

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER+**

**SPECIAL EXCEPTION
SE-22006**

DECISION

Application:	Car Wash
Applicant:	Dash in Food Stores, Inc.
Opposition:	Ronald Beverly
Hearing Date:	December 18, 2023
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF REQUEST

- (1) Special Exception 22006 is a request to develop approximately 1.25 acres of a 3.19 acre outlot that is part of the 70.11 Mill Branch Crossing, a mixed-use development, formerly zoned C-S-C (Commercial Shopping Center) and currently zoned CGO (Commercial, General and Office) for use as a 3,468-square-foot Car Wash. The subject property is located on the north side of Saint Chesley Avenue (formerly Mill Branch Road), approximately 1,000 feet east of its planned intersection with Crain Highway (US Route 301), also identified as 16680 Saint Chesley Avenue (formerly 3301 Mill Branch Road), Bowie, Maryland. The subject property lies within the municipal boundaries of the City of Bowie.
- (2) TCP 2 -044-202-01 was submitted for review and approval. The new number for the TCP will be TCP 2-044-2021-02.
- (3) The Maryland-National Capital Park and Planning Commission ("MNCPPC") Technical Staff recommended approval with conditions. (Exhibit 2) The City of Bowie also recommended approval with conditions. (Exhibit 2, Backup p. 74)
- (4) Mr. Ronald Beverly appeared in opposition to the request.
- (5) At the close of the hearing, the record was left open to allow the Applicant to submit three additional exhibits. The items were received on December 22, 2023, and the record was closed at that time.¹

¹ The record consists of 53 Exhibits and testimony presented at the evidentiary hearing.

(6) The request is being reviewed for compliance with the 2019 Edition of the Zoning Ordinance since the Application was accepted by the Prince George's County Planning Department on July 19, 2023. (See Subtitle 27, Sections 1900,1903 and 1904)

FINDINGS OF FACT

Subject Property

(1) The Technical Staff provided a detailed zoning history of the Subject Property. (Exhibit 2, pages 4-5), paraphrased below:

The subject property is known as Parcel 15 of Mill Branch Crossing The site is currently undeveloped

On May 29, 2009, Preliminary Plan of Subdivision (PPS) 4-08052 was approved by the Prince George's County Planning Board ... to combine seven existing parcels into one parcel for a mixed-use development containing retail and hotel uses

In 2019 [the Zoning Ordinance was amended] ... for the purpose of permitting by right, a gas station, food or beverage store in combination with a gas station, apartment housing for the elderly or physically handicapped, dwelling, multifamily and townhouse uses in the C-S-C Zone, under certain circumstances.

PPS 4-19050 was approved by the Planning Board on March 18, 2021 ... [to allow the] development of 190 single-family attached dwellings, 408 multifamily dwelling units, a 150-room hotel, and 77,635 square feet of commercial, retail, and office uses

(Exhibit 2, page 4)

(2) A Detailed Site Plan ("DSP") has been approved for the Mill Branch Crossing and a smaller one covering 3.19 acres inclusive of the subject property (DSP-20003-01) to permit a Gas Station and a 4809-square-foot Food or Beverage Store (colloquially called a convenience store), which is permitted by right in the zone. This convenience store is also located within the boundaries of the Special Exception because the uses share infrastructure, and the nearest parking spaces for the Car Wash surround the convenience store. DSP-20003-01 was approved with a condition that it will be further revised to include the Special Exception criteria and conditions if the instant request is approved. (Exhibit 21)

(3) The subject property does not contain and is not adjacent to any Prince George's County designated Historic sites or resources. (Exhibit 2, Backup p. 38)

(4) The property is subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance and the Environmental Technical Manual because the Application is subject to a new preliminary plan of subdivision. (Exhibits 2 and 8) A new Type 2 Tree Conservation Plan (TCP2-044-2021-02) is being considered for approval along with this parent Special Exception Application. (Exhibit 35) There is a Stormwater Management Concept Plan approved by the City of Bowie in 2022. (Exhibit 27) There is also an approved Natural Resources Inventory Plan (NRI-029-07). (Exhibit 24)

Surrounding Property/Neighborhood

(5) The neighborhood is defined by the following boundaries:

- North - US Route 50
- South - Mill Branch Place
- East - Undeveloped land in CGO Zone and MNCPPC's underdeveloped Green Branch Athletic Complex in the AG Zone
- West - Crain Highway (US 301)

(6) The subject property is bounded by the following properties/uses: to the northwest, by a wooded stream valley of an unnamed tributary of Green Branch, some of which is in a parcel owned by the Mill Branch Crossing Property Owners Association in the CGO Zone; to the east, more developing outlots in the commercial portion of the Mill Branch Crossing development, and beyond is MNCPPC's undeveloped Green Branch Athletic Complex in the AG Zone; to the south, by Saint Chesley Avenue and a service road providing right-in and right-out access to US 301 and developing lots in the commercial portion of the Mill Branch Crossing development; and to the west, by US 301 and beyond by single- family attached dwellings in the Covington subdivision in the CGO Zone.

(Exhibits 25-Slides 6 and 9, and 48)

Master Plan/Sectional Map Amendment/General Plan

(7) The subject property is located in Planning Area 71 B, an area governed by the 2022 Bowie-Mitchellville and Vicinity Master Plan ("Master Plan"). The Master Plan designates the subject property for commercial future land use. While the Car Wash is not strictly a commercial use, the Master Plan defines this category to include "retail and business areas, and employment uses, such as office and service uses." (Master Plan, p. 49) The Master Plan includes a policy that recommends that commercial uses be concentrated along the US 301 corridor at certain planned interchanges, and the subject property is located near the planned interchange of US 301 with Ballpark Drive and Collington Road, per the Countywide Master Plan of Transportation.

Other goals within the Master Plan stress the preservation/restoration/enhancement of the green infrastructure network, best practices with environmental site design; and effective stormwater management. The record is replete with examples of how these are satisfied, as noted below. Moreover, there are no regulated areas of the County's Green Infrastructure Network within the Special Exception boundaries.

(8) The 2014 General Plan (Plan Prince George's 2035) classifies the property within the Established Communities Growth Policy Area. The Generalized Future Land Use Map also designates the site for commercial land use. The site is not located within a Priority Preservation Area. Established Communities should be developed with context-sensitive infill of low-to-medium density. (2014 General Plan, p. 101)

Applicant's Request

(9) The instant request is to approve a Special Exception for a Car Wash that will be adjacent to the permitted Gas Station and Food or Beverage Store. Applicant provided car wash tunnel information that included architectural facades for the use, which match the design for the Dash In store, and a photo of an existing facility. (Exhibit 39) Applicant provided a car wash stacking plan that shows the number of vehicles that can queue on site before entering the tunnel or choosing to bail out and leave the site without having been washed. (Exhibit 38) Applicant also provided a car wash building plan (Exhibit 50), a car wash signage plan (Exhibit 51), a car wash retail floor plan (Exhibit 52), and a photometric plan (Exhibit 53).

(10) The Planning Board approved a preliminary plan of subdivision for the property in 2021 and a Detailed Site Plan (DSP-20003) for the residential component and infrastructure improvements for the future commercial development, which includes the subject property, discussed *infra*. The Car Wash was not reviewed with the DSP but will use access driveways and other site amenities in common with the Gas Station and Dash In Store. (Exhibit 2, Backup p. 21) The boundaries of the Special Exception exclude the Gas Station canopy and pump islands but includes the Dash-In Food or Beverage Store (also referred to as a "convenience store") and associated parking. (Exhibit 46)

(11) Mr. Anthony Williams, the Director of Real Estate for the Wills Group (the parent company for Dash in Food Stores, Inc.), testified on Applicant's behalf. Applicant provided a limited power of attorney authorizing Mr. Williams' testimony. (Exhibit 42) The Wills Group, Inc., is a privately owned company that includes nearly 300 gas stations, convenience stores, and car washes in its portfolio, and Dash in Food Stores, Inc., is one of its subsidiaries.²

(12) Mr. Williams explained that the Applicant has a ground lease to operate on the property. Applicant is requesting approval to operate a 3,468-square-foot Car Wash on the site. Per Mr. Williams, the Car Wash will operate daily between the hours of 7:00 a.m.

² Applicant submitted Certificates of Good Standing issued by the State Department of Assessments and Taxation for both the Applicant and the property owner (Green Branch, LLC) in the case. (Exhibits 40 and 41)

to 7:00 p.m. and will employ four people per shift. (T. 21) He also noted that the building adjacent to the Car Wash tunnel will contain a small office, restroom, and a small retail area containing car wash or auto-related items that will only be accessible to the Car Wash customers. (T.58)

(13) Mr. Williams prepared an Exhibit that provided information on the Car Wash tunnel itself and the architectural façade of the Car Wash structure, which will be similar to the adjacent Dash In convenience store. (Exhibit 39; T. 120) He also summarized the use and operation of the Car Wash:

[T]here's one-way circulation ... - there's a one-way lane that allows car washes to have a queue separate from the remainder of the site which permits adequate stacking space. The tunnel is 95 feet long. It's safe and it's on a conveyor belt system. The belt is continuously moving at variable speed to help eliminate any stacking or delays.

All the equipment that is used is state of the art. SpinRite technology improves cleaning and [is] quieter We have a spot ... free rinse which does not require any hand-drying.

We have exit dryers that are contained within the tunnel itself. The tunnel doors do close at 45 degrees, all of which help limit the noise pollution.

We also have the ECO, part of our Splash In moniker here. The ECO portion of the name is very important to us. Dash In uses biodegradable chemicals and applications. We have technology that helps to optimize application materials that prevent waste. We also use a water reclaim system to help conserve water and protect the quality of nearby bodies.

The vac stalls are limited to 10 minutes to minimize loitering. Signs are posted to help reinforce that intent.

There is an escape lane designed within the queuing area to allow people to escape the line if they need to. And last, but not least, there is no detailing that we are proposing for this operation

(December 18, 2023, T. 17-23)

(14) Mr. Williams reviewed the Statement of Justification and adopted it as his testimony (with the exception of the incorrect square footage for the Car Wash) and agreed with the findings and recommendations of the Technical Staff. (December 18, 2023, T. 23-24) Upon cross-examination from Mr. Ronald Beverly, he reiterated that the queuing area and conveyor belt system that perpetually moves the cars through the tunnel should prevent any stacking of vehicles on the adjacent rights-of-way, and any noise from the car wash or vacuums should be buffered by closing the doors to the car wash, and the two buildings which surround the vacuum area. (T. 33-35)

(15) Mr. Brian Fenwick, Construction Project Manager for the Wills Group, appeared on Applicant's behalf. He testified in response to a question by People's Zoning Counsel

that the use is subject to State and federal regulations regarding wastewater recycling and Applicant's "system is compliant with the ... [regulations of] the authorities having jurisdiction." (T. 37-38)

(16) Mr. Nicholas Speech, accepted as an expert in the area of civil engineering provided the following testimony in support of the request:

[T]here was a detailed site plan previously approved for this site that set the layout as far as the convenience store, the entrance off of the service road, and the canopy for the fuel.

The site overall, though, and as it relates to the special exception, does have an entrance off of the roundabout to the southeast corner. As you come into the site, there is parking adjacent to the convenience store right off the entrance in between the convenience store and the access lane around the ... canopy....

[A]s you come down to the east side of the site behind the convenience store, there are stacking lanes for the car wash use itself. There are approximately 23 cars that can stack in those lanes leading up to the tunnel car wash.

The car wash is located on the northern side of the site, and as cars enter the car wash and exit to the west, drivers have the ability to either go south towards the vacuum stalls that are located between the convenience store and the car wash and then back out towards the ... west where the end of the tunnel car wash is. And then they can exit out to the access ... drive ... between the ... convenience store ... and the canopy to then exit the site....

[T]he parking itself is based off of the ... multiple uses on the site. For the special exception itself, the use of the car wash required seven spaces. The vacuum stalls, which are a complimentary use to the car wash itself, provides 15 spaces. So that is part of how the car wash itself was approved or ... is being parked and meeting that requirement.... [T]hey have a requirement of 31 spaces, which are provided throughout the site around the convenience store and then into the western portion. So that, although, some of those spaces are within the special exception boundary because of access, they were approved previously as part of the DSP....

[T]he way the vacuum stalls are accessed, you would need to come out of the car wash tunnel to be able to make a left where the vacuum stalls are. There is a "Do Not Enter" sign that limits cars that are coming from the other direction and not going through the car wash from being able to access the ... vacuum stalls....

This site is subject to the 2010 Prince George's County Woodland and Wildlife Habitat Conservation Ordinance, [and] the Environmental Technical Manual because we're subject to a new preliminary plan.

So, the ... Type 2 Tree Conservation Plan, TCP2-044-2021-02, was submitted for review, and it covers the area of this special exception. As a part of that, there is a reduction of 0.08 acres of woodland preservation with this application. So, there is a total of 14.77 acres for [the] woodland conservation requirement. There is a

condition in the Staff Report to update the woodland conservation worksheet to show that 0.08 acres woodland conservation requirement, which will be done as a part of the certification....

[T]his proposed site does not impact any additional environmentally regulated features [A]ll of the impacts that were previously approved under Detailed Site Plan 20003 remain intact

(T. 44-50)

(17) Mr. Nicholas Speech also testified that the Site Plan conforms with the Tree Canopy coverage requirements and all of the engineering-related regulations of the C-S-C Zone. He concurred with the engineering-related findings and conclusions set forth in the Technical Staff Report. He explained that the revised Site Plan (Exhibit 46) was updated to note the correct square footage (3,468) and to change General Note 33 to state that the Northview Fire Station is 1.5 miles from the site. (T. 52-53)

(18) Applicant provided a Geotechnical Report prepared by John D. Hynes & Associates, Inc. (Geotechnical and Environmental Consultants) “to determine the various soil profile components and the engineering soil characteristics for the design of a retaining wall foundation and County easement structure” and “to determine the soil characteristics in proposed stormwater management (SWM) facilities associated with the community infrastructure.” (Exhibit 22, p.1) Topographically, the site is described as rolling terrain. A retaining wall will be constructed along the northwest corner of the Mill Branch Crossing development near the Dash In store and the subject Car Wash, which will vary in height from 0 feet to 12 feet. (Exhibit 22, pp. 1-2) The consultants conducted over thirty test borings and determined that the soils below the organic bearing surficial layer are generally classified as silt and clay in Stratum A and Sand in Stratum B; groundwater was not encountered in the test borings; and the site is generally acceptable for the proposed development. (Exhibit 22, pp. 4-5)

(19) Mr. Michael Lenhart, accepted as an expert in traffic engineering and transportation planning, testified on Applicant’s behalf. Mr. Lenhart described the roadways adjacent to the site:

Route 301 is currently an arterial road as a master planned designated freeway, F-10. The ... site lacks ... access to Mill Branch Road as well as right-in/right-out from Route 301

The [future] master plan calls for a grade-separated interchange at Route 301 and 197. Right-of-way has been identified and reserved through the preliminary plan to accommodate that [This right-of-way has been dedicated in prior preliminary plans.

(T. 71-72)

(20) Mr. Lenhart explained the work performed to evaluate traffic conditions on site:

We made an investigation of the conditions. We ... did not evaluate the levels of service. That was done under the preliminary plan of subdivision for the ... overall project

The gas [station] and convenience use are approved uses. This is limited to the car wash. So, we did look at how the car wash would impact trip not only from the site but from the overall property perspective

[We prepared a traffic statement (Exhibit 34)] The ... Institute for Transportation Engineers Trip Generation Manual [("ITE")] is currently on the 11th Edition. In the 9th Edition of the Trip Generation Manual, ITE had a specific land use code for gasoline stations with convenience market and car wash. And that was known as Land Use Code 946.

When ITE released the 10th Edition of the Trip Generation Manual, they eliminated the use of hard use Code 946, which included the car wash because studies had shown that the presence or non-presence of car wash had no impact whatsoever on the trip generation of the convenience store with the service status.

And ITE specifically stated that, in quote, gasoline service stations with car wash was removed from the manual and the data were reclassified to existing land uses. An examination of the data for this land use indicates that the presence of a car wash does not have a demonstrable effect on trip generation rates, end quote.

And the ... traffic statement that we prepared also looked at the overall trip caps, not only of this use but the overall property and how this use fits within the property.

The gas station and car wash [were] included in the original - the most recent preliminary plan approval as a use that generated traffic and trips were associated and included in the trip cap

[T]he car wash has no demonstrable impact on the trips generated by the service station and convenience market. Therefore the ... car wash has no impact on the site as it relates to trip generation ... [and has no impact on the site as it relates to trip generation [The special exception] would be consistent with the [APF adequacy determinations from] prior [preliminary plan approvals]

The development ... will have safe and adequate vehicular access for pedestrians and vehicles circulating within the site. Furthermore, in a memorandum dated September 19, 2023, that's included as part of the backup material for the ... special exception ... from Benjamin Patrick to Lockhart, the Transportation Planning Section determined that the proposed plan will not have an adverse impact on traffic conditions, pedestrian movements, nor will it impair the Master Plan....

(T. 71-77)

(21) Mr. Lenhart concluded that the request will not have an adverse impact on surrounding neighborhood or properties, from a transportation perspective. (T. 78) He also noted that if the stacking exhibit (Exhibit 36) is followed, it and the conveyor belt system "would easily handle the queuing for the site, [since] the queuing is all contained [and] there's no pedestrian activity across the queuing areas." (T.79)

(22) Upon cross-examination by Mr. Beverly, Mr. Lenhart noted that the subject property is "over 1500 feet from Mill Branch and ... other development will be between the car wash and Mill Branch [so] it's also not likely that any of [the vehicular queueing to use the car wash] would be seen from Mill Branch." (T. 89-90)

(23) Mr. Mark Ferguson, accepted as an expert in the area of land use planning, testified on Applicant's behalf and prepared a Land Planning Analysis. (Exhibit 48) The Land Planning Analysis provided detailed reasoning as to why the Application satisfies all applicable laws and noted, in pertinent part, as follows:

The subject property comprises a single outlet within the developing Mill Branch Crossing mixed use subdivision, and is currently undergoing active physical development of its infrastructure. It is located on the north side of a roundabout of Saint Chesley Avenue, a local roadway, approximately 1,000 feet east of its planned right-in, right-out intersection with Crain Highway (US Route 301)....

The proposed use ... is the construction of an automatic tunnel-type car wash, to supplement the gas station and convenience store which were already approved for the subject application [in] DSP -20003-01; though the convenience store has already been approved, it is within the boundary of the subject application because the nearest spaces which serve as the required parking for the car wash surrounds the convenience store.

The car wash building will contain a rest room and small retail area. The car wash system is to be equipped with a water reclaim system. After cars exit the tunnel, there is an area with fifteen vacuum bays for the use of car wash patrons only. Patrons of the gas station and convenience store will instead be able to use a conventional vacuuming station elsewhere on the site. The access aisle serving the vacuum bays will serve as the "bail out" route for queued vehicles who wish to exit before going through the tunnel.

While ...there is no statutory queueing requirement for car washes under the prior zoning ordinance, the car wash will be provided with queueing for 21 cars to ensure that vehicles waiting to pass through the tunnel do not interfere with vehicle traffic serving the gas station and convenience store, let alone interfere with traffic on Saint Chesley Avenue or the US 301 service road. As a comparison, the new zoning ordinance would require queueing for only seven cars ahead of the tunnel entrance....

[The use complies with Section 27-317,] the general criteria for approval of a Special Exception ...; there are no [a]dditional requirements for [the] use

The harmony of the proposed car wash with the Zoning Ordinance's [p]urpose of protecting and promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County is provided for through its conformance to the required Special Exception approval finding of [Section] **27-317(a)**... [and] [t]he harmony ... with the Zoning Ordinance's [p]urpose of implementing the General Plan, the Master Plan and the Functional Master [Plan] is provided for through its conformance to required ... approval finding of [Section] 27-317(a)(3) ... discussed ... below....

This Application proposes development which will [be] a part of a larger development which underwent the review of preliminary plan of subdivision 4-19050, which confirmed the adequacy of public facilities and services to support the Mill Branch Crossing development.... [A]pproval of the ... application would continue to be in harmony with this purpose of promoting the conservation of a community which will be developed with adequate public facilities....

Approval of the ... car wash would provide for the orderly growth and development of the County by serving as a part of a planned mixed-use development[It] would serve the local existing and new housing stock in conformance with the County's planning policies and zoning regulations....

[I]t will be developed in conformance with the ... Zoning Ordinance to ensure the provision of adequate light, air and privacy, both for the occupants of the subject site and for its neighbors. These principles include the provision of sufficient setback distances, buffering between the proposed use and neighboring uses, and conformance with height limitations in order to allow access to light and air

The ... car wash ... will be developed in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings, including conformance with the tables of permitted uses for the variance zones [,] ... and in conformance with the provisions of the Landscape Manual which provide for the screening of service functions and the buffering of incompatible adjoining uses....

The ... car wash ... will be developed in conformance with regulations ... which are intended to protect from fire, flood, panic and other dangers, namely : the floodplain regulations, stormwater management regulations, the fire prevention code, the building code, and the tables of permitted uses for the various zones....

The ... car wash ... would augment the tax base of the County directly and through the employment provided to its workers....

The ... car wash will be developed in accordance with various principles that have been codified in the [Zoning] Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that [provide] for the compatibility of uses, height limits, and setbacks....

The approval of the ... car wash ... will ... provide an unusually long queueing lane, ensuring that vehicles waiting to be washed will not back up far enough to interfere with the gas station and convenience store uses on the subject property, or onto the surrounding road network....

[C]onformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence [that the social and economic stability of the County will be ensured].... The ... car wash ... will [also] promote the economic and social stability of the County by contributing to the tax base, and by providing a useful and convenient service to the surrounding community....

Because the subject car wash is a part of a much larger development, the review of which already provided for the preservation of stream valleys, the approval of the subject application will have no further impact to the natural features in the County.... The proposed use will be in compliance with the County's Woodland Conservation policies by virtue of the approval of its Tree Conservation Plan. No steep slopes or scenic vistas will be affected. The proposed car wash will be part of a larger lot which will be provided with modern stormwater management measures to protect the nearby stream valley, and the car wash equipment will contain recycling systems to conserve water use and lessen its impact on the region's sanitary sewerage treatment capacity. By conformance to these principles and regulations, the approval of this application would be in harmony with this Purpose. ...

(Exhibit 48, pp. 3-8)

(24) Mr. Ferguson found the request would satisfy the general purposes of the commercial zones and the specific purposes of the C-S-C Zone, as required by Section 27-317 (a) (1) and (2) of the Zoning Ordinance. (Exhibit 48, pp. 8-10) He offered the following in support of his findings:

- The Car Wash implements the general purposes of the Zoning Ordinance (as discussed above).
- The use would supplement the Gas Station and Food or Beverage store and supply the needs of the traveling residents/businesses in the area.
- Traffic efficiency will be ensured since the use must meet the adequacy of public facilities requirements in Preliminary Plan 4-19050; and the queuing capacity in its design additionally improves traffic efficiency on the site.
- The service use meets the intent of General and Area Master Plans (as discussed below).
- The addition of this compatible use will increase the stability of this commercial zone; and its compatible design materials, scale, and character will protect the character of development in the area.
- The compatible use and design will conserve the land value in the area and enhance the economic base of the County by providing employment and enhancing the tax base.

- The Car Wash, while not a retail commercial use, will serve and not adversely impact the planned commercial uses in the Mill Branch Crossing development.
- The Car Wash is a compatible service use in this area and is compatible with general retail uses.
- The request will be required to meet all applicable requirements of the Zoning Ordinance.

(25) Mr. Ferguson explained why the request satisfies the remaining provisions in Section 27-317 of the Zoning Ordinance. (Exhibit 48, pp. 10-13) First, the request implements the applicable Plans (as required by the general purposes of the Zoning Ordinance) and will not substantially impair the integrity of the Plans. The site lies within an area classified in the 2014 General Plan as part of the Established Communities category depicted in its Growth Policy Map. Established Communities are described as those "most appropriate for context-sensitive infill and low-to medium-density development...." (2014 General Plan, p. 20). The Generalized Future Land Use Map in the General Plan recommends commercial land use for the subject property. (2014 General Plan, p. 101)

He next stated that the 2022 Bowie-Mitchellville and Vicinity Master Plan similarly recommended the subject property and its surrounds to the north, east, and south for commercial land use. (2022 Bowie-Mitchellville and Vicinity Master Plan, p. 50) A policy within the Land Use Element of the Master Plan urges the concentration of commercial uses along the US 301 corridor at certain planned interchanges and the site is in the vicinity of a planned interchange at US 301 with Collington Road and Ballpark Drive. Goals within the Natural Environment Element will be implemented on Outlot 15 "through the preservation of the regulated natural features and their associated buffers, [and] the fact that those preserved regulated environmental features are interconnected with preserved features and buffers downstream, by the full use of Environmental Site Design." (Exhibit 48, p. (11) However, none of the regulated natural features are located within the Special Exception Area. The 2009 Countywide Master Plan of Transportation as amended by the 2022 Bowie-Mitchellville and Vicinity Master Plan classifies the abutting US 301 as a freeway, with a proposed interchange with Collington Road (Md 197) and a spur extending to Ballpark Road will have an impact on the northern end of Mill Branch Crossing (where the subject property is located). The Planning Board approved the Preliminary Plan of Subdivision without requiring any dedication of right-of-way for this interchange. (Exhibit 48, p. 12) The Planning Board found that the DSP (which includes the subject property) is consistent with the 2022 Bowie-Mitchellville and Vicinity Master Plan and the Master Plan of Transportation. (Section 27-317(a)(3))

Mr. Ferguson opined that the request would not adversely affect the health, safety, or welfare of residents or workers in the area since it meets the purposes of the Zoning Ordinance, and applicable provisions thereof, as well as other state and county regulations. (Section 27-317(a)(4)) The witness also believed that the design of the site,

including the substantial provisions for vehicle queueing and its co-location with the Gas Station and Food Beverage Store, ensure that the use will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5)) A Tree Conservation Plan (TCP 2-044-2022) is being recommended for approval in conjunction with the instant Special Exception request. (Section 27-317(a)(6)) He noted there are no areas of regulated natural features within the boundaries of the Special Exception. (Section 27-317(a)(7)) Finally, the property does not lie within the Chesapeake Bay Critical Area. (Section 27-317(b))

Opposition's concerns:

(26) Mr. Ronald Beverly, a resident of Mill Branch Estates to the south, appeared in opposition to the Application. Although Mr. Beverly cross-examined a few witnesses, he did not offer testimony.

Planning Board/Technical Staff/City Comment

(27) The City of Bowie conducted a public hearing on the Application and DSP-20003-01 in March 2023 and recommended approval of the Special Exception with two conditions "intended to improve the site design and address conformance with the County Zoning Ordinance and City Development Review Guidelines." (Exhibit 2, Backup p. 74)

(28) The Planning Board approved a Preliminary Plan of Subdivision for the Mill Branch Crossing Development (PPS 4-19050) that permitted 77,635 square feet of commercial, retail, and office uses. Subsequently, it approved DSP-20003 for the entire development and an amendment thereto (DSP-20003-01) for the 3.19 acres in the northwestern corner of the site. In its Resolution approving PPS 4-19050, the Planning Board addressed the relationship of the Gas Station, Food or Beverage Store, and the instant Car Wash:

The DSP includes construction of a gas station, with 16 gasoline fueling stations and a 5,796-square-foot metal canopy, 2 diesel fueling stations, and a 4,809-square-foot food or beverage store, specifically a Dash In store. A 3,059-square-foot car wash is also proposed on the property, which is not part of this DSP approval, and will be reviewed and permitted as part of a separate Special Exception (SE-22006) application. The car wash, while not reviewed with this DSP, uses access driveways and other site amenities, such as the trash enclosure, common with the gas station and the Dash In store. To that end, any revisions to the subject DSP have the potential to impact the special exception site plan once it is approved. Similarly, any revisions to SE-22006 may require concurrent revisions to this DSP. The applicant is cognizant of the interdependence of the two applications and acknowledges that changes to one site plan may require changes to the other site plan. A condition is included herein, to require the applicant to amend the subject DSP, if necessary, to reflect the approved SE-22006 prior to approval of a fine grading permit for the subject property.

The 3.19-acre subject site is irregularly shaped, with the northern portion located within the 100-year floodplain. The property fronts on US 301 to the west, and on its service road to the south. The site is accessed from a roundabout located at

its southeast corner, while an egress only driveway is proposed to the US 301 Service Road. The site's topography includes a uniform slope from south to north and will be mass-graded, as approved under DSP-20003. An approximately 530-foot-long retaining wall is shown along the northern edge, to maximize developable area on the property. The Dash In store is oriented toward US 301, with one access point to the common private driveway it will share with the car wash use on the property. The canopy and gas dispensing stations are located between the Dash In building and US 301.

The car wash to be approved under SE-22006, will only feature one-way circulation, with the entrance to the car wash lane located along the eastern property border, on the rear side of the convenience store building. This one-way lane allows the car wash to have a queue separate from the remainder of the site, which permits adequate stacking space. The car wash will also be supported by vacuum stalls, which are located between the convenience store building and the car wash. These vacuum stalls are proposed with canopies with overhead lights. Though the car wash and the vacuum stalls are not part of this DSP, future architecture of these structures should be consistent with architecture approved with this DSP....

Architectural elevations for the convenience store show a coordinated design theme. The building materials include brick veneer, metal coping, aluminum, glass, and wood that will be in multiple colors including black, white, and brown. Separate architectural elevations are provided and are acceptable, but conditions have been included to label the cardinal directions on the elevations and to dimension more architectural features. The fuel island canopy columns are finished with thin brick veneer and metal panels, colored to match the materials on the store façade....

A photometric plan was submitted with this DSP and depicts a lighting design for the site, which includes full cut-off street light fixtures that provide adequate light for safety, in accordance with Crime Prevention Through Environmental Design principles, while preventing light spillage on adjacent properties....

(Exhibit 2, Backup pp. 21-23)

(29) In its Resolution approving DSP-20003-01, the Planning Board included findings that are applicable to the Car Wash:

The approved PPS shows Parcel 15 having a single driveway onto ... the traffic circle connecting private streets Lola Land and Chesley Avenue. The DSP, by comparison, shows a second driveway onto the public service road located in between the traffic circle and US 301, a freeway. The proposed second driveway was found to be acceptable, pursuant to Section 24-121(a)(3) of the prior Subdivision Regulations, as the driveway access is to the service road, rather than to the freeway itself. The second driveway also conforms to the access and circulation approved with the PPS because the traffic evaluation performed with the PPS treated the intersection of the service road and US 301 as the overall access point to the subdivision, rather than the intersection of the service road and

the traffic circle. The second driveway is, therefore, an addition to the internal circulation of the subdivision rather than a new access point to the overall site....

(Exhibit 2, Backup p. 40)

(30) The Planning Board further found that the DSP demonstrates the preservation and/or restoration of regulated environmental features in a natural state to the fullest extent possible and conditions related to the curation of archeological artifacts, street lighting along the US 301 service road, and the on-site retaining wall could be deleted. (Exhibit 2, Backup p. 46) Finally, it recommended that the applicant provide at least one ADA accessible parking space on the Special Exception Site Plan if this request is approved. (Exhibit 2, Backup p. 45)

(31) The MNCPPC Community Planning division reviewed the request and opined that it will not substantially impair the integrity of the 2022 Bowie-Mitchellville and Vicinity Master Plan nor the 2014 General Plan, reasoning in pertinent part as follows:

General Plan: The subject property is located in the Established Communities. [It] ... classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers, as Established Communities.... Plan 2035 considers it 'vital' that the County 'support its Established Communities' ...[and] notes that 'Established Communities make up the County's heart – its established neighborhoods, municipalities, and unincorporated areas outside designated centers,' ... and 'Urban design is equally relevant to the planning and design of urban and suburban Established Communities as it is to rural areas....'

In order to meet these objectives, Plan 2035 includes the following policy and strategies: Policy 8: Strengthen and enhance existing residential areas and neighborhoods in the Plan 2035 Established Communities....

Strategy TM1.6: Where feasible and practical, require physical connections-such as trail connections, bus-only streets, and roads – within new and between new and existing developments in our Established Communities, while making adequate provisions for the mitigation of privacy, noise, and cut-through traffic concerns....

Analysis: The proposed special exception site plan is consistent with Plan 2035's Established Communities Growth Policy designation. The scope and size of the proposed car wash is compatible with low- to medium-density development.

Master Plan: The 2022 *Approved Bowie-Mitchellville and Vicinity Master Plan* recommends Commercial land uses on the subject property.... The description of the Commercial land use category is, 'Retail and business areas, including employment uses, such as office and services. A range of services are provided at the neighborhood to regional level. New commercial areas have access to multimodal transportation options. These areas are intended to remain predominantly or entirely commercial....'

In addition, the master plan offers the following observation relevant to the subject property:

The upgrade of US 301 to a limited -access highway will spur economic development along the corridor, especially highway-related services that cater to travelers and regional and interstate transportation, logistics, and warehousing at the Collington Local Employment Area....

Analysis: The proposed special exception for a carwash conforms with the 2022 *Approved Bowie-Mitchellville and Vicinity Master Plan* recommended Commercial land uses, because it is considered within the 'range of services that are provided at the neighborhood to regional level....'

(Exhibit 2, Backup pp. 52-53, citations omitted)

(32) The MNCPPC Transportation Planning Section provided the following comment on the instant request:

The subject property fronts US 301 along its western border, this portion of US 301 as a freeway with a proposed interchange serving MD 197 and Ballpark Road. During review of the Preliminary Plan of Subdivision (PPS), it was determined that the proposed US 301 interchange serving MD 197 and Ball park Road would have an impact on the northern end of the subject property. To that end, reservation pursuant to Section 34-139 of the Subdivision Regulations was considered. Due to the lack of information to support the findings needed to place the needed property in reservation, along with the lack of a legal nexus to require the dedication of the needed property, the PPS was approved without right-of-way preservation for this planned facility....

[The Master Plan of Transportation [MPOT] and the 2022 Bowie-Mitchellville and Vicinity Master Plan recommend multimodal transportation and infrastructure/shared use paths.] DSP-20003 included a 12-foot shared-use path along US 301 that is shown in the [PPS] and recommended in the 2022 *Bowie-Mitchellville and Vicinity Master Plan*. The current DSP includes a wide sidewalk and associated crosswalks along the service road to the site access at the roundabout....

Staff find that the proposed plan with the recommended facilities does not impair the ability to make transportation-related recommendations that are supported by an approved Master Plan or Functional Master Plan. In this case, MPOT and [the Master Plan] recommendations for bicycle and pedestrian improvements were evaluated during the prior detailed site plan approvals.

DSP-20003-01 approved the construction of a gas station with food [or] beverage store. The location of the entrance to the car wash is located near the site access point from the roundabout so it was considered during the review of the detailed site plan. During the review of the site plan, staff raised concerns regarding the vehicular conflicts that would occur at the access point. Staff believed that the wide drive aisle at the site entry, in addition to the entrance to the car wash, as well as the proposed parking spaces near the building would impact vehicles entering and exiting the site. The applicant revised the plans to include additional directional signage, striping, directional arrows, stop bar, 'Stop' sign, crosswalk and ADA ramps, and eliminated a lane from the car wash; thereby restricting vehicles from exiting the car wash in that location.

In order to provide safe pedestrian movements on site, staff recommended a direct pedestrian route be provided from the sidewalks shown within the right of way at the site access point to the proposed sidewalks surrounding the building as a condition of approval of DSP-20003-01. Staff supports the bicycle and pedestrian facilities required with the prior applications and offers no additional bicycle and pedestrian improvements for the application.

(Exhibit 2, Backup pp. 55-57)

(33) The MNCPPC Environmental Planning Section (“EPS”) reviewed the Application and TCP2-0444-2021-02 and provided the following comment:

Conformance with [Preliminary Plan of Subdivision] 4-19050 and TCP1-020-2020

The following conditions apply during the preparation and review of the special exception plan.

4. Development of this site shall be in conformance with the stormwater management concept plan for this project (01-0614-205NE14, once reapproved by the City of Bowie), and any subsequent revisions.

A copy of the approved Stormwater Management Concept Plan (SWMC) (#03-0621-205NE14) from the City of Bowie was submitted with the subject application....

12. Prior to signature approval of the preliminary plan of subdivision, the Type 1 tree conservation plan (TCP1) shall be revised....

All requirements for conditions 4 and 12 above were met prior to the signature approval of the Type 1 tree conservation plan.

13. Development of this subdivision shall be in conformance with an approved Type 1 Tree Conservation Plan (TCP1-020-2020). The following note shall be placed on the Final Plat of Subdivision: “This development is subject to restrictions shown on the approved Type 1 Tree Conservation Plan (TCP1-016-2020 or most recent revision), or as modified by the Type 2 Tree Conservation Plan and precludes any disturbance or installation of any structure within specific areas....”

This condition was met prior to the signature approval of the final plat of subdivision.

14. Prior to the issuance of permits for this subdivision, a Type 2 tree conservation plan shall be approved. The following note shall be placed on the Final Plat of Subdivision: ‘This plat is subject to the recordation of a Woodland Conservation Easement pursuant to Section 25-122 (d)(1)(B) with the Liber and folio reflected on the Type 2 Tree Conservation Plan, when approved.’

This condition was met prior to the signature approval of the Type 2 tree conservation plan and final plat of subdivision.

15. At the time of final plat, a conservation easement shall be described by bearings and distances. The conservation easement shall contain the delineated primary management area except for any approved impacts and shall be reviewed by the Environmental Planning Section prior to approval of the final plat. The following note shall be placed on the plat: ‘Conservation easements described on this plat are areas where the installation of structures and roads and the removal of vegetation are prohibited without prior written consent from the M-NCPCC Planning Director or designee. The removal of hazardous trees, limbs, branches, or trunks is allowed.’

This condition was met prior to approval of the final plat of subdivision.

16. Prior to the issuance of any permits which impact wetlands, wetland buffers, streams, or Waters of the U.S., the applicant shall submit copies of all federal and state wetland permits, evidence that approval conditions have been complied with, and associated mitigation plans.

This condition shall be met at the time of permit application.

17. Prior to signature approval of the preliminary plan, an approved stormwater concept shall be submitted. The limits of disturbance shall be consistent between the approved SWM concept plan and the Type 1 tree conservation plan.

A copy of a Stormwater Management Concept Plan (SWMC)(#03-0621-205NE140 from the City of Bowie was submitted with the subject application. In an email dated January 27, 2023, the Bowie City Engineer, Bruce Beasman, indicated that the SWMC does not need to be updated for each new pad site as the concept design may undergo some degree of revision to fit the particular layout for each pad, as long as the final design adheres to the drainage patterns, and water quality requirements of the approved SWMC.

(Exhibit 2, Backup pp.59-61)

(34) The EPS also reviewed the Application for compliance with conditions 2 and 3 imposed in the approval of DSP-20003 and TCP2-044-2021 and found that both were met prior to the certification of both. (Exhibit 2, Backup p. 61) The EPS reviewed the Application for conformance with Condition 2 of DSP-20003-01 and TCP2-044-2021-01 and noted that a revision to Line 16 of the woodland conservation worksheet and revision of the clearing amount on the woodland conservation worksheet to account for the additional 0.08 acre of woodland clearing are recommended conditions if the instant request is approved. (Exhibit 2, Backup pp. 61-62)

(35) The EPS reviewed compliance with the Natural Resources Inventory Plan, the Woodland and Wildlife Habitat Conservation Ordinance, Subtitle 25's requirements for specimen trees, preservation of regulated environmental features/primary management area requirements, scenic and historic road requirements, soil requirements, and stormwater management requirements. The EPS opined, in pertinent part, as follows:

- An approved Natural Resources Inventory Plan (NRI-029-07-04) was submitted with the Application. The site contains 100-year floodplain, wetlands, streams, and steep slopes that comprise the primary management area ("PMA"). SE-22006 and TCP2-04402022-02 are in conformance with the NRI.
- The request is subject to the Woodland and Wildlife Habitat Conservation Ordinance and the Environmental Technical Manual. TCP 2-044-2021-02 was submitted for approval, and it covers the subject property. The woodland conservation threshold for the 70.11-acre site is 15% of the net tract area or 9.02 acres. The total woodland conservation requirement is 14.69 acres, based on the amount of clearing proposed. This requirement will be satisfied by 6.03 acres of off-site woodland conservation credits, 4.94 acres of on-site afforestation, and 3.72

acres of on-site preservation. Staff noted, however, that the TCP2 shows a .08-acre reduction of woodland preservation and recommended a condition to address the shortfall.

- The Planning Board approved the removal of 38 specimen trees in its approval of PPS 4-19050. No specimen tree removals were proposed with the instant request.
- The subject property contains regulated environmental features (“REF”) (on-site streams, stream buffers, wetlands, wetland buffers, 100-year floodplain, and steep slopes). The Subdivision Ordinance requires the PPS and all associated plans demonstrate the preservation and/or restoration of these features in a natural state to the fullest extent possible, consistent with the guidance provided by the Environmental Technical Manual. Impacts to the REF should be limited to those necessary for the development of the site – such as sanitary sewerage and water lines, road crossings for required street connections, and outfalls for stormwater management facilities. 1.26 acres of off-site and 1.38 acres of on-site impacts were approved in DSP-20003. These remain unchanged and no additional impacts were requested in the Special Exception Application.
- Saint Chesley Avenue (formerly Mill Branch Road) is designated as a scenic and historic road in the Master Plan of Transportation. These are Special Roadways. As such, the Landscape Manual requires a Special Roadway buffer.
- Marlboro and Christiana clays are not found to occur on the subject property. EPS found no geotechnical concerns with the revisions to the plans submitted with the Special Exception Application.
- Stormwater Management Concept Approval #03-0621=205NE14 from the City of Bowie was submitted with the instant request. It includes one stormwater management pond, numerous bio-swales, drywells, infiltration trenches, and micro-bioretenion trenches for on-site quality control measures and attenuation. The City’s agent noted that no changes need to be made for each new pad site as long as the final design adheres to the drainage patterns and water quality requirements of the approved Stormwater Management Concept Plan. Accordingly, no further action is required with the instant Application.

(Exhibit 2, Backup pp.62-65)

The EPS recommended approval of the Special Exception and the Type 2 Tree Conservation Plan with conditions included in the Technical Staff Report.

(36) After reviewing all referrals, the Technical Staff found that the Special Exception and Type 2 Tree Conservation Plan are consistent with the approved Preliminary Plan of Subdivision (PPS 4-19050), DSP-20003, and Section 27-317 of the prior Edition of the Zoning Ordinance reasoning, in pertinent part, as follows:

The purposes of Subtitle 27 of the Prince George's County Code, as set forth in Section 27-102(a) ... of the prior Zoning Ordinance, are generally to protect the health, safety, and welfare of the public; to promote compatible relationships between various land uses; to guide orderly development; and to ensure adequate public facilities and services.

The property is subject to PPS 4-19050, which determined adequacy. The subject application does not propose a substantial revision to the mix of uses on the subject property, which were approved at the time of the PPS. The Subtitle 24 adequacy findings of the PPS are not affected.

Staff find that the proposed development will not negatively impact the public. The proposed car wash will provide diverse commercial service options for the surrounding community. The site also provides internal pedestrian and vehicular connections to the larger site development, which will include a gas station and food or beverage store....

[T]his application [is] located within the Established Communities Growth Policy Area. These areas are most appropriate for context-sensitive infill and low-to medium-density development. The subject property is surrounded by mostly undeveloped land commercial uses. To the south of the site is a public right-of-way for US 301, for a service road and a private roundabout The scope and size of the proposed car wash is compatible with low-to medium-density development and the surrounding commercial uses....

The proposed use will add quality commercial development to the surrounding community. The proposed car wash will provide safe vehicular and pedestrian circulation for future customers. The SE site plan shows a sidewalk surrounding the convenience store approved under DSP-20003-01, which is adjacent to the proposed car wash, providing a connected internal site layout. Staff find that the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area....

Based on the applicant's statement of justification, the analysis contained [herein], associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings, as set forth in Section 27-317(a) of the prior Prince George's County Zoning Ordinance. Staff find that the proposed application satisfies the requirements for approval and that the application will be in conformance with the Zoning Ordinance requirements.

(Exhibit 2, pp. 5-7, 12)

APPLICABLE LAW

(1) The request must satisfy the applicable general purposes of the Zoning Ordinance, the purposes for all commercial zones, and those for the C-S-C Zone found in Sections 27-102, 446, and 454(a) of the prior Edition of the Zoning Ordinance:

Sec. 27-102. Purposes.

- (a) The purposes of the Zoning Ordinance are:
- (1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;
 - (2) To implement the General Plan, Area Master Plans, and Functional Master Plans;

- (3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (5) To provide adequate light, air, and privacy;
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of land;
- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;
- (12) To insure the social and economic stability of all parts of the County;
- (13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;
- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

Sec. 27-446. General purposes of Commercial Zones.

- (a) The purposes of Commercial Zones are:
 - (1) To implement the general purposes of this Subtitle;
 - (2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;
 - (3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;
 - (4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;
 - (5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;
 - (6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;
 - (7) To increase the stability of commercial areas;
 - (8) To protect the character of desirable development in each area;

- (9) To conserve the aggregate value of land and improvements in the County; and
- (10) To enhance the economic base of the County.

Sec. 27-454. C-S-C Zone (Commercial Shopping Center).

(a) Purposes.

- (1) The purposes of the C-S-C Zone are:
 - (A) To provide locations for predominantly retail commercial shopping facilities;
 - (B) To provide locations for compatible institutional, recreational, and service uses;
 - (C) To exclude uses incompatible with general retail shopping centers and institutions; and
 - (D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

- (2) The Application must also satisfy the provisions in Section 27-317(a) and (b) in the prior Edition of the Zoning Ordinance, which provide as follows:

Sec. 27-317. Required findings.

- (a) A Special Exception may be approved if:
 - (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
 - (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
 - (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).
- (b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:
 - (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
 - (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

Special Exception

(3) The Supreme Court of Maryland (formerly the “Court of Appeals”) provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements; he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material.... But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

(4) The test in Schultz has been applied over the decades, but there has been clarification as to what was meant by “the neighborhood,” as noted in Attar v. DMS Tollgate, LLC., 451 Md. 272, 280 (2017):

[Under the County’s law], a special exception use is prohibited if it is ‘detrimental to the health, safety or general welfare of the locality involved.’ In *Schultz v. Pritts*, we held that an applicant for a special exception ‘does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood ... he has met his burden.’ 291 Md. 1, 11, 432 A. 2d 1319, 1325 (1981).

We further held in *Montgomery County v. Butler*, ‘the phrase ‘detriment to the neighborhood’ implies necessarily that the Board’s task is to determine if there is or likely will be a detriment to the *surrounding properties*.’ 417 Md. 271, 305, 9 A. 3d 824, 844 (2010) (emphasis added). Thus, we held that, within the context of a special exception, the ‘neighborhood’ means ‘the surrounding properties.’

(5) Finally, absent language in the Code to the contrary, the special exception use is “conceptually ... compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.” People’s Counsel for Baltimore County v. Loyola College Md., 406 Md. 54, 95 (2008)

CONCLUSIONS OF LAW

(1) The purposes of the Zoning Ordinance applicable to the instant request are found in Sections 27-102, 446, and 454. Section 27-317 (a)(1) of the Zoning Ordinance requires that the use and Site Plan be in harmony with these purposes. The request satisfies the following purposes for the reasons provided:

To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County

The use serves the needs of all County residents who rely on the automobile as a means of transportation. Additionally, the Car Wash will be designed in an environmentally sensitive manner which will be beneficial to the surrounding neighborhood, and in a manner that compatible with the Gas Station and Dash In.

To implement the General Plan, Area Master Plans, and Functional Master Plans

The 2022 Master Plan recommends commercial use defined to include areas of retail use. The 2014 General Plan placed the site within the Established Communities – an area that encourages context-sensitive infill. Since the site lies within a commercial cluster of uses, and the requested Car Wash is a relatively minor addition, the Application would constitute context-sensitive infill. Finally, no functional master plan is affected by this development (as noted above).

To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services

Development of the subject property in the manner proposed by the Applicant will have no negative impact on the public facilities within the area since the Gas Station, Food or Beverage Store and the proposed Car Wash were addressed in the Preliminary Plan of Subdivision and will be served by public facilities necessary for their operation. Moreover, the addition of a Car Wash will not detract from transportation facilities since a large percentage of its customers may have already been on-site using one of the other two uses.

To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development

The Applicant proposes to add a well-designed Car Wash to a site with two compatible uses permitted by right in a manner consistent with the various provisions of the Zoning Ordinance. There will be new landscaping, lighting, and sidewalks and the Car Wash will be designed to complement the Food or Beverage Store. This purpose is, therefore, met.

To encourage economic development activities that provide desirable employment and a broad, protected tax base

To ensure the social and economic stability of all parts of the County

The use ensures that a certain number of jobs will be provided and that taxes will be paid into the County's coffers, thereby furthering these purposes.

To prevent the overcrowding of land

The addition of a 3,468-square-foot Car Wash to an improved site with two other uses operating at the site, constructed in accordance with all applicable laws, helps to ensure the prevention of overcrowding of land at this location.

To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions

Staff has noted that the addition of this well-designed Car Wash will not add to the congestion on Saint Chesley Drive, there will be traffic directional signs, a significant portion of the customers will be pass-by traffic already on the road networks, and a sidewalk will be added to improve pedestrian access between the uses.

To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

This purpose is met since the site will be developed in accordance with all state and local regulations pertaining to noise and air quality, and no regulated environmental features are found on the subject property.

The Application also is in harmony with the general purposes for all commercial zones since: the general purposes of the Zoning Ordinance are satisfied; the use supplements the Gas Station and Food or Beverage uses providing a useful and convenient commercial use to the traveling public; the Car Wash is compatible with the Gas Station and convenience store, and with the planned commercial component within the Mill Branch Crossing development, and while not strictly commercial uses, all three are allowed by the Master Plan's extensive definition of commercial uses to include retail, business, and employment uses (such as office and services); the use will be developed in accordance with all applicable laws and the Landscape Manual, and in a manner to avoid spillage of light and prevent noise, so it will protect adjacent properties against fire, noise, glare, noxious matter, etc.; development must satisfy the conditions and findings by the Planning Board in its approval of the preliminary plan of subdivision, so traffic efficiency and lessened congestion will be ensured; the use meets the intent for land use set forth in the Master and General Plans; the Car Wash will be comparable in design and scale to the surrounding uses; this complementary use will further enhance the tax base, conserve the value of land in that area, and provide additional employment for residents of the County; will supply the needs of those in the area for such commercial uses; and, is not incompatible with other general retail uses.

The request satisfies the specific purposes of the C-S-C Zone for the following reasons: when the entire retail commercial portion of the Mill Branch Crossing development is considered, this incidental more service-related use is one that works well with the others

and does not detract from the predominantly retail commercial uses therein; and this use is a compatible service use, as discussed herein.

(2) The use satisfies Section 27-317(a)(2) since it will be in conformance with all applicable requirements of the Zoning Ordinance once the conditions are addressed.

(3) The use satisfies Section 27-317 (a)(3) since it does not substantially impair the integrity of the Master Plan, which specifically addresses the provisions of such uses in the area of the subject property or Functional Master Plans, for the reasons set forth by the Technical Staff (Exhibit 2) and the Land Planning Analysis prepared by Applicant's expert witness (Exhibit 48), and as noted by this Examiner, *supra*.

(4) The Planning Board has approved a Preliminary Plan of Subdivision that expressly found the site to be designed in a manner that provides for the safe internal flow of traffic, as well as pedestrian safety. It is designed in an attractive manner that coordinates with the adjacent Gas Station and convenience store, with adequate landscaping and lighting. The hours of operation are limited and the access to the vacuums restricted to customers and located between two buildings, thereby limiting noise pollution. The stacking plan limits the possibility of queuing cars offsite. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area. (Section 27-317(a)(4))

(5) The Application, in essence, requests the addition of a Car Wash to complement a Gas Station and a Food or Beverage Store – three uses that will provide a service to the community and the traveling public. The Detailed Site Plan, which also covers the subject property, ensures that each will be designed in an aesthetically pleasing and symbiotic manner. The Car Wash is designed with an ample queueing area and an escape lane, ensuring little to no impact on the adjacent Saint Chesley Drive. Its vacuum station can only be used by its customers, and it is located between the Car Wash and the Food or Beverage Store, thereby reducing the impact of light spillage or noise on adjacent residences. Sufficient employees will be on-site to assist customers and ensure that there is a steady flow and limited opportunity for loiterers. Therefore, the use will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(6) The Applicant seeks approval of TSP2-044-2021-02, thereby meeting the requirement in Section 27-317(a)(6).

(7) The regulated environmental features on the entire 70.11-acre site were reviewed prior to the approval of PPS 4-19050 and DSP-20003, and there is an approved Natural Resources Inventory Plan (NRI-029-07-04). The previously approved impacts have not changed, and no additional impacts were requested with this application. (Section 27-317 (a)(7))

(8) The subject property is not located within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317 (b))

(9) The applicant has submitted sufficient evidence and testimony from which a reasoning mind could conclude that the requested use will have no more of an adverse impact on the subject property than it would if it were located elsewhere in the C-S-C Zone and in the neighborhood. Accordingly, the request can be approved if conditions, addressed below, are satisfied.

DISPOSITION

Special Exception 22006 and TCP2-044-2021-02 are hereby Approved subject to the following conditions:

(1) Prior to certification of the Special Exception Site Plan, the following revisions must be made and submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record:

(a) Correct the entire Special Exception Site Plan document (Exhibit 46) to state "Special Exception Site Plan" and include the Application Number on each page of the document. Update the notes to delete "pending" if a referenced project has been approved;

(b) Correct the address for the subject property and include the correct acreage for the subject property wherever acreage is mentioned;

(c) Include a note on the Special Exception Site Plan referencing the hours of operation, and stating that the Application will be designed as provided in Exhibit 38 (Car Wash Stacking Plan), Exhibit 39 (Car Wash Tunnel Information), Exhibit 50 (Car Wash Building Floor Plan), and Exhibit 52 (Enlarged Retail Only Floor Plan).

(d) Submit the Car Wash Signage Plan to the MNCPPC Permit Review Section and/or DPIE for review and comment, and revision if required;

(e) Add a Note that states if further amendments to DSP-20003-01 are approved that are inconsistent with the certified Special Exception Site Plan and Attachments, Applicant or its heirs, successors, or assigns shall submit an Application to amend SE-22006 prior to the issuance of any building permits.

(f) Revise the Type 2 Tree Conservation Plan (TCP2-044-2021-02) as follows:

(1) Address Condition 2(a) of DSP-20003-01 to revise the clearing amount in the woodland conservation worksheet to account for the additional 0.08 acre of woodland clearing and show how this additional requirement will be met.

- (2) Revise the TCP 2 application number to TCP2-044-2021 on the Environmental Planning Section approval block.
- (3) Add the approval information for the - 01 revision in the Environmental Planning Section approval block.
- (4) Revise line 6 in the woodland conservation worksheet (TCP number) to indicate this is the - 02 revision.
- (5) Revise Line 16 in the woodland conservation worksheet (clearing permitted without reforestation) to 1-41 acres.

(2) Prior to the issuance of any building permits, the property must be re-platted as a parcel. The property is currently platted as Outlot 15, recorded in Plat Book ME 262 page 52 of the Prince George's County Land Records. An outlot is not useable as a legal building site pursuant to Section 24-101(b)(19) of the prior Prince George's County Subdivision Regulations,

[Note: The Special Exception Site Plan, Landscape Plan, and Attachments are Exhibit 46; the Photometric Plan is Exhibit 53; TCP2-044-2021-02 is Exhibit 35]