email me at greg.leck@montgomerycountymd.gov or call me at 240-777-2197.

Sincerely,

Gregory M. Leck, Manager
Development Review Group
Traffic Engineering and Operations Section

M:\sub\gm\docs\TIS\CBA-2740-A, 12301 Darnestown Road

CC: Michael Lenhart; Lenhart Traffic Consulting, Inc.
Raymond Burns; MSHA Engineering Access Permits
Emil Wolanin; DPWT TEOS
Bruce C. Mangum; TEOS TSET
David C. Adams; TEOS DRG

Division of Operations

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MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

February 28, 2007

MEMORANDUM

TO: Daniel Janousek
Development Review Division

VIA: Daniel K. Hardy, Supervisor *DKH*
Transportation Planning

FROM: Ki H. Kim, Planner *KHK*
Transportation Planning

SUBJECT: Gas Station Expansion, 12301 Darnestown Road
Special Exception Case No. CBA-2740A

This memorandum represents Transportation Planning staff's Adequate Public Facilities (APF) review and recommendations on the subject special exception application for the proposed expansion of the gas station on a site next to the Quince Orchard Marketplace located on the north side of Darnestown Road (MD 28), west of Quince Orchard Road (MD 124) in the Darnestown area.

RECOMMENDATION

Based on our review of the site plan and the traffic analysis submitted by the applicant, staff recommends the following conditions as part of the APF test related to approval of the subject special exception application.

1. Total development under this special exception is limited to a gas station with 12 fueling positions, a 2,728 square-foot convenience store and a car wash.
2. The applicant shall provide a separate southbound right-turn lane from Riffle Ford Road onto Darnestown Road (MD 28).
3. The applicant shall construct the master planned shared use path across the property frontage on MD 28.

DISCUSSION

Local Area Transportation Review

Three intersections were identified as critical intersections to be affected by the proposed expansion of a gas station next to the existing shopping center and were examined in the traffic study to determine whether they met the applicable congestion standard. The congestion standards in the City of Gaithersburg and North Potomac areas are 1,450 Critical Lane Volumes (CLV). The critical lane volume (CLV) impacts of the proposed expansion of a gas station on critical intersections in the vicinity of the site were analyzed and are summarized in Table 1.

Table I

Intersection Capacity Analysis with CLV Under Various Development Schemes During the Peak Hour								
	Existing		Background		Total*		Total**	
	AM	PM	AM	PM	AM	PM	AM	PM
MD 28/Riffle Ford Road	1,105	1,874	1,108	1,878	1,113	1,883	1,055	1,828
MD 28/Safeway/Quince Orchard HS	950	859	953	861	963	875	N/A	N/A
MD 28/Quince Orchard Road	1,142	1,152	1,165	1,165	1,168	1,173	N/A	N/A

* Total development conditions without proposed roadway improvements

** Total development conditions with proposed roadway improvements

As shown in the above table, all intersections analyzed, except during the weekday PM peak hour at MD 28 and Riffle Ford Road, are currently operating at acceptable CLVs (below 1,450) and this acceptable level will continue for the background development condition (the existing traffic plus traffic from the approved/unbuilt developments) and the total future development condition (the background traffic plus traffic from the site) during the weekday AM and PM peak hours.

In order to mitigate the unacceptable congestion level at the MD 28/Riffle Ford Road intersection during the weekday PM peak hour, the applicant proffered to pay an additional fee equal to 50% of the transportation impact tax in lieu of physical intersection improvements. Staff, however, recommends constructing a separate southbound right-turn lane on Riffle Ford Road since this improvement is feasible and will improve the traffic operations at this intersection. The State Highway Administration and DPWT concur with the staff position, as indicated in the attached correspondence. The applicant has accepted the staff's recommendation. The total future traffic condition with the proposed improvement at this intersection is projected to be improved compared to the existing and background traffic conditions as shown in the above table. Therefore, this special exception application meets the LATR requirements of the APF review.

Site Access and Vehicular/Pedestrian Circulation

Two access points to the site exist on Darnestown Road (MD 28) as “right-in and right-out” only and these access points are not proposed to change. Staff reviewed existing access to the site and the internal traffic circulation system shown on the site plan and finds them safe and adequate. Staff also finds that the internal pedestrian circulation system and the existing sidewalk and bikeway along MD 28 are safe and adequate. Based on staff’s field reviews, staff does not foresee any problem in constructing a separate southbound right-turn lane on Riffle Ford Road. Staff finds that the proposed gas station expansion with a convenience store does not cause any pedestrian safety issues since the pedestrian traffic to the site is minimal and the signalized MD 28 intersections at Quince Orchard Road and the shopping center entrance include pedestrian signal phasing with appropriate pedestrian crosswalk pavement markings.

Master Plan Roadway and Bikeway

Darnestown Road (MD 28) exists as a four-lane divided major roadway with sidewalks on both sides per the Gaithersburg Master Plan’s recommendation. The Countywide Bikeways Functional Master Plan recommends a dual bikeway (DB-16), consisting of a shared use path along the north side and existing designated bike lanes on both directions. Staff recommends that the applicant construct the shared use path across the property frontage per the Countywide Bikeways Functional Master Plan.

Summary

Transportation Planning staff concludes that the granting of the requested Special Exception to allow the proposed gas station expansion on the site next to the existing Quince Orchard Marketplace shopping center with the improvement conditions recommended in this memorandum satisfies the LATR test and would not have an adverse effect on the nearby road system.

KK:nm

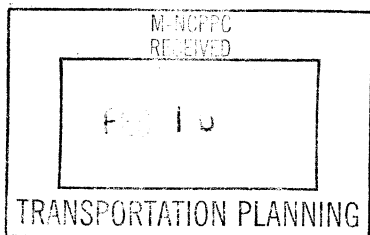
Attachments



Martin O'Malley, Governor
Anthony Brown, Lt. Governor

John D. Porcari, Secretary Designate
Neil J. Pedersen, Administrator

Maryland Department of Transportation



February 13, 2007

Re: Montgomery County
MD 28
12301 Darnestown Road

Mr. Shahriar Etemadi
Transportation Coordinator
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Mr. Etemadi:

Thank you for the opportunity to review the Traffic Impact Study Report prepared by Lenhart Traffic Consulting, Inc. dated July 10, 2006 (received by the EAPD on January 23, 2007) that was prepared for the proposed re-development of 12301 Darnestown Road in Montgomery County, Maryland. The major report findings and Maryland State Highway Administration (SHA) comments and conclusions are as follows:

- Access to the site that will be re-developed from the existing 8-fueling position Gasoline Station –to- a 2,924 square foot Convenience Store, a 1,536 square foot Car Wash, and a 12-fueling position Gasoline Station, is proposed from two (2) existing right-in/right-out site access driveways on MD 28.
- The developer's traffic consultant determined that the proposed development would negatively impact the MD 28 at Rifle Ford Road intersection. In lieu of physical MD 28 at Rifle Ford Road intersection improvements, the developer's traffic consultant has recommended to pay a 150% transportation impact tax for each net square foot of new development in accordance with M-NCPPC regulations.

SHA recommends that actual intersection improvements be constructed at the MD 28 at Rifle Ford Road intersection rather than a payment of a transportation impact tax. SHA has determined that the construction of a westbound MD 28 exclusive right turn lane at the MD 28/Rifle Ford Road intersection can be accomplished within SHA right-of-way and will mitigate the

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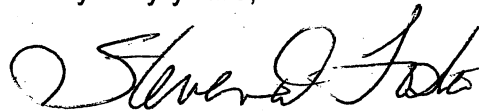


Mr. Shahriar Etemadi
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site traffic impact in accordance with M-NCPPC regulations. Therefore, in conclusion, SHA recommends that the M-NCPPC condition the applicant to design and construct a westbound MD 28 right turn lane at the MD 28/Rifle Ford Road intersection. Roadway improvement plans and traffic signal modification plans should be submitted to SHA for our review and comment.

Unless specifically indicated in SHA's response on this report, the comments contained herewith do not supersede previous comments made on this development application. If there are any questions on any issue requiring a permit from SHA on this application, please contact Raymond Burns at (410) 545-5592 or rburns1@sha.state.md.us. If you have any questions regarding the enclosed traffic report comments, please contact Larry Green at (410) 995-0090 x20.

Very truly yours,



Steven D. Foster, Chief
Engineering Access Permits Division

cc: **Mr. Ed Axler, M-NCPPC Montgomery County**
Mr. Ray Burns, SHA Engineering Access Permits Division
Mr. Robert French, SHA Office of Traffic & Safety
Mr. Larry Green, Daniel Consultants, Inc.
Mr. Michael Lenhart, Lenhart Traffic Consulting, Inc.
Mr. Errol Stoute, SHA Traffic Development & Support Division
Mr. Morteza Tadayon, SHA Travel Forecasting Section
Mr. Jeff Wentz, SHA District 3 Traffic Engineering

Figure 1. Subject Property and Surrounding Neighborhood

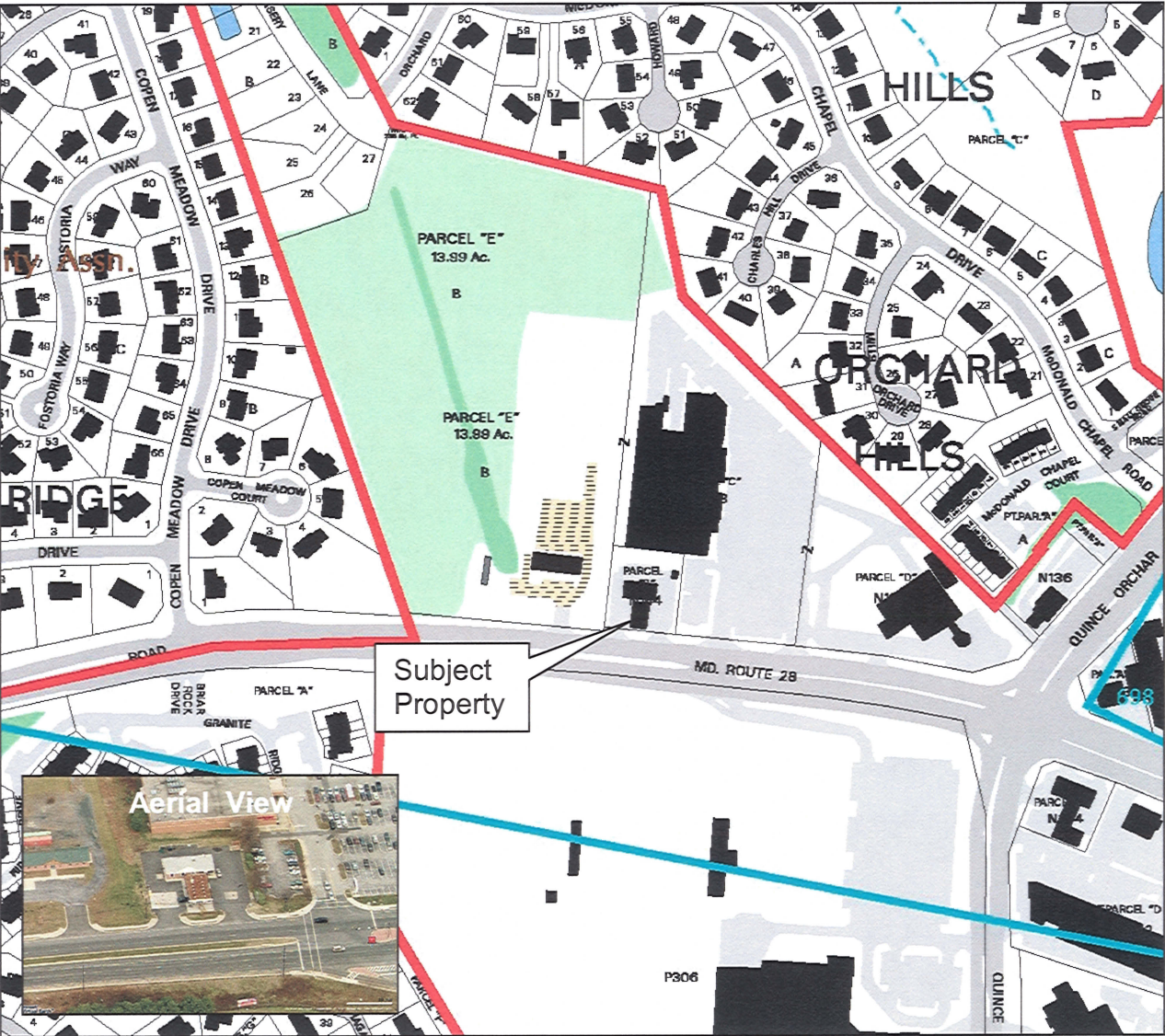


Photo 1. Aerial View



Photo 2. Aerial View



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KENNETH R. WEST
STANLEY D. ABRAMS
KEITH J. ROSA

PRACTICING IN MARYLAND AND
THE DISTRICT OF COLUMBIA

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JAMES L. PARSONS, JR.
OF COUNSEL

WRITER'S DIRECTOR NUMBER
(301) 951-1550

F A C S I M I L E C O V E R S H E E T

PERSONAL & CONFIDENTIAL

TO: Dan Janousek (301) 495-1306

FROM: Stanley D. Abrams, Esq./Donna Wilson, Office Manager

DATE: March 20, 2007

NO. OF PAGES (incl. cover): 5

SUBJECT: Special Exception Modification
Case No. CBA -2740-A

MESSAGE: Please see the following:

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JAMES L. PARSONS, JR.
OF COUNSEL

WRITER'S DIRECT NUMBER
(301) 951-1540
EMAIL: "sabrums@awsdlaw.com"

March 27, 2007

Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

**RE: April 5, 2007 Agenda
Special Exception Modification
Case No. CBA - 2740-A**

Dear Chairman Hanson & Members of the Board:

I represent the Petitioner for a special exception modification to an existing auto filling station at 12301 Darnestown Road, Gaithersburg, MD (north side of Darnestown Road, west on MD Rt. 124). This station has operated at this location since 1970 pursuant to special exception and contains eight (8) fueling positions (4 pumps) and a service station building containing a small convenience store area and three (3) service bays.

The Petitioner recently acquired the facilities (but not the property) and has rebranded the station and through this modification seeks to upgrade the site by demolishing the existing building, pumps and canopy and reconstructing the facility to contain twelve (12) fueling positions, (6 pumps), new canopy and new building containing a convenience store and add a small accessory car wash facility to the rear of the building.

The threshold issue in this case for the Petitioner is the recommendation of the Transportation Planning Division of your staff to recommend as a condition of approval the construction of a right turn lane on Riffleford Road to westbound Darnestown Road at the intersection of these two roads. The Petitioner's traffic engineer identified an existing failing condition at this intersection during the P.M. peak hour irrespective of this application¹. Our traffic engineer has recommended an additional fee of 50% of the transportation impact tax which is permitted under the LATR Guidelines to mitigate traffic impact on the basis that there is no rational nexus between the traffic impact at this location by these improvements and the provision of a second westbound lane on MD Rt. 28 to bring the CLV at this intersection to a passing condition during the P.M. peak hours. The provision of a right turn lane on Riffleford Road will not significantly improve this condition during

¹MD Rt. 28 was recently reconstructed in this area and the eastbound lanes were reconstructed from 1 to 2 through lanes which improved the A.M. level of service but there was no reconstruction of the westbound lane which is still only one lane creating a bottleneck in the evening peak hour.

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the P.M. peak hour and is also an excessive request considering that we are upgrading a pre-existing use and the minimal amount of new trips we are adding with the site improvements. As a compromise we offered to staff to reduce the number of fueling positions back to what is existing (from 12 to 8) which would produce less than 30 new trips or a de minimus effect. Staff has indicated to us that the LATR 30 trip threshold applies to total trips and not net new trips and is still recommending construction of the right turn lane. So essentially this project has to be considered as if the property were vacant and no trips existed from the existing station.

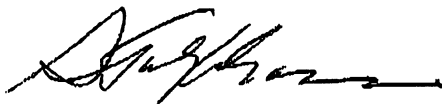
Ki Kim of your transportation staff has indicated to us in an email that if the Planning Board choose to approve the payment of the additional transportation impact tax "staff would not have a problem" (see attached email). We hereby request that in lieu of the road improvements that you impose and recommend to the Board of Appeals the imposition of an impact fee of 150% of the traditional impact fee to mitigate the traffic impacts. This solution would also have the positive effect of not tearing up or relocating a planned sidewalk at this intersection required to be installed as part of the preliminary subdivision plan approval (No. 1-02018) for the Evangelical Formosan Church and also not endangering a specimen tree (36" Locust) near this leg of the intersection².

Finally, we have costed out the right turn lane and in all probability if the Petitioner were required to construct such lane, the modification proposed would be abandoned since he has determined that it is not economically feasible to undertake this cost, particularly where the Petitioner is a Lessee and not the owner of the property.

The auto filling station will remain in its existing conditions and layout and not have the same ability as other commercial uses which are permitted by right to modernize or expand their facilities without such a requirement to undertake this or similar off-site road improvements.

Thank you for your consideration to Petitioners concern and request.

Sincerely,



Stanley D. Abrams

SDA:dw
Enclosure

cc: All Planning Board Members
Carlos Horcasitas
Francoise Carrier, Esq.

² The Evangelical Church had no road improvement requirements imposed as a condition of its subdivision approval.

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Dan Janousek
Ki Kim
Martin Klauber, Esq.
Lee Sutherland

03/20/2007 13:51 3019511543

ABRAMS & WEST, P.C.

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Donna Wilson

From: Mike Lenhart [mlenhart@lenharttraffic.com]
Sent: Wednesday, March 14, 2007 10:17 AM
To: 'Carlos Horcasitas'; 'Stan Abrams'
Subject: FW: Darnestown Road Property

Ki's response is below. Staff will testify at the hearing that they do not have a problem with the payment in-lieu of offsite improvements if the Board chooses to consider our request.

Mike Lenhart
Lenhart Traffic Consulting, Inc.
331 Redwood Grove Ct, Millersville MD 21108
Phone (410) 987 3888
Fax (443) 782-2288
Mobile (410) 980-2367

From: Kim, Ki [mailto:Ki.Kim@mncppc-mc.org]
Sent: Wednesday, March 14, 2007 9:54 AM
To: mlenhart@lenharttraffic.com
Cc: Hardy, Dan; Janousek, Daniel
Subject: RE: Darnestown Road Property

Mike,

The item is still scheduled on the 3/29 Board Agenda and I'm planning to attend.

Staff's recommendation is an off-site improvements but if the Board chooses to approve the payment of the transportation impact tax, staff would not have a problem. The applicant has to request the Board to consider the payment at the hearing.

Ki

-----Original Message-----

From: Mike Lenhart [mailto:mlenhart@lenharttraffic.com]
Sent: Tuesday, March 13, 2007 3:24 PM
To: Kim, Ki
Subject: RE: Darnestown Road Property

Ki,

I believe we are scheduled for March 29th Planning Board. I believe that you would normally attend, however, if not, could you please make arrangements to attend in this case.

We will be requesting that the Board approve the project with the payment of the Transportation Impact Tax as allowed in the LATR guidelines, and think it would be helpful for you to be there if any questions would arise. We understand Staff's position in the Staff Report will be for a condition of off-site improvements. You initially indicated that you could be available for testimony and if asked by the Board, that you could agree that the site will have a minimal impact and that you would not have a problem if the Board determined that they wanted to approve the payment of the impact tax. Would you still be available and willing to make that statement if the Board wanted to consider the impact tax?

Thanks,
Mike

Mike Lenhart
Lenhart Traffic Consulting, Inc.
331 Redwood Grove Ct, Millersville MD 21108
Phone (410) 987 3888
Fax (443) 782-2288
Mobile (410) 980-2367

/14/2007