



The Maryland-National Capital Park and Planning Commission  
 Prince George's County Planning Department  
 Development Review Division  
 301-952-3530

Note: Staff reports can be accessed at <http://mncppc.iqm2.com/Citizens/Default.aspx>

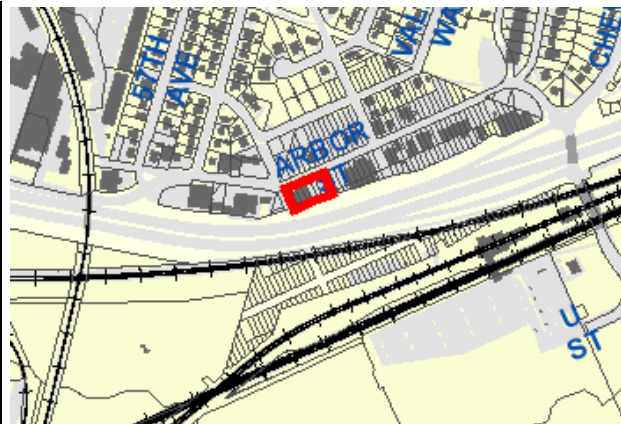
# Detailed Site Plan

## 5801 Arbor Street Property

# DSP-21032

REQUEST	STAFF RECOMMENDATION
<p>This case was continued from the Planning Board hearing date of April 27, 2023 to June 29, 2023.</p> <p>To approve a change in the list of allowed uses to permit wholesaling, distribution, and related storage of food and beverage materials (products) used and produced on the premises in the M-U-I/D-D-O Zones.</p>	<ul style="list-style-type: none"> <li>• DISAPPROVAL</li> </ul>

<b>Location:</b> On the south side of Arbor Street, approximately 250 feet west of its intersection with 59th Avenue.	
Gross Acreage:	0.46
Zone:	LTO-C
Zone Prior:	M-U-I/D-D-O
Reviewed per prior Zoning Ordinance:	Section 27-1903(c)
Dwelling Units:	N/A
Gross Floor Area:	9,053 sq. ft.
Planning Area:	69
Council District:	05
Municipality:	N/A
<b>Applicant/Address:</b> Nabely Family Trust 17707 Central Avenue Upper Marlboro, MD 20774	
<b>Staff Reviewer:</b> Dominique Lockhart <b>Phone Number:</b> 301-952-3411 <b>Email:</b> Dominique.Lockhart@ppd.mncppc.org	



Planning Board Date:	6/29/2023
Planning Board Action Limit:	Waived Indefinitely
Staff Report Date:	6/14/2023
Date Accepted:	09/29/2022
Informational Mailing:	11/23/2021
Acceptance Mailing:	09/14/2022
Sign Posting Deadline:	03/28/2023

The Planning Board encourages all interested persons to request to become a person of record for this application. Requests to become a person of record may be made online at [http://www.mncppcapps.org/planning/Person\\_of\\_Record/](http://www.mncppcapps.org/planning/Person_of_Record/). Please call 301-952-3530 for additional information.

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THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

STAFF REPORT

SUBJECT: Detailed Site Plan DSP-21032  
5801 Arbor Street Property

The Urban Design staff has completed its review of the subject application and appropriate referrals. The following evaluation and findings lead to a recommendation of DISAPPROVAL.

**EVALUATION**

This property is located within the Local Transit-Oriented-Core (LTO-C) Zone. However, this application is being reviewed and evaluated in accordance with the prior Prince George's County Zoning Ordinance, pursuant to Section 27-1903(c) of the current Zoning Ordinance. This request to change the list of allowed uses and accompanying detailed site plan (DSP) were reviewed and evaluated for conformance with the following criteria:

- a. The requirements of the 2018 *Approved Greater Cheverly Sector Plan*;
- b. The requirements of the prior Prince George's County Zoning Ordinance in the Mixed Use-Infill (M-U-I) Zone and the Development District Overlay (D-D-O) Zone;
- c. The requirements of the 2010 *Prince George's County Landscape Manual*;
- d. The requirements of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance;
- e. The requirements of the Prince George's County Tree Canopy Coverage Ordinance; and
- f. Referrals.

**FINDINGS**

Based upon the evaluation and analysis of the subject application, the Urban Design staff recommends the following findings:

- 1. **Request:** The site is currently operating as a wholesaling and distribution warehouse, and a contractor's office with outdoor storage. Per the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), there are no prior permits issued that allow these uses.

The applicant pursued use and occupancy permits to validate the existing uses through Permit 1670-2018 for the wholesaling and distribution warehouse use and Permit 7827-2020 for the contractor's office with outdoor storage use. These permits were not approved, and are currently on hold, due to noncompliance with the applicable Development District Overlay (D-D-O) Zone standards, as the uses are not permitted under applicable zoning.

This DSP is a request to validate the existing "wholesaling or distribution of materials used or produced on the premises," pursuant to Section 27-548.26(b)(1)(B) of the prior Prince George's County Zoning Ordinance, that allows the Prince George's County District Council to approve a change in the list of allowed uses in the D-D-O Zone, as modified by the zone's development district standards. When making such a request, an applicant is required to submit either a DSP, or a conceptual site plan (CSP). The Prince George's County Planning Board is required to make a recommendation to the District Council on the request to change the list of allowed uses and make a final decision on whether the DSP meets the required findings for approval.

The property is subject to the table of uses for the Mixed Use-Infill (M-U-I)/D-D-O Zones, within the *2005 Tuxedo Road/Arbor Street/Cheverly Metro Area Approved Sector Plan and Sectional Map Amendment* (Cheverly Sector Plan and SMA). The initial request filed with the acceptance package of the subject application was to permit the uses of wholesaling, distribution, and related storage of materials (products) used and produced on the premises (Wholesaling and Distribution Warehouse), and a contractor's office as a permanent use with outdoor storage (Contractor's Office with Outdoor Storage), at the subject property. The Cheverly Sector Plan and SMA does not permit the uses for the M-U-I/D-D-O Zones.

On May 18, 2023, the applicant submitted revised materials removing the request to amend the Table of Uses for the M-U-I/D-D-O Zones to allow a "contractor's office with outdoor storage." The applicant proposes to remove the existing contractor's office with outdoor storage use from the property.

In addition, the other requested use to allow "wholesaling or distribution of materials used or produced on the premises" has been slightly altered to narrow the use to "wholesaling or distribution of food or beverage materials only." The revised use is still not permitted within the M-U-I/D-D-O Zones, and, as such, an application to change the use is still required for approval of the use on the subject property.

Per Section 27-546.17 of the prior Zoning Ordinance, all uses permitted by-right or by special exception in the Commercial Shopping Center (C-S-C) Zone, as provided in Section 27-461(b), are permitted by-right in the M-U-I Zone. Per Section 27-461(b), the use of wholesaling and distribution of food and beverage materials is not a permitted use.

**2. Development Data Summary:**

	<b>EXISTING</b>	<b>PROPOSED</b>
Zone	LTO-C (Prior M-U-I/D-D-O)	LTO-C (Prior M-U-I/D-D-O)
Total Site Area	0.46	0.46
Use(s)	Wholesale or distribution and Contractor's Office*	Wholesale or distribution
Total Building Gross Floor Area (GFA)	9,053 sq. ft	9,053 sq. ft

**Parking and Loading Data:**

<b>Parking Requirements</b>	<b>REQUIRED</b>	<b>PROVIDED</b>
3 spaces for first 1,500 sq. ft. GFA	3	3
1 space for each additional 1,500 sq. ft. GFA	5	6
<b>Total Parking Spaces</b>	<b>8</b>	<b>9</b>

**Other Development Data:**

<b>Loading Spaces</b>	<b>REQUIREMENT</b>	<b>REQUIRED</b>	<b>PROVIDED</b>
Wholesale or warehouse	1 per 1,500–10,000 sq. ft GFA	1	0
<b>Total Loading Spaces</b>		<b>1</b>	<b>0**</b>

**Notes:** \*The existing uses, as a wholesaling and distribution warehouse and a contractor's office with outdoor storage, are operating without approval or authorization. The contractor's office with outdoor storage use is to be removed.

\*\*The Cheverly Sector Plan and SMA does not contain specific requirements for the number of loading spaces; therefore, Section 27-582(a) of the prior Zoning Ordinance serves as the requirement.

- 3. Location:** This property is located on the south side of Arbor Street, approximately 250 feet west of its intersection with 59th Avenue in Council District 5, and Planning Area 69. More specifically, the site address is 5801 Arbor Road, located less than a 0.5 mile south of the corporate limits for the Town of Cheverly. The property is shown as Lots 1–8, Block 6, of the Tuxedo Subdivision shown in Plat Book A, Plat No. 71, as filed among the land records of Prince George's County.

4. **Surrounding Uses:** This property is surrounded by light industrial/commercial uses in the LTO-C Zone to the west, east, and north across Arbor Street. US 50 (John Hanson Highway) is located to the south, with the Cheverly Metro Station in the LTO-C Zone, beyond.
5. **Previous Approvals:** Permit 906-1975-U was issued on June 4, 1975, and allowed the retail sale of truck parts, but specifically stated that no warehousing or service use was permitted. At the time of permit approval, the site was located in the General Commercial, Existing (C-2) Zone, which also did not allow a storage warehouse use.

Permit 1881-1988-U was approved on February 14, 1989, and allowed the site to be used for auto repair services.

In 2005, the Cheverly Sector Plan and SMA rezoned the subject property from the Miscellaneous Commercial (C-M) Zone to the M-U-I Zone and superimposed a D-D-O Zone.

DSP-05103 was approved by the Planning Board on July 20, 2006 (Resolution No. 06-177), to allow for an automotive storage yard for cars waiting to be repaired, on a 0.42-acre site in the C-M Zone. At the time of this application, the site was exempt from the Cheverly Sector Plan and SMA D-D-O Zone requirements, because no new construction was proposed on-site.

The site is currently operating as a wholesaling and distribution warehouse, and a contractor's office with outdoor storage.

Per DPIE, there are no prior permits issued that allow the use of a wholesaling and distribution warehouse and a contractor's office with outdoor storage.

The applicant has pursued use and occupancy permits to validate the existing uses through Permit 1670-2018 for the wholesaling and distribution warehouse use and Permit 7827-2020 for the contractor's office with outdoor storage use. These permits were not approved and are currently on hold due to noncompliance with the applicable D-D-O Zone standards, as the uses are not permitted.

The revised request removes the contractor's office with outdoor storage use and narrows the scope of the wholesaling and distribution use to food or beverage materials only.

## COMPLIANCE WITH EVALUATION CRITERIA

6. **2018 Approved Greater Cheverly Sector Plan and the Development District Overlay (D-D-O) Zone:** This property is located within the Cheverly Metro Local Transit Center boundary of the Greater Cheverly Sector Plan, and Section 3 (Land Use Element) provides policies and strategies that apply to this area, including the following:

**Policy LU 2—Define the Local Transit Center (LTC) boundary to focus redevelopment at the Cheverly Metro Station and along the MD 459 (Arbor Street and Tuxedo Road) corridor east of the CSX Railroad tracks, and to limit development in the floodplain. (Page 43)**

## Strategies

**LU 2.1—Promote redevelopment from east of the CSX railroad tracks along MD 459 (Tuxedo Road and Arbor Street) to Cheverly Avenue to allow a mix of residential, retail and office uses.** (Page 43)

**LU 2.2—Facilitate parcel assembly from east of the CSX Railroad tracks along MD 459 (Tuxedo Road and Arbor Street) to encourage redevelopment in the Local Transit Center and implement the vision of a walkable main street.** (Page 43)

The 2018 *Approved Greater Cheverly Sector Plan* replaced the 2005 Cheverly Sector Plan and SMA. However, the D-D-O Zone containing design standards and a table of uses to facilitate implementation of land use and community character recommendations still remains applicable.

The subject application proposes to amend the table of uses within the D-D-O Zone, in accordance with Section 27-548.26(b)(5). New development is not being proposed with this application. Staff find that the proposed amendment will allow the wholesaling and distribution of food and beverage materials to continue as a principal use on the property. The contractor's office with outdoor storage use is to be removed. The requested principal use is not consistent with the policies and strategies of the Greater Cheverly Sector Plan that seek to achieve a mix of residential, retail, and office uses for the purpose of implementing the plan's vision of a walkable main street in the plan area.

7. **Prince George's County Zoning Ordinance:** The subject site plan has been reviewed for conformance with the requirements of the M-U-I and D-D-O Zones. Uses in the M-U-I Zone are governed by Section 27-546.17(a), which states:

(a) **All uses permitted by right or by Special Exception in the C-S-C Zone, as provided in Section 27-461(b), are permitted by right in the M-U-I Zone, except as follows:**

- (1) **For the uses in Section 27-461(b)(3), Miscellaneous, and 27-461(b)(6) Residential/Lodging, the uses allowed are those permitted in Section 27-441(b)(4), Miscellaneous, and (7), Residential/Lodging, for the R-18 Zone, except that hotel and motel uses are permitted as in the C-S-C Zone.**

The C-S-C Zone does not permit wholesaling or distribution uses of any kind, with one specific exception (by footnote) for the adaptive use of a furniture warehouse store. Section 27-461(a)(7) of the prior Zoning Ordinance provides that all uses not listed are prohibited.

Uses in the D-D-O Zone are governed by Section 27-548.22 which provides that "uses allowed on property in a Development District Overlay Zone shall be the same as those allowed in the underlying zone in which the property is classified, except as modified by Development District Standards approved by the District Council." The development district standards as adopted by the 2005 Cheverly Sector Plan and SMA also prohibit the use.

Although wholesaling or distribution of food or beverage materials only is a prohibited use in the M-U-I and D-D-O Zones, pursuant to Section 27-548.26(b), the applicant can request that the District Council change the list of allowed uses for the subject property, to allow a desired use. In doing so, the District Council must find that the proposed development conforms with the purposes and recommendations for the development district, as stated in the master plan, master plan amendment, or sector plan; meets applicable site plan requirements; and does not otherwise substantially impair the implementation of any comprehensive plan, applicable to the subject development proposal.

Staff oppose the applicant's request to allow a wholesaling and distribution warehouse, as it is not consistent with the permitted uses of the C-S-C Zone nor the intent of the D-D-O Zone, and will substantially impair implementation of the Cheverly Sector Plan and SMA by eliminating the opportunity to develop the subject property as recommended by the sector plan.

Two objectives of the Cheverly Sector Plan and SMA are to bring industrial areas into code compliance, remove noxious uses, and transform Arbor Street into a main street with retail, accompanied and supported by residential and small office uses (Page 56). More specifically, Subareas A and B which contain the subject property, were placed under the D-D-O Zone to ensure that the redevelopment of land in these subareas met the land uses and/or urban design goals contained in the Cheverly Sector Plan and SMA. The D-D-O Zone's development district standards, guidelines, and uses are intended to achieve goals that "provide a pedestrian-oriented, human-scale environment that will enliven the sector area, provide a community-oriented town center, and offer flexible, easy-to-accommodate opportunities for future economic growth and development." (Page 83).

In addition, staff believe disapproval of the proposed use is appropriate when the applicant is currently operating that same use without a permit. Per DPIE, no prior permits have been issued that allow the use of a storage warehouse. Permit 906-1975-U was issued on June 4, 1975, and allowed the retail sale of truck parts, but specifically stated that no warehousing or service was permitted. When this permit was approved, the site was located in the C-2 Zone, which did not allow a storage warehouse use. Permit 1881-1988-U was approved on February 14, 1989, and allowed the site to be used for auto repair services. The subject property was changed from the C-2 Zone to the C-M Zone, which also does not allow a storage warehouse use.

The District Council, the Planning Board, and the community invested a significant amount of time creating the D-D-O Zone for the Cheverly Sector Plan and SMA. To ignore the strategies and permitted uses, fails to adhere to the community's wishes and the land use vision for the area.

The planning processes, which lead to approval of all sector plans, involve public processes and substantial resources. The public process is to guarantee that the clear vision and reasonable expectations are considered and, most importantly, an implementable plan is approved. The Cheverly Sector Plan and SMA provides decision-makers with clear and concise direction regarding desired uses and building standards necessary to implement the plan's vision.



In an effort to assure the validity of approved plans, to maximize opportunities to implement the plan, and to maintain the community's trust in the planning processes, staff cannot support uses that are contrary to the plan's vision. The applicant's request, to add the wholesaling and distribution warehouse of food and beverage materials as a permitted use on the property, eliminates the opportunity to attract mixed-use residential development to the subject property, as recommended by the Greater Cheverly Sector Plan, and reinforced by the Cheverly Sector Plan and SMA, which reclassified the subject property from the C-M Zone to the M-U-I Zone and imposed the D-D-O Zone. In addition, the District Council did not approve zoning for the subject site that would allow the proposed use; therefore, there is no presumption that the subject site could be used, as desired.

Therefore, staff find that the Planning Board should recommend to the District Council that the wholesaling, distribution, and related storage of food and beverage materials (products) used and produced on the premises use be disapproved.

8. **2010 Prince George's County Landscape Manual:** The application is exempt from the requirements of the 2010 *Prince George's County Landscape Manual* (Landscape Manual), per Section 1.1(d), because the change in use will not result in a change from a lower-intensity to a higher-intensity use category, as defined in the Landscape Manual. Any future development applications for this site may be subject to the requirements of the Landscape Manual.
9. **Prince George's County Woodland and Wildlife Habitat Conservation Ordinance:** The site is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance, as stated in a letter of exemption issued by the Environmental Planning Section on October 10, 2013. The reason given for issuing the letter of exemption was because the property contains less than 10,000 square feet of woodland and has no previous tree conservation plan approvals.
10. **Prince George's County Tree Canopy Coverage Ordinance:** This project is not subject to the requirements of the Tree Canopy Coverage Ordinance because the disturbance on the site will not exceed 5,000 square feet.
11. **Referral Comments:** This application was referred to the concerned agencies and divisions. The referral comments are summarized as follows, and are incorporated herein by reference:
  - a. **Community Planning**—In a memorandum dated June 7, 2023 (Selvakumar to Lockhart), the Community Planning Division offered an evaluation of the application's conformance with the D-D-O Zone, which has been incorporated into Findings 7 and 8 above.
  - b. **Transportation Planning**—In a memorandum dated November 9, 2022 (Yang to Burke), the Transportation Planning Section provided comments and found that the existing access connections, site circulation, and the number of on-site parking spaces are sufficient and meet the zoning requirements.

- c. **Subdivision Review**—In a memorandum dated November 4, 2022 (Gupta to Burke), the Subdivision Review Section provided comments and found that there is no preliminary plan of subdivision (PPS) associated with the subject property. The project is exempt from the requirement of a new PPS and new final plat, pursuant to Section 24-111(c)(3) of the prior Subdivision Regulations, because the final plat predates October 27, 1970, the development was in existence prior to January 1, 1990, and no new development is now proposed. A PPS may be required if new development is proposed in the future.
  - d. **Prince George’s County Department of Permitting, Inspections, and Enforcement Review**—In a memorandum dated December 1, 2022 (Giles to Burke), the DPIE Site/Road Plan Review Division provided comments and stated no objection to the proposed DSP. In addition, the applicant will be required to provide documentation of previously issued permits for all built structures and site work in future development stages.
12. The subject DSP does not propose any new development on the property. Because staff is recommending the Planning Board oppose the use request, it follows that, pursuant to Section 27-285(b)(1) of the prior Zoning Ordinance, the DSP does not represent a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the Prince George’s County Code, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development, for its intended use.
  13. Section 27-285(b)(4) of the prior Zoning Ordinance requires that regulated environmental features be preserved and/or restored in a natural state, to the fullest extent possible. This application is to allow a use and will not impact the conditions of the site.
  14. As of the writing of this technical staff report, staff has not received any community feedback or input regarding the subject application.

## RECOMMENDATION

Based upon the foregoing evaluation and analysis, the Urban Design staff recommends that the Planning Board adopt the findings of this report and recommend to the Prince George’s County District Council DISAPPROVAL of the applicant’s request to permit wholesaling, distribution, and related storage of food and beverage materials (products) used and produced on the premises, and DISAPPROVE applicant’s request for approval of the detailed site plan.

# 5801 ARBOR STREET PROPERTY

Detailed Site Plan

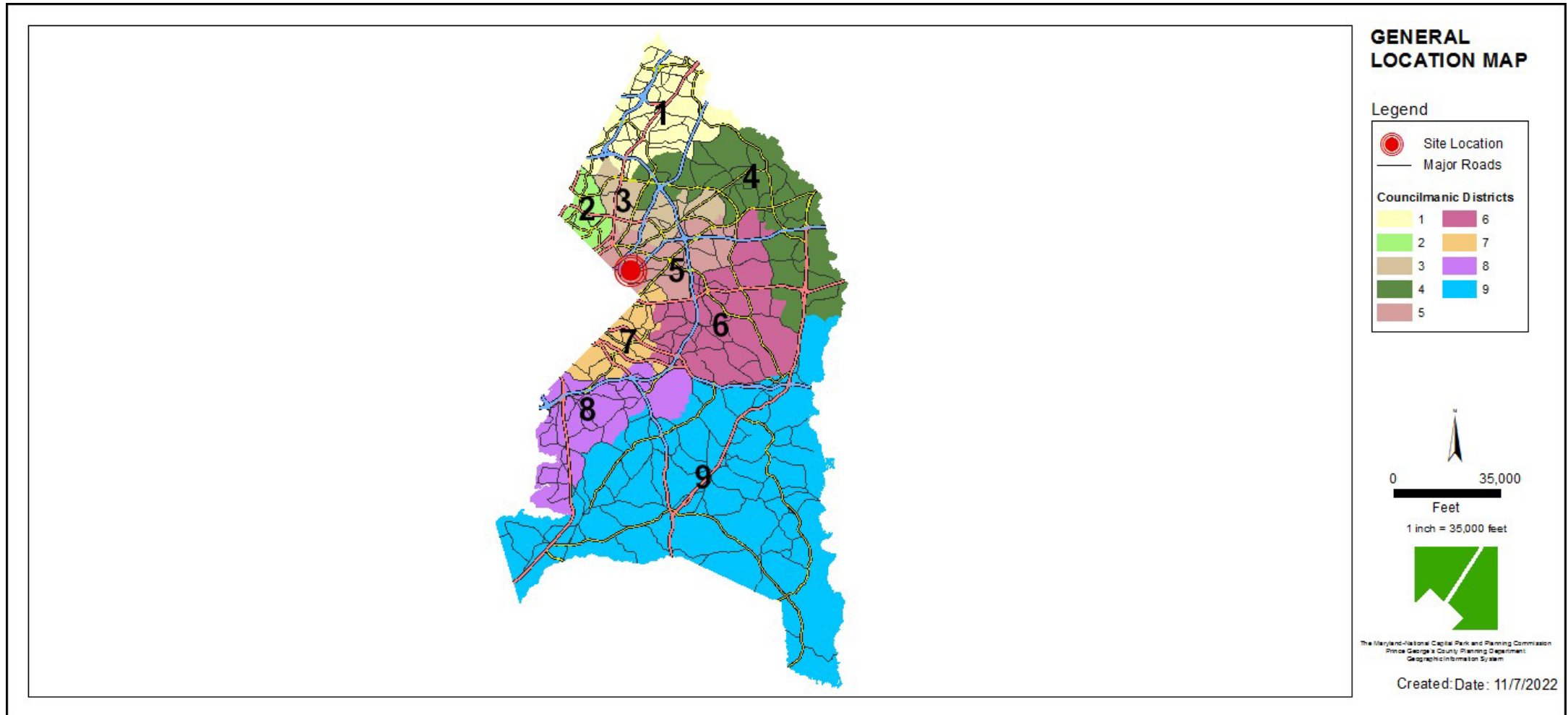
**Staff Recommendation: DISAPPROVAL**



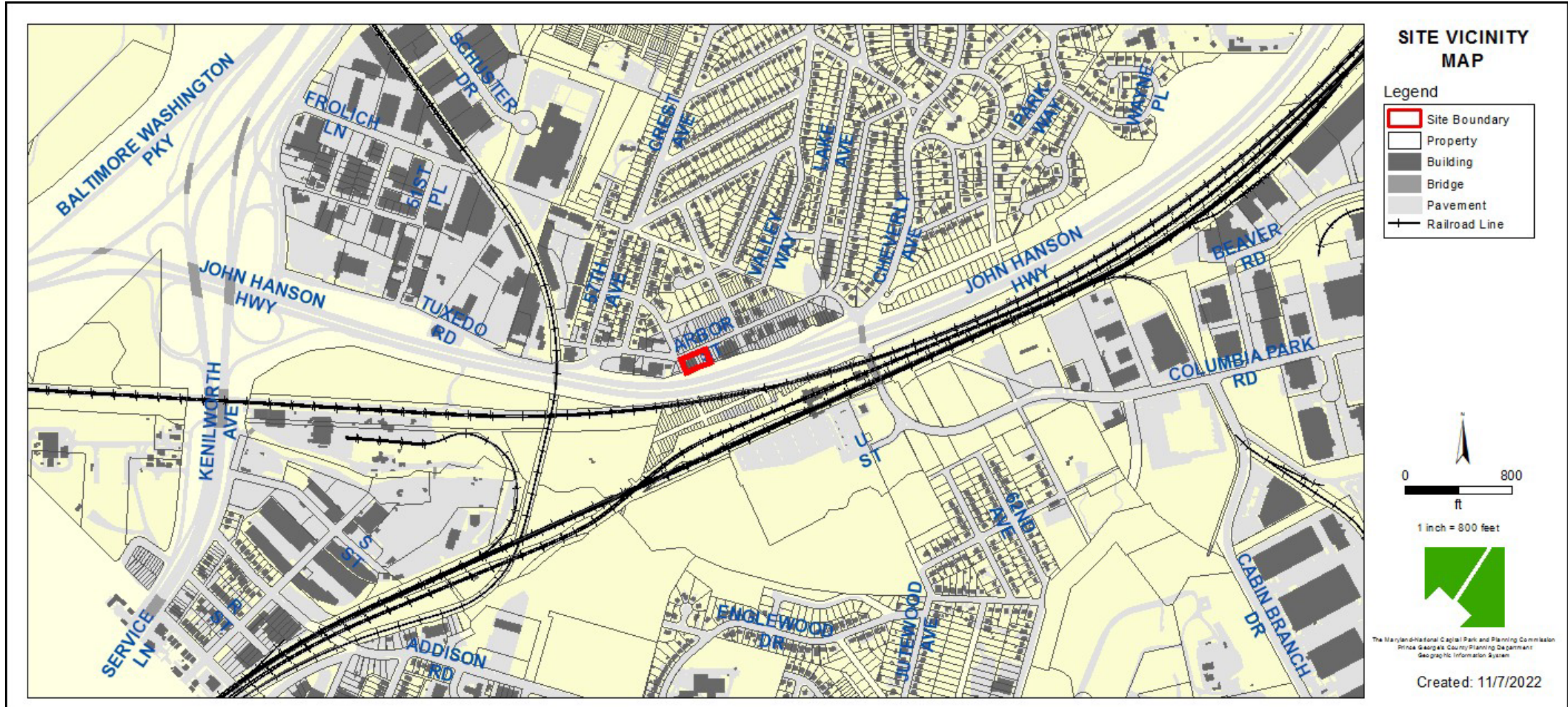
# GENERAL LOCATION MAP

Council District: 05

Planning Area: 69



# SITE VICINITY MAP

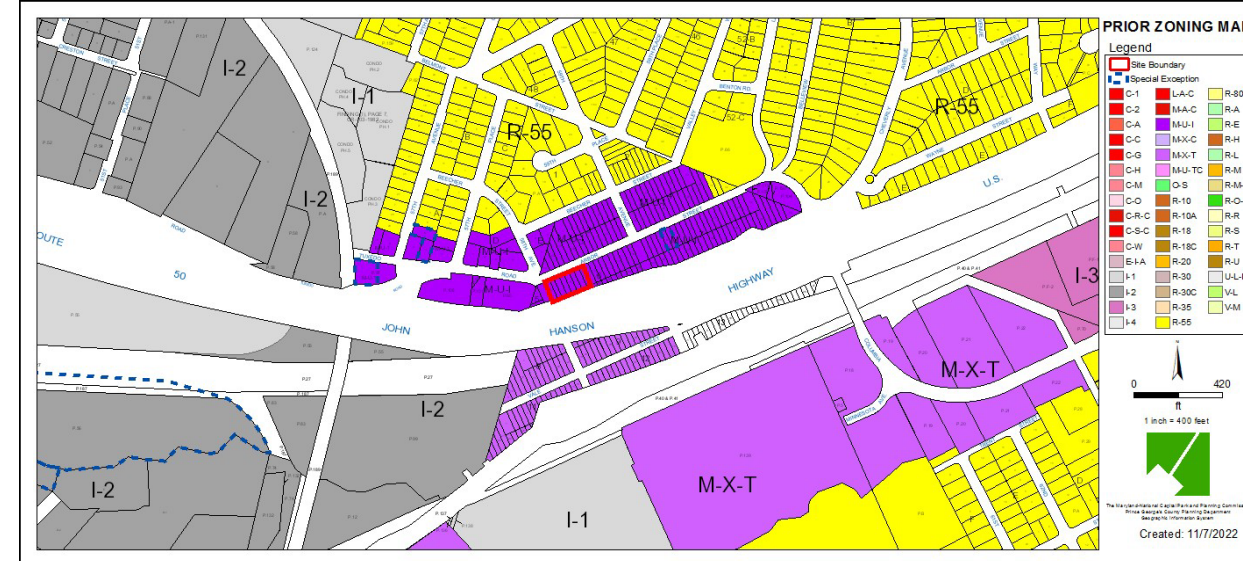
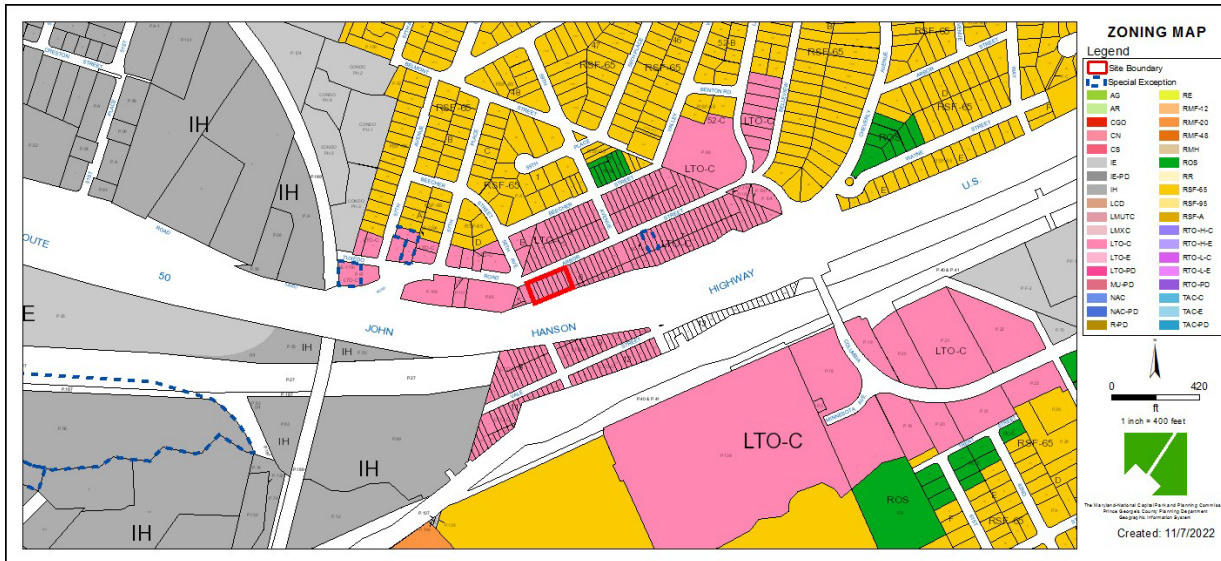


# ZONING MAP (CURRENT & PRIOR)

Property Zone: LTO-C  
 Prior Property Zone: M-U-I

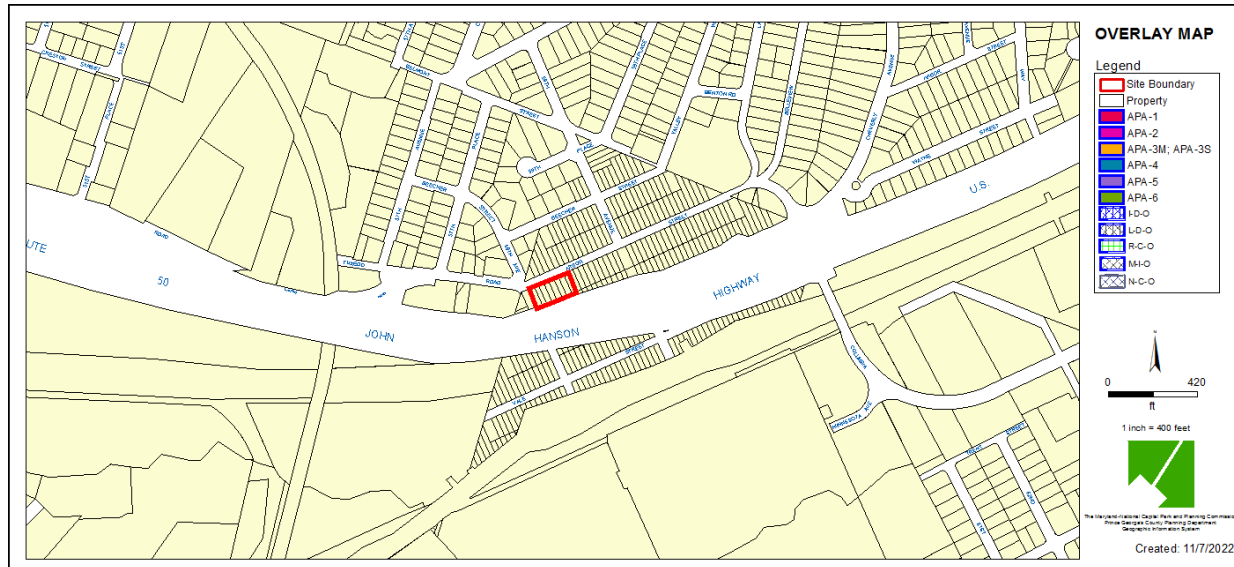
CURRENT ZONING MAP

PRIOR ZONING MAP

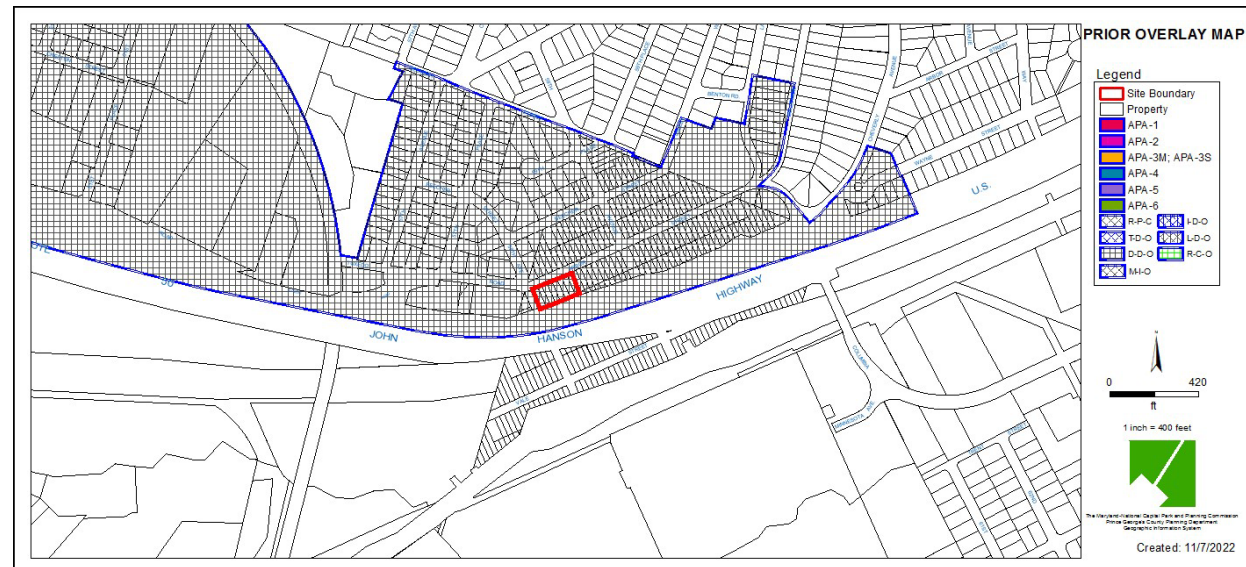


# OVERLAY MAP (CURRENT & PRIOR)

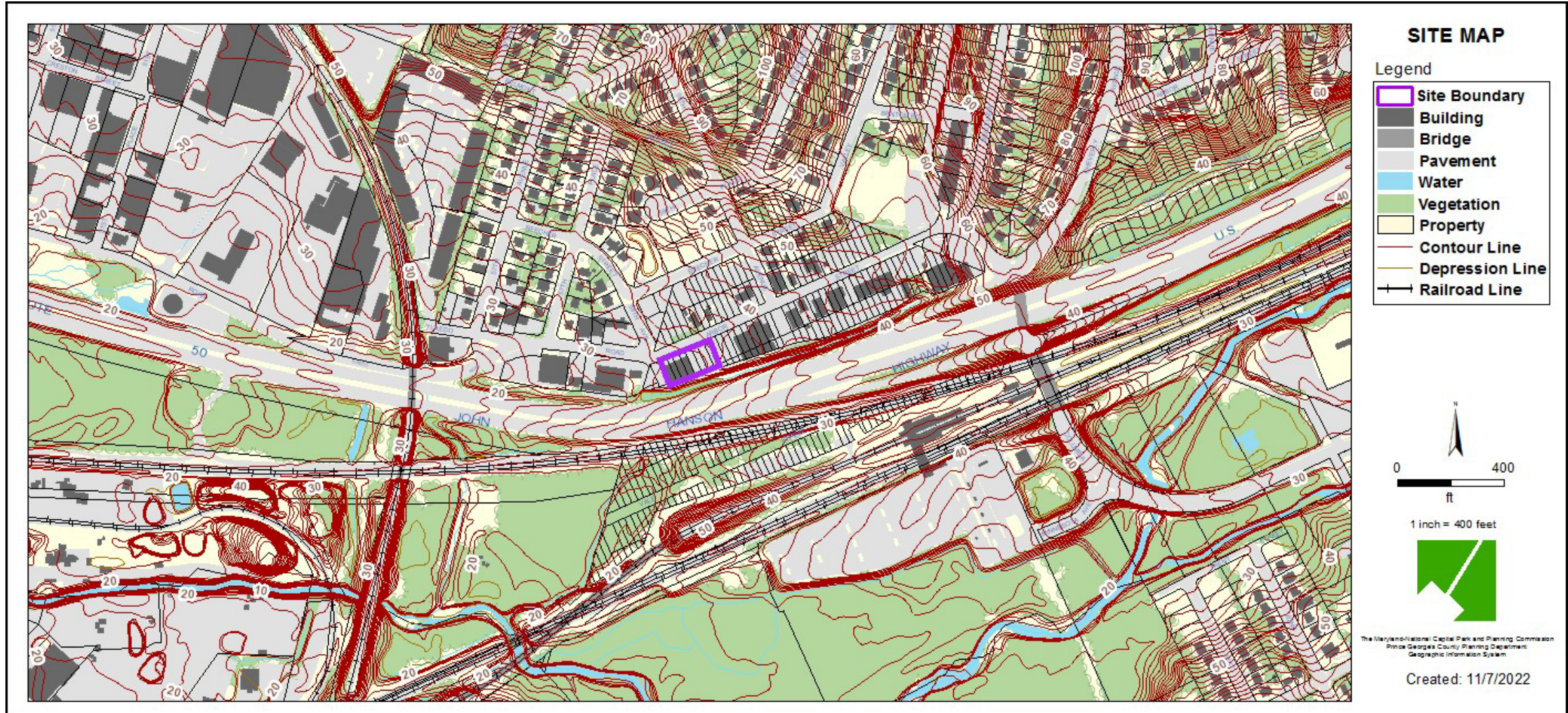
CURRENT OVERLAY MAP



PRIOR OVERLAY MAP

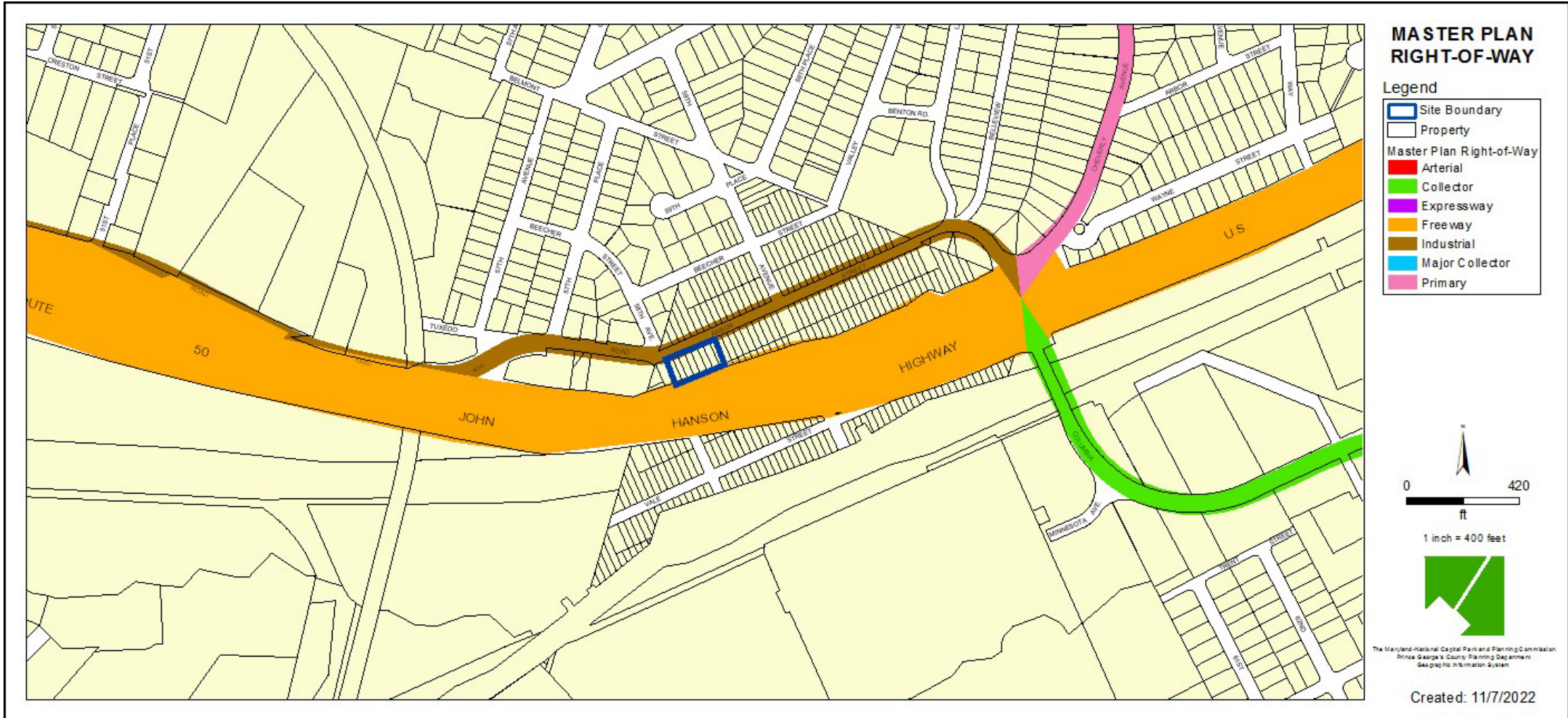


# SITE MAP





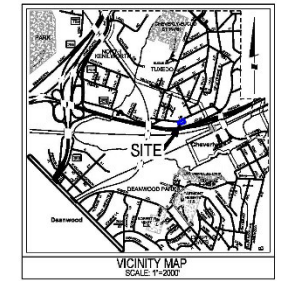
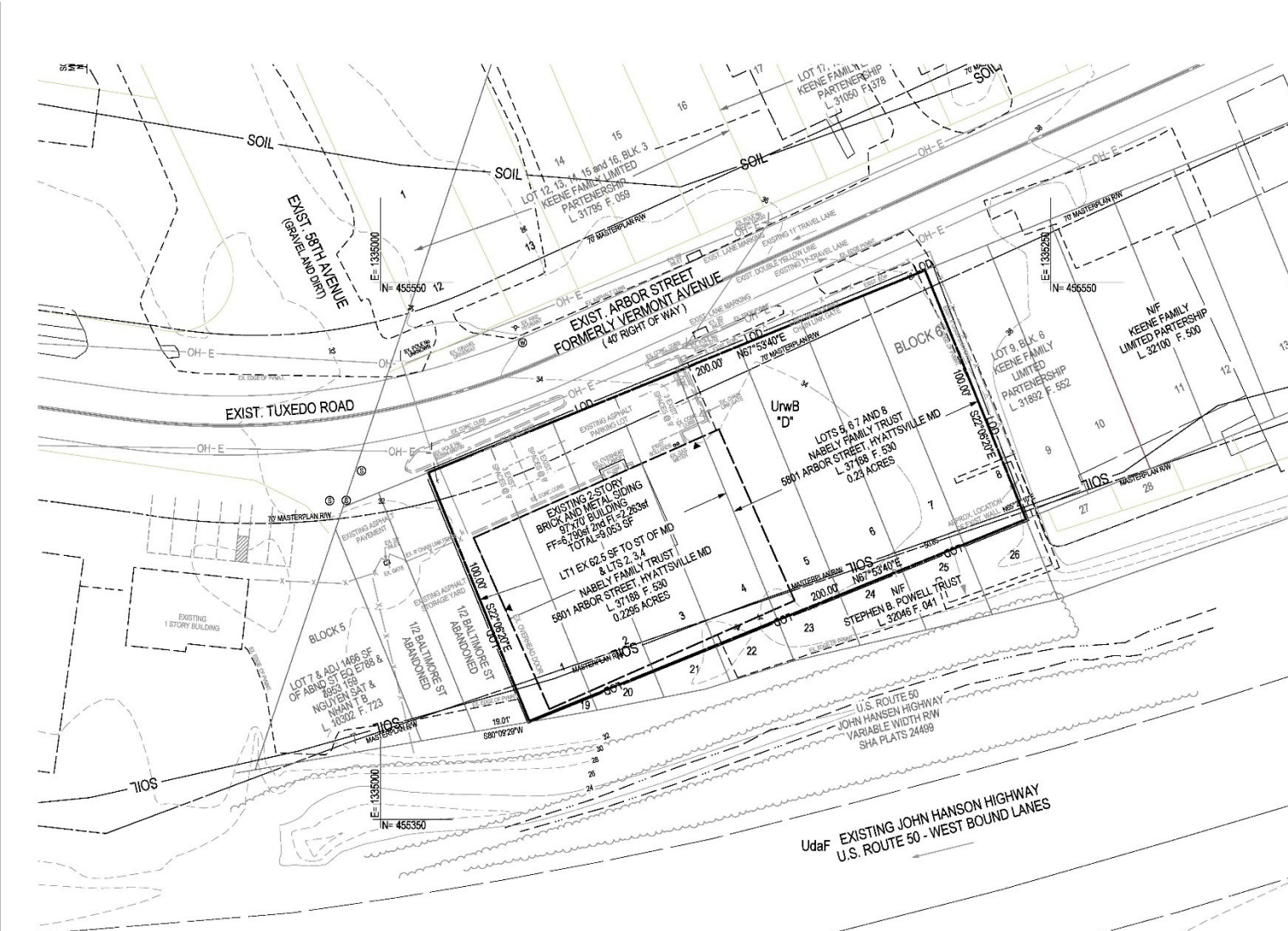
# MASTER PLAN RIGHT-OF-WAY MAP



# BIRD'S-EYE VIEW WITH APPROXIMATE SITE BOUNDARY OUTLINED



# DETAILED SITE PLAN



- GENERAL NOTES:
- PROJECT NAME: NABELY PROPERTY  
 PLAT BOOK AD2-0264  
 GROSS ACREAGE: 0.46  
 FLOODPLAIN ACREAGE:  
 NET ACREAGE: 0.46 ACRES
  - EXISTING ZONING: (NEW) LTO-C - LOCAL TRANSIT-ORIENTED CORE  
 (OLD) MUI - MULT USE INFILL
  - PROPOSED USE OF PROPERTY:  
 WHOLESALING OR DISTRIBUTION OF MATERIALS  
 USED OR PRODUCED ON THE PREMISES AND  
 CONTRACTORS OFFICE WITH OUTDOOR STORAGE.  
 NO ADDITIONAL GROSS FLOOR AREA IS PROPOSED.
  - EXISTING LOTS 1-8  
 PROPOSED LOTS: 0  
 PROPOSED PARCELS: 0  
 PROPOSED OUTLOTS: 0  
 PROPOSED OUTPARCELS: 0
  - PROPOSED DWELLING UNITS: N/A
  - GROSS FLOOR AREA (COMMERCIAL/INDUSTRIAL ONLY)  
 EXISTING: APPROX. 9,053 SF  
 PROPOSED:
  - WSSC SHEET: 203NE05  
 TAX MAP NUMBER/GRID: 58-F3  
 AVIATION POLICY AREA: N/A  
 MILITARY INSTALLATION OVERLAY ZONE (MIOZ): NO  
 WATER/SEWER CATEGORY DESIGNATION:  
 EXISTING: W-3 & S-3  
 PROPOSED: W-3 & S-3
  - STORMWATER MANAGEMENT CONCEPT N/A
  - 10-FOOT PUBLIC UTILITY EASEMENT ALONG ALL RIGHTS-OF-WAY: NO
  - MANDATORY PARK DEDICATION: N/A
  - NO CEMETERIES EXIST ON OR CONTIGUOUS TO PROPERTY.
  - NO HISTORIC SITES ON OR IN THE VICINITY OF THE PROPERTY.
  - THERE ARE NO STREAMS ON SITE.
  - THERE ARE NO WETLANDS ON SITE.
  - 100-YEAR FLOODPLAIN ON SITE: NO
  - SITE IS NOT WITHIN CHESAPEAKE BAY CRITICAL AREA.
  - SOURCE OF TOPOGRAPHY: PG GIS
  - APPLICANT: NABELY FAMILY TRUST  
 8316 ARDWICK ARDMORE ROAD  
 LANDOVER, MARYLAND 20785
  - PARKING TABLE:  
 ZONED: MUI  
 USE: WAREHOUSE  
 a. REQUIRED: 3 SPACES FOR FIRST 1,500 SF = 3 SPACES  
 1 SPACE FOR ADDITIONAL 1,500 SF = 5 SPACES  
 TOTAL SPACES REQUIRED: 8 SPACES  
 b. EXISTING: 9 SPACES

# FRONT BUILDING VIEW



# WESTWARD (LEFT) SIDE OF BUILDING VIEW



# REAR BUILDING VIEW



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# STAFF RECOMMENDATION

## DISAPPROVAL

### Major Issues:

- Does not meet the intent of the D-D-O Zone

### Applicant Required Mailings:

- Informational Mailing 11/23/2021
- Acceptance Mailing 9/14/2021

# O'Malley, Miles, Nylan & Gilmore, P.A.

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May 18, 2023

Ms. Dominique Lockhart  
M-NCPPC, Development Review Division  
County Administration Building  
Upper Marlboro, MD 20772

Re: 5801 Arbor Street; DSP-21032  
Revision to DSP

Dear Ms. Lockhart:

The purpose of this letter is to inform you that I am revising the above-referenced detailed site plan request regarding the uses proposed therein. This application is removing the request to amend the Table of Uses for the M-U-I/D-D-O Zone to allow: “contractor’s office with outdoor storage” at the subject location. Additionally, this application is narrowing the scope of the other requested use to: “wholesaling or distribution of **food or beverage** materials used or produced on the premises. The phrase “food or beverage” has been added.

The deletion of one requested use and modification to the other requested use is the result of lengthy discussions with the Town of Cheverly Planning Board and the Mayor and Town Council of Cheverly (Collectively, “Cheverly”). Cheverly has agreed to support the subject detailed site plan as amended, and it is my understanding that they will be showing support via referral.

Throughout this process Cheverly adamantly protected the vision espoused for the Arbor Street area as planned within the 2005 *Approved Tuxedo Road/Arbor Street/Cheverly Metro Sector Plan and Sectional Map Amendment* and the 2018 *Approved Greater Cheverly Sector Plan*. These plans envision a walkable, mixed-use community with various shops and residential dwellings. Cheverly did not believe the detailed site plan, as originally submitted, furthered this vision, and were unwilling to voice their support.

With the revised detailed site plan, the situation has changed. The Applicant believes that “wholesaling or distribution of food or beverage materials used or produced on the premises” conforms with this vision. In the interim, this detailed site plan will allow Sodibar, a long-time, locally owned business to remain operating in Prince George’s County—which it has since 1948—without impacting the growth and development of Arbor Street. Long term, the Subject Property would be able to encourage unique or attractiveness uses that catalyze the growth of Arbor Street.



5801 Arbor Street; DSP-21032

May 18, 2023

Page 2

Should Sodibar vacate the premises, this use could reasonably encompass a future coffee roastery, bakery, distillery or microbrewery. None of these wholesale uses are permitted under the Current Zoning Ordinance. The versatility afforded this revised use amendment ultimately persuaded Cheverly to support this application.

Thus, please find enclosed the following documents to effectuate the revision to DSP-21032:

1. Revised detailed site plan;
2. Revised statement of justification (red-lined); and
3. Revised statement of justification (clean)

Thank you very much for your time and attention to this matter. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Nathaniel Forman", written in a cursive style.

Nathaniel Forman

**IN RE:** **DETAILED SITE PLAN (DSP-21032)**

**APPLICANT:** Nabely Family Trust

**AGENT/  
CORRESPONDENT:** Lawrence N. Taub, Esquire  
Nathaniel Forman, Esquire  
O’Malley, Miles, Nysten & Gilmore, P.A.  
7850 Walker Drive, Suite 310  
Greenbelt, MD 20770

**AMENDED-REVISED STATEMENT OF JUSTIFICATION**

**I. REQUEST ..... 1**

**II. PROPERTY..... 2**

**III.REQUEST FOR APPROVAL UNDER THE PRIOR ZONING ORDINANCE ..... 4**

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    A. Conformance with § 27-548.26: ..... 5

    B. Conformance with § 27-546.19(c):..... 8

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**I. REQUEST**

The Applicant hereby requests approval of a Detailed Site Plan (“DSP”) to validate the existing “wholesaling or distribution of food or beverage materials used or produced on the premises” and ~~“contractor’s office with outdoor storage”~~ in accordance with Subtitle 27 of the Prince George’s Zoning Ordinance (“Zoning Ordinance”), on approximately 0.46 acres of land, which is located at 5801 Arbor Street, Hyattsville and shown as Lots 1-8, Block 6 of the Tuxedo Subdivision shown in Plat Book A, Plat No. 71 filed among the land records of Prince George’s County (“Subject Property” or “Property”). The Subject Property is located on the south side of Arbor Street, approximately 250 feet west of its intersection with 59<sup>th</sup> Avenue in an unincorporated part of Prince George’s County, but close to the corporate limits of the Town of Cheverly. It was zoned M-U-I/D-D-O through the *2005 Approved Tuxedo Road/Arbor Street/Cheverly Metro Sector Plan and Sectional Map Amendment* (“Tuxedo Road Sector Plan”), and within that Sector Plan, it is shown as being located within Subarea B. The Subject Property is bounded by nonconforming light industrial/commercial service uses in the M-U-I Zone to the west, north and east; and by John Hanson Highway (Route 50) to the south.<sup>1</sup> Although the

<sup>1</sup> As shown on the attached site plan, the actual southern boundary of the property consists of the remnants of Lots 20-26, Block B of the Tuxedo Subdivision that seem to have been created from the taking associated with the construction of John Hanson Highway (Route 50). The cumulative total of these lots amount to approximately 1,219

Subject Property was rezoned through the Tuxedo Road Sector Plan, in 2018, Prince George's County approved a new Master Plan for the area—the *Approved Greater Cheverly Sector Plan* ("Greater Cheverly Sector Plan"). However, no sectional map amendment was approved in conjunction with this plan given that a new Zoning Ordinance was pending approval at that time, and no properties were rezoned through the Greater Cheverly Sector Plan. For this reason, planning principles for this area are encompassed within the Greater Cheverly Sector Plan, but zoning is still controlled by the Tuxedo Road Sector Plan.

In accordance with § 27-548.26 of the Zoning Ordinance, the purpose of this detailed site plan application is to amend the Table of Uses for the M-U-I/D-D-O Zone within the Tuxedo Road Sector Plan to permit, at this location only, the existing "wholesaling or distribution of food or beverage materials used or produced on the premises" ~~and "contractor's office with outdoor storage"~~ uses to continue. No construction or improvements to the Property are proposed as part of this application—this application is solely to allow the existing users to continue their operations at this site. ~~This~~ ~~se~~ ~~uses~~ ~~were~~ ~~was~~ established following the adoption of the Tuxedo Road Sector Plan when the Applicant was unaware ~~this~~ ~~se~~ ~~uses~~ ~~were~~ ~~prohibited~~ upon the Subject Property.

## II. PROPERTY

Applicant purchased the Subject Property believing it could be used for industrial/service-commercial uses, based on its appearance and the neighboring uses. The Property is improved with an existing two-story brick and frame rectangular building consisting of 9,053 sq. ft. (6,790 sq. ft. on the first floor and 2,263 sq. ft. on the second floor) and associated areas for parking. Maryland Department of Assessment and Taxation shows the building was constructed in 1972, while aerial imagery confirms that the site was developed prior to 1977, and that there have been no noticeable changes since. Two tenants currently lease space within and without the building: Sodibar Systems Inc. ("Sodibar") and Chiaramonte Construction Company ("Chiaramonte"). The use permitted upon detailed site plan approval would be Sodibar, which occupies approximately 5,000 sq. ft. of the first floor. Sodibar has been in business since 1948 (although not at this location) serving Washington, Maryland, and Virginia with carbonated and juice beverage dispensing systems and equipment. Additionally, Sodibar distributes bag-n-box syrup containers that contain various syrups including, but not limited to Coca-Cola products and various juices. The bag-n-box syrup containers for juice are produced on-site. ~~Chiaramonte occupies the remainder of the first floor space (approximately 1,790 sq. ft.) of the building for office space and uses the parking area upon Lots 5-8 for the storage of construction equipment and materials in connection with its general contracting operation.~~ Two (2) six-foot high fences enclose the outdoor storage and parking areas in-used by Sodibar ~~and Chiaramonte~~. Parking for this site was based on "warehouse" pursuant to § 27-568 of the Zoning Ordinance. Utilizing these calculations, eight (8) parking spaces are required, and nine (9) are provided.

As mentioned previously, the Subject Property is in a predominantly light industrial/service-commercial area south and west of the corporate limits of the Town of Cheverly. This area was

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sq. ft. Some lots are owned by the Stephen B. Powell Trust, while ownership of the others is uncertain. Given that these lots are undevelopable, for purposes of this application, the proper southern boundary is John Hansen Highway (Route 50).

zoned C-M prior to adoption of the Tuxedo Road Sector Plan in 2005. Aerial imagery, shows that many properties along Arbor Street were developed in the 1960s and 1970s in a manner and style befitting light industrial/service-commercial users. Notwithstanding the organic development of Arbor Street, this area—including the Subject Property—was rezoned M-U-I/D-D-O in 2005 with the hope of transforming Arbor Street into a main street with retail accompanied and supported by residential and small office uses.<sup>2</sup> While a noble goal, the rezoning of the Arbor Street area has unfortunately not been the catalyst for redevelopment that the County had hoped. In the more than seventeen (17) years since the Tuxedo Road Sector Plan was adopted, no redevelopment of the area has occurred, or appears likely to occur. Since 2005, only a single development application has been approved, let alone filed, for any property within the M-U-I/D-D-O Zone. In 2006, DSP-05103 was approved to validate an existing auto storage yard for cars waiting to be repaired<sup>3</sup> in conjunction with an existing vehicle repair shop. This application, however, was reviewed in accordance with C-M Zone requirements, not the M-U-I Zone because it involved uses that were legally existing when the Tuxedo Road Sector Plan was adopted. Thus, even the single development application approved since 2005 avoided compliance with the M-U-I/D-D-O Zone regulations. Nevertheless, and despite this lack of success, the approved Greater Cheverly Sector Plan carried forward essentially identical planning goals and policies for this area as the Tuxedo Road Sector Plan as explained in greater detail in Section VI.A below.

The hurdle to redeveloping Arbor Street—and by extension the Subject Property—cannot be overcome through zoning alone, since zoning does not address the real obstacle to transforming this area—lot assemblage. This impairment was first acknowledged within the Tuxedo Road Sector Plan at the time of its adoption. Under “Issues” on page 23 of the Tuxedo Road Sector Plan, the first entry is “assembling and consolidating numerous small lots to facilitate redevelopment.” Thirteen (13) years later, within the Greater Cheverly Sector Plan, the assemblage of various properties along Arbor Street is not among the listed “Challenges” found on page 37, but parcel assembly to facilitate redevelopment along Arbor Street into a Local Transit Center is mentioned as part of Land Use Goal 2.2, which is found on Page 43 of the Greater Cheverly Sector Plan. The inclusion of land assembly as part of a land use goal in the 2018 plan is a clear indication that this impediment remains.

The fundamental obstacle to parcel assembly, at present, is the amount of capital necessary to assemble the various properties into one coherent development scheme, and given the passage of time—and the lack of any progress in this direction—it is quite clear that the market has not evolved to support the necessary assemblage. It is also clear that it is not economically viable to undertake piecemeal redevelopment of individual properties in accordance with the M-U-I/D-D-

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<sup>2</sup> Moreover, Change 10a of the Sector implemented the M-U-I zone believing that this zone was “appropriate for mixed-use development in accordance with the sector plan’s land use recommendation and General Plan recommendations for Community Centers.” The D-D-O Zone was superimposed pursuant to Change 10c of the Sector Plan to “achieve the General Plan goals to provide a pedestrian-oriented, human-scale environment that will enliven the sector area, provide a community-oriented town center, and offer flexible, easy-to accommodate opportunities for future economic growth and development.”

<sup>3</sup> PGCPB Resolution No. 06-177 (“Resolution”) states that the subject of DSP-05103 was zoned C-M, and that the request was reviewed in accordance with the requirements. According to the Resolution, a 2006 memo from the community planner stated that the site plan requirements of the Tuxedo Road Sector Plan were not applicable given that the existing uses were legal at the time of plan adoption.

O Zone regulations. Without a market to support the redevelopment that was hoped for, and with the development constraints imposed upon the properties in this area by the M-U-I/D-D-O zone, there has been little, if any, economic improvement within this area since the comprehensive rezoning seventeen (17) years ago. There is no reason to believe that this will be rectified by the planning goals espoused within the Greater Cheverly Sector Plan. Within the Greater Cheverly Sector Plan, Policy EP 2.1 on page 54 provides for conducting a feasibility study for commercial and residential mixed-use redevelopment potential along Arbor Street (as well as Tuxedo Road), while Policy EP 2.2—also on page 54—promotes establishing a Redevelopment Group comprised of local stakeholders and property owners to champion redevelopment in the area. To date, it does not appear that either policy has been, or will be implemented soon.

The Subject Property serves as a prime example of a negative impact from rezoning. The Applicant is unable to find tenant(s) to lease the Subject Property pursuant to the uses permitted by the Table of Uses for the M-U-I/D-D-O Zone. Moreover, redeveloping the Subject Property—at only a little less than a half-acre—as a “spec building” is likewise prohibitively expensive. Thus, at present, the only viable options for the Applicant are to allow the property to sit vacant and unproductive, or to occupy the space with illegal uses. In order to avoid this Solomonian choice, the Applicant is seeking a third option—amending the Table of Uses for the M-U-I/D-D-O Zone to allow a viable economic uses upon this property until such time as a market develops to support a coherent and comprehensive development scheme for Arbor Street.

The Applicant believes that “wholesaling or distribution of food or beverage materials used or produced on the premises” is an effective compromise between vision for the area and the economic reality. In the interim, this request will allow Sodibar, a long-time, locally owned business to remain operating in Prince George’s County—which it has since 1948—without impacting the growth and development of Arbor Street. Long term, the Subject Property would be able to encourage unique or attractiveness uses that catalyze the growth of Arbor Street. Should Sodibar vacate the premises, this use could reasonably encompass a future coffee roastery, bakery, distillery or microbrewery—all uses that would be a boon to the area.

### III. REQUEST FOR APPROVAL UNDER THE PRIOR ZONING ORDINANCE

Pursuant to § 27-1900 et seq. of the Current Zoning Ordinance, which took effect on April 1, 2022, an applicant is afforded the option to choose between the Current and Prior Zoning Ordinance until April 1, 2024 for review and approval. Although the applicant’s choice cannot be denied, if the applicant requests review and approval under the Current Zoning Ordinance, the applicant must provide the basis for the decision. Pursuant to Section 27-1903 (c) of the Zoning Ordinance, the applicant is choosing to develop under the prior zoning due to the M-U-I/D-D-O Zone allowing amendments to the Table of Uses through the detailed site plan process.

### IV. AMENDMENT TO THE TABLE OF USES

Pursuant to § 27-548.26 of the Zoning Ordinance, the Applicant hereby requests an amendment to the *2005 Approved Tuxedo Road/Arbor Street/Cheverly Metro Sector Plan and Sectional Map Amendment* Table of Uses for the M-U-I/D-D-O Zone to add the following uses at this location:

1. “Wholesaling or distribution of materials used or produced on the premises”~~;~~~~and~~

~~“Contractor’s office with outdoor storage.”~~

## V. CONFORMANCE WITH SUBMITTAL REQUIREMENTS

As set forth on page 86 of the Tuxedo Road Sector Plan, the submittal requirements for detailed site plan applications within Subarea B are the same as those required by Part 3, Division 9 of the Zoning Ordinance. Furthermore, all detailed site plan applications must include architectural elevations in conformance with building design standards, as well as demonstration that development conforms with all applicable design regulations. However, legally existing development is exempt from development district standards pursuant to Page 85 of the Sector Plan. Because no site improvements are proposed as part of this detailed site plan, and prior Use and Occupancy permits were issued for this property (most recently in 2002 under Use and Occupancy Permit No.: 42275-2002), this development is exempt from the development district standards.

## VI. CONFORMANCE WITH THE ZONING ORDINANCE

### A. Conformance with § 27-548.26:

This Detailed Site Plan application to revise the Table of Uses for the M-U-I/D-D-O Zone conforms to § 27-548.26 for the reasons discussed in greater detail below:

#### (b) Property Owner

- (1) Notwithstanding the provisions of subsection (a), above, a property owner may request that the District Council amend development requirements for the owner's property, as follows:

...

- (B) An owner of property in the Development District may request changes to the underlying zones or the list of allowed uses, as modified by the Development District Standards.

- (i) A request for changes to the underlying zone or list of allowed uses may include requested amendments to the applicable Development District Standards for the applicable D-D-O Zone.
- (ii) In determining whether to approve such amendments to the Development District Standards, the District Council shall find that the amended standards will benefit the proposed development, will further the purposes of the applicable Development District, and will not substantially impair implementation of any applicable Master Plan or Sector Plan.

- (2) The owner’s application shall include:

- (A) A statement showing that the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan;

- (B) A description of any requested amendments to the Development District Standards applicable to a qualifying development proposal; and
- (C) A site plan, either the Detailed Site Plan required by Section 27-548.25 or a Conceptual Site Plan.

*As mentioned previously, no new development or site improvements are proposed as part of this detailed site plan request. Therefore, in accordance with Page 85 of the Tuxedo Road Sector Plan, it is exempt from development district standards. The sole purpose of this application is to amend the Table of Uses for the M-U-I/D-D-O Zone to permit wholesaling or distribution of food or beverage materials used or produced on the premises. ~~and contractor's office with outdoor storage at this location.~~*

*Regarding conformance with the purposes and recommendations for the development district as outlined in the controlling Master or Sector Plan, the Applicant respectfully submits that the land use goals espoused by the Greater Cheverly Sector Plan—which is substantially similar to the Tuxedo Road Sector Plan that came before it—for the Subject Property are untenable, and were implemented without the necessary infrastructure (as recognized by the two Sector Plans) to spur change. For this reason, the Applicant submits that it is unreasonable to bar a viable uses upon the Subject Property. especially a use that will not hinder growth or redevelopment of the Arbor Street area. :-*

*The Tuxedo Road Sector Plan was approved in 2005 with the goal of transforming the existing industrial and service-commercial properties within a ¼ mile radius of the Cheverly Metro Station that developed between the 1960's and 70's into a "mixed-use main street infill" transit-oriented development. Of import to the subject application, the Tuxedo Road Sector Plan rezoned properties along Arbor Street to the M-U-I Zone and superimposed the Development District Overlay (D-D-O) Zone with the belief that these zones would catalyze the transformation of the area into a mixture of office, retail, residential, civic and commercial uses. But, over seventeen (17) years later, this grandiose vision has not even begun, let alone come to fruition. Despite espousing an ambitious redevelopment plan for the Arbor Street area, the Tuxedo Road Sector Plan is nevertheless cognizant of the barriers to said redevelopment. The first entry under both "Issues" and "Land Use and Zoning Recommendations" on Page 23 of the Sector Plan acknowledges that redevelopment will require assembling and consolidating the small lots along Arbor Street to facilitate redevelopment. Moreover, Objective 1 on Page 23 summarizes the action plan: "make incremental land use changes as market factors change, buildings are rehabilitated, public infrastructure is improved, properties are assembled, and adjacent subareas are developed. . . Existing uses are expected to continue until*

*redevelopment occurs.” However, market demand did not develop, incremental land use changes were not made to the Arbor Street Area, and there has been no property assemblage in this area since the approval of the M-U-I/D-D-O Zone through this Sector Plan.*

*The Greater Cheverly Sector Plan was approved in 2018 and carried forward substantially similar land use goals for the Subject Property originally established in the Tuxedo Road Sector Plan. Policy LU 2.2, on page 43: “facilitate parcel assembly from east of the CSX Railroad tracks along MD 459 (Tuxedo Road and Arbor Street) to encourage redevelopment in the Local Transit Center and implement the vision of a walkable main street.” Policy UD 5, on page 108: “support the evolution of MD 459 (Arbor Street and Tuxedo Road) between Cheverly Avenue and the CSX Railroad bridge into a pedestrian-oriented, mixed-use new Main Street destination.” Policy UD 6, on page 109 continues this goal: “encourage the revitalization of MD 459 (Tuxedo Road) into a pedestrian-oriented, mixed-use retail destination with improved street design to support the establishment of a new street along MD 459 (Arbor) leading to, and within, the Town of Cheverly.”*

*The only real change from the Tuxedo Road Plan to the Greater Cheverly Sector Plan is that the latter seems unwilling to explicitly acknowledge the existing hurdles that continue to frustrate redevelopment since the M-U-I/D-D-O Zone was imposed. Instead, the Greater Cheverly Sector Plan only hints at these obstacles when promulgating policy. Policy such as Policy EP 2 on page 51: “create the social and physical infrastructure to support mixed-use development along MD 459 (Tuxedo Road and Arbor Street).” Additionally, Policy EP 2.1 on page 54, states: “conduct a feasibility study for commercial and residential mixed-use redevelopment potential along Arbor Street (as well as Tuxedo Road),” and Policy EP 2.2—also on page 54—to “establish a Redevelopment Group comprised of local stakeholders and property owners to champion redevelopment in the area.” No context is given for why parcel assembly would be necessary or why this particular area should have a Redevelopment Group to champion redevelopment. The lost subtext is that in this instance zoning alone has been insufficient to spur redevelopment*

*Unless, and until, the required assemblage occurs, there are no economically viable uses within the M-U-I/D-D-O Zone in this Sector Plan to occupy the Subject Property, nor is it reasonable for the Applicant to transform the only property he controls—at a little less than half an acre—into the type of development envisioned by the Tuxedo Road Sector Plan and the Greater Cheverly Sector Plan. Approval of the subject application will allow the Subject Property to continue to be economically viable, at least until such time that a large-scale assemblage could occur. This request is aligned with the Tuxedo Road Sector Plan’s acknowledgement that incremental changes will occur when “[there are]*



*market factor changes, buildings are rehabilitated, public infrastructure is improved, properties are assembled, and adjacent subareas are developed.”*

*This request is merely to allow the owner of the Subject Property to maintain the economic viability of this property until such time as said forces coalesce and drive change. For these reasons, the subject application does not substantially impair the implementation of either the Tuxedo Road Sector Plan nor the Greater Cheverly Sector Plan.*

*Finally, although the specific vision for the Subject Property espoused by the 2018 Greater Cheverly Sector Plan is untenable for the reasons discussed previously, other objectives and goals in general related to industrial uses within the Greater Cheverly Sector Plan are satisfied by the subject application. On page 19 of the Greater Cheverly Plan regarding the state of existing industrial areas: “industrial uses in the sector plan area have been vital and viable for over a century.” Moreover, the present state of existing industrial properties is a specific challenge to revitalization of the plan area, which is from page 37: “vacant and underutilized industrial properties are unattractive and show signs of deferred maintenance”. Policy EP 5.5 is to “coordinate economic revitalization and urban design strategies in the industrial area.” The retention of ~~this industrial uses on the Subject Property~~ will prevent the proliferation of vacant industrial properties along Arbor Street that diminish the economic viability of the entire area. Permitting the ~~is~~ is uses will also create economic incentives for the applicant to maintain his property in a good condition. For this reason, the subject application conforms with the goals and principles of the Greater Cheverly Sector Plan as it relates to industrial property.*

**B. Conformance with § 27-546.19(c):**

The Planning Board may not approve a detailed site plan in the M-U-I Zone unless the owner demonstrates conformance with enumerated criteria. For the reasons described in greater detail below, the subject application conforms to the requirements under § 27-546.19(c):

- (1) The site plan meets all approval requirements in Part 3, Division 9;

*The site plan is in accordance with approval requirements in Part 3, Division 9 of the Zoning Ordinance.*

- (2) All proposed uses meet applicable development standards approved within the Master Plan, Sector Plan, Transit District Development Plan, or other applicable plan;

*The Subject Property is exempt from development district standards since the existing improvements pre-dated the Sector Plan, and no new improvements are proposed.*

- (3) Proposed uses on the property will be compatible with one another;

*The requested wholesaling or distribution of food or beverage materials used or produced on the premises ~~, and contractor's office with outdoor storage uses~~ will be compatible with the existing light industrial/service-commercial uses along Arbor Street.*

- (4) Proposed uses will be compatible with existing or approved future development on adjacent properties and an applicable Transit or Development District or Development District; and

*The proposed wholesaling or distribution of food or beverage materials used or produced on the premises ~~and contractor's office with outdoor storage~~ upon the Subject Property will be compatible with existing or approved future development on adjacent properties. As mentioned above, the proposed uses are compatible with the existing development on adjacent properties, and the redevelopment of Arbor Street will require assembling the various lots into a coordinated development scheme. Even if some properties in the area were to undergo piecemeal redevelopment the requested use would permit a myriad of uses compatible with a walkable, urban environment, to wit: coffee roastery, bakery, distillery or microbrewery.*

- (5) Compatibility standards and practices set forth below will be followed, or the owner shows why they should not be applied:

- (A) Proposed buildings should be compatible in size, height, and massing to buildings on adjacent properties;

*No buildings are proposed.*

- (B) Primary facades and entries should face adjacent streets or public walkways and be connected by on-site walkways, so pedestrians may avoid crossing parking lots and driveways;

*The primary façade of the existing building faces north towards Arbor Street. There are no sidewalks along Arbor Street, and pedestrian access is not envisioned for this location.*

- (C) Site design should minimize glare, light, and other visual intrusions into and impacts on yards, open areas, and building facades on adjacent properties;

*No site improvements are proposed.*

- (D) Building materials and color should be similar to materials and color on adjacent properties and in the surrounding neighborhoods, or building design should incorporate scaling, architectural detailing, or similar techniques to enhance compatibility;

*No site improvements or modifications to the existing building are proposed.*

- (E) Outdoor storage areas and mechanical equipment should be located and screened to minimize visibility from adjacent properties and public streets;

*Outdoor storage areas on the east and west side of the property are enclosed with an existing six-foot high chain link fence.*

- (F) Signs should conform to applicable Development District Standards or to those in Part 12, unless the owner shows that its proposed signage program meets goals and objectives in applicable plans; and

*No signs are proposed as part of this application.*

- (G) The owner or operator should minimize adverse impacts on adjacent properties and the surrounding neighborhood by appropriate setting of:

- (i) Hours of operation or deliveries;
- (ii) Location of activities with potential adverse impacts;
- (iii) Location and use of trash receptacles;
- (iv) Location of loading and delivery spaces;
- (v) Light intensity and hours of illumination; and
- (vi) Location and use of outdoor vending machines.

*Given the light industrial/service-commercial nature of surrounding uses, it is not anticipated that ~~thi~~these uses will have any impact, let alone, negative impact. Storage and parking -areas ~~on~~ on either side of the building about ~~other~~ other outdoor storage and parking areas on abutting properties. Dumpsters are located within the storage areas and away from Arbor Street.*

## VII. CONCLUSION

For all of the above-stated reasons, the Applicant respectfully requests approval of the proposed Detailed Site Plan to add the uses of “wholesaling or distribution of food or beverage materials used or produced on the premises”, ~~and “contractor’s office with outdoor storage”~~ to the Table of Uses for the M-U-I/D-D-O Zone, as set forth in the Sector Plan in accordance with Subtitle 27 of the Prince George’s Zoning Ordinance.

Respectfully submitted,

O’MALLEY, MILES, NYLEN & GILMORE, P.A.

By:



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Lawrence N. Taub, Esquire



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Nathaniel Forman, Esquire  
7850 Walker Drive, Suite 310  
Greenbelt, MD 20770  
301-572-3248

*Attorneys for Applicant*



**IN RE:** **DETAILED SITE PLAN (DSP-21032)**

**APPLICANT:** Nabely Family Trust

**AGENT/  
CORRESPONDENT:** Lawrence N. Taub, Esquire  
Nathaniel Forman, Esquire  
O’Malley, Miles, Nylen & Gilmore, P.A.  
7850 Walker Drive, Suite 310  
Greenbelt, MD 20770

**REVISED STATEMENT OF JUSTIFICATION**

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**III.REQUEST FOR APPROVAL UNDER THE PRIOR ZONING ORDINANCE ..... 4**

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**VI.CONFORMANCE WITH THE ZONING ORDINANCE ..... 5**

    A. Conformance with § 27-548.26: ..... 5

    B. Conformance with § 27-546.19(c):..... 8

**VII. CONCLUSION..... 10**

**I. REQUEST**

The Applicant hereby requests approval of a Detailed Site Plan (“DSP”) to validate the existing “wholesaling or distribution of food or beverage materials used or produced on the premises” in accordance with Subtitle 27 of the Prince George’s Zoning Ordinance (“Zoning Ordinance”), on approximately 0.46 acres of land, which is located at 5801 Arbor Street, Hyattsville and shown as Lots 1-8, Block 6 of the Tuxedo Subdivision shown in Plat Book A, Plat No. 71 filed among the land records of Prince George’s County (“Subject Property” or “Property”). The Subject Property is located on the south side of Arbor Street, approximately 250 feet west of its intersection with 59<sup>th</sup> Avenue in an unincorporated part of Prince George’s County, but close to the corporate limits of the Town of Cheverly. It was zoned M-U-I/D-D-O through the *2005 Approved Tuxedo Road/Arbor Street/Cheverly Metro Sector Plan and Sectional Map Amendment* (“Tuxedo Road Sector Plan”), and within that Sector Plan, it is shown as being located within Subarea B. The Subject Property is bounded by nonconforming light industrial/commercial service uses in the M-U-I Zone to the west, north and east; and by John Hanson Highway (Route 50) to the south.<sup>1</sup> Although the Subject Property was rezoned through the Tuxedo Road Sector

<sup>1</sup> As shown on the attached site plan, the actual southern boundary of the property consists of the remnants of Lots 20-26, Block B of the Tuxedo Subdivision that seem to have been created from the taking associated with the construction of John Hanson Highway (Route 50). The cumulative total of these lots amount to approximately 1,219 sq. ft. Some lots are owned by the Stephen B. Powell Trust, while ownership of the others is uncertain. Given that

Plan, in 2018, Prince George’s County approved a new Master Plan for the area—the *Approved Greater Cheverly Sector Plan* (“Greater Cheverly Sector Plan”). However, no sectional map amendment was approved in conjunction with this plan given that a new Zoning Ordinance was pending approval at that time, and no properties were rezoned through the Greater Cheverly Sector Plan. For this reason, planning principles for this area are encompassed within the Greater Cheverly Sector Plan, but zoning is still controlled by the Tuxedo Road Sector Plan.

In accordance with § 27-548.26 of the Zoning Ordinance, the purpose of this detailed site plan application is to amend the Table of Uses for the M-U-I/D-D-O Zone within the Tuxedo Road Sector Plan to permit, at this location only, the existing “wholesaling or distribution of food or beverage materials used or produced on the premises” use to continue. No construction or improvements to the Property are proposed as part of this application—this application is solely to allow the existing users to continue their operations at this site. This use was established following the adoption of the Tuxedo Road Sector Plan when the Applicant was unaware this use was prohibited upon the Subject Property.

## II. PROPERTY

Applicant purchased the Subject Property believing it could be used for industrial/service-commercial uses, based on its appearance and the neighboring uses. The Property is improved with an existing two-story brick and frame rectangular building consisting of 9,053 sq. ft. (6,790 sq. ft. on the first floor and 2,263 sq. ft. on the second floor) and associated areas for parking. Maryland Department of Assessment and Taxation shows the building was constructed in 1972, while aerial imagery confirms that the site was developed prior to 1977, and that there have been no noticeable changes since. Two tenants currently lease space within and without the building: Sodibar Systems Inc. (“Sodibar”) and Chiaramonte Construction Company (“Chiaramonte”). The use permitted upon detailed site plan approval would be Sodibar, which occupies approximately 5,000 sq. ft. of the first floor. Sodibar has been in business since 1948 (although not at this location) serving Washington, Maryland, and Virginia with carbonated and juice beverage dispensing systems and equipment. Additionally, Sodibar distributes bag-n-box syrup containers that contain various syrups including, but not limited to Coca-Cola products and various juices. The bag-n-box syrup containers for juice are produced on-site. Two (2) six-foot high fences enclose the outdoor storage and parking areas used by Sodibar. Parking for this site was based on “warehouse” pursuant to § 27-568 of the Zoning Ordinance. Utilizing these calculations, eight (8) parking spaces are required, and nine (9) are provided.

As mentioned previously, the Subject Property is in a predominantly light industrial/service-commercial area south and west of the corporate limits of the Town of Cheverly. This area was zoned C-M prior to adoption of the Tuxedo Road Sector Plan in 2005. Aerial imagery, shows that many properties along Arbor Street were developed in the 1960s and 1970s in a manner and style befitting light industrial/service-commercial users. Notwithstanding the organic development of Arbor Street, this area—including the Subject Property—was rezoned M-U-I/D-D-O in 2005 with the hope of transforming Arbor Street into a main street with retail

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these lots are undevelopable, for purposes of this application, the proper southern boundary is John Hansen Highway (Route 50).

accompanied and supported by residential and small office uses.<sup>2</sup> While a noble goal, the rezoning of the Arbor Street area has unfortunately not been the catalyst for redevelopment that the County had hoped. In the more than seventeen (17) years since the Tuxedo Road Sector Plan was adopted, no redevelopment of the area has occurred, or appears likely to occur. Since 2005, only a single development application has been approved, let alone filed, for any property within the M-U-I/D-D-O Zone. In 2006, DSP-05103 was approved to validate an existing auto storage yard for cars waiting to be repaired<sup>3</sup> in conjunction with an existing vehicle repair shop. This application, however, was reviewed in accordance with C-M Zone requirements, not the M-U-I Zone because it involved uses that were legally existing when the Tuxedo Road Sector Plan was adopted. Thus, even the single development application approved since 2005 avoided compliance with the M-U-I/D-D-O Zone regulations. Nevertheless, and despite this lack of success, the approved Greater Cheverly Sector Plan carried forward essentially identical planning goals and policies for this area as the Tuxedo Road Sector Plan as explained in greater detail in Section VI.A below.

The hurdle to redeveloping Arbor Street—and by extension the Subject Property—cannot be overcome through zoning alone, since zoning does not address the real obstacle to transforming this area—lot assemblage. This impairment was first acknowledged within the Tuxedo Road Sector Plan at the time of its adoption. Under “Issues” on page 23 of the Tuxedo Road Sector Plan, the first entry is “assembling and consolidating numerous small lots to facilitate redevelopment.” Thirteen (13) years later, within the Greater Cheverly Sector Plan, the assemblage of various properties along Arbor Street is not among the listed “Challenges” found on page 37, but parcel assembly to facilitate redevelopment along Arbor Street into a Local Transit Center is mentioned as part of Land Use Goal 2.2, which is found on Page 43 of the Greater Cheverly Sector Plan. The inclusion of land assembly as part of a land use goal in the 2018 plan is a clear indication that this impediment remains.

The fundamental obstacle to parcel assembly, at present, is the amount of capital necessary to assemble the various properties into one coherent development scheme, and given the passage of time—and the lack of any progress in this direction—it is quite clear that the market has not evolved to support the necessary assemblage. It is also clear that it is not economically viable to undertake piecemeal redevelopment of individual properties in accordance with the M-U-I/D-D-O Zone regulations. Without a market to support the redevelopment that was hoped for, and with the development constraints imposed upon the properties in this area by the M-U-I/D-D-O zone, there has been little, if any, economic improvement within this area since the comprehensive rezoning seventeen (17) years ago. There is no reason to believe that this will be rectified by the planning goals espoused within the Greater Cheverly Sector Plan. Within the Greater Cheverly

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<sup>2</sup> Moreover, Change No.: 10a of the Sector implemented the M-U-I zone believing that this zone was “appropriate for mixed-use development in accordance with the sector plan’s land use recommendation and General Plan recommendations for Community Centers.” The D-D-O Zone was superimposed pursuant to Change 10c of the Sector Plan to “achieve the General Plan goals to provide a pedestrian-oriented, human-scale environment that will enliven the sector area, provide a community-oriented town center, and offer flexible, easy-to accommodate opportunities for future economic growth and development.”

<sup>3</sup> PGCPB Resolution No. 06-177 (“Resolution”) states that the subject of DSP-05103 was zoned C-M, and that the request was reviewed in accordance with the requirements. According to the Resolution, a 2006 memo from the community planner stated that the site plan requirements of the Tuxedo Road Sector Plan were not applicable given that the existing uses were legal at the time of plan adoption.



Sector Plan, Policy EP 2.1 on page 54 provides for conducting a feasibility study for commercial and residential mixed-use redevelopment potential along Arbor Street (as well as Tuxedo Road), while Policy EP 2.2—also on page 54—promotes establishing a Redevelopment Group comprised of local stakeholders and property owners to champion redevelopment in the area. To date, it does not appear that either policy has been, or will be implemented soon.

The Subject Property serves as a prime example of a negative impact from rezoning. The Applicant is unable to find tenant(s) to lease the Subject Property pursuant to the uses permitted by the Table of Uses for the M-U-I/D-D-O Zone. Moreover, redeveloping the Subject Property—at only a little less than a half-acre—as a “spec building” is likewise prohibitively expensive. Thus, at present, the only viable options for the Applicant are to allow the property to sit vacant and unproductive, or to occupy the space with illegal uses. In order to avoid this Solomonic choice, the Applicant is seeking a third option—amending the Table of Uses for the M-U-I/D-D-O Zone to allow a viable economic use upon this property until such time as a market develops to support a coherent and comprehensive development scheme for Arbor Street.

The Applicant believes that “wholesaling or distribution of food or beverage materials used or produced on the premises” is an effective compromise between vision for the area and the economic reality. In the interim, this request will allow Sodibar, a long-time, locally owned business to remain operating in Prince George’s County—which it has since 1948—without impacting the growth and development of Arbor Street. Long term, the Subject Property would be able to encourage unique or attractiveness uses that catalyze the growth of Arbor Street. Should Sodibar vacate the premises, this use could reasonably encompass a future coffee roastery, bakery, distillery or microbrewery—all uses that would be a boon to the area.

### **III. REQUEST FOR APPROVAL UNDER THE PRIOR ZONING ORDINANCE**

Pursuant to § 27-1900 et seq. of the Current Zoning Ordinance, which took effect on April 1, 2022, an applicant is afforded the option to choose between the Current and Prior Zoning Ordinance until April 1, 2024 for review and approval. Although the applicant’s choice cannot be denied, if the applicant requests review and approval under the Current Zoning Ordinance, the applicant must provide the basis for the decision. Pursuant to Section 27-1903 (c) of the Zoning Ordinance, the applicant is choosing to develop under the prior zoning due to the M-U-I/D-D-O Zone allowing amendments to the Table of Uses through the detailed site plan process.

### **IV. AMENDMENT TO THE TABLE OF USES**

Pursuant to § 27-548.26 of the Zoning Ordinance, the Applicant hereby requests an amendment to the *2005 Approved Tuxedo Road/Arbor Street/Cheverly Metro Sector Plan and Sectional Map Amendment* Table of Uses for the M-U-I/D-D-O Zone to add the following use at this location:

1. “Wholesaling or distribution of materials used or produced on the premises”

### **V. CONFORMANCE WITH SUBMITTAL REQUIREMENTS**

As set forth on page 86 of the Tuxedo Road Sector Plan, the submittal requirements for detailed site plan applications within Subarea B are the same as those required by Part 3, Division 9 of

the Zoning Ordinance. Furthermore, all detailed site plan applications must include architectural elevations in conformance with building design standards, as well as demonstration that development conforms with all applicable design regulations. However, legally existing development is exempt from development district standards pursuant to Page 85 of the Sector Plan. Because no site improvements are proposed as part of this detailed site plan, and prior Use and Occupancy permits were issued for this property (most recently in 2002 under Use and Occupancy Permit No.: 42275-2002), this development is exempt from the development district standards.

## **VI. CONFORMANCE WITH THE ZONING ORDINANCE**

### **A. Conformance with § 27-548.26:**

This Detailed Site Plan application to revise the Table of Uses for the M-U-I/D-D-O Zone conforms to § 27-548.26 for the reasons discussed in greater detail below:

#### **(b) Property Owner**

- (1) Notwithstanding the provisions of subsection (a), above, a property owner may request that the District Council amend development requirements for the owner's property, as follows:

...

- (B) An owner of property in the Development District may request changes to the underlying zones or the list of allowed uses, as modified by the Development District Standards.

- (i) A request for changes to the underlying zone or list of allowed uses may include requested amendments to the applicable Development District Standards for the applicable D-D-O Zone.
- (ii) In determining whether to approve such amendments to the Development District Standards, the District Council shall find that the amended standards will benefit the proposed development, will further the purposes of the applicable Development District, and will not substantially impair implementation of any applicable Master Plan or Sector Plan.

- (2) The owner's application shall include:

- (A) A statement showing that the proposed development conforms with the purposes and recommendations for the Development District, as stated in the Master Plan, Master Plan Amendment, or Sector Plan;
- (B) A description of any requested amendments to the Development District Standards applicable to a qualifying development proposal; and
- (C) A site plan, either the Detailed Site Plan required by Section 27-548.25 or a Conceptual Site Plan.

*As mentioned previously, no new development or site improvements are proposed as part of this detailed site plan request. Therefore, in accordance with Page 85 of the Tuxedo Road Sector Plan, it is exempt from development district standards. The sole purpose of this application is to amend the Table of Uses for the M-U-I/D-D-O Zone to permit wholesaling or distribution of food or beverage materials used or produced on the premises.*

*Regarding conformance with the purposes and recommendations for the development district as outlined in the controlling Master or Sector Plan, the Applicant respectfully submits that the land use goals espoused by the Greater Cheverly Sector Plan—which is substantially similar to the Tuxedo Road Sector Plan that came before it—for the Subject Property are untenable, and were implemented without the necessary infrastructure (as recognized by the two Sector Plans) to spur change. For this reason, the Applicant submits that it is unreasonable to bar a viable use upon the Subject Property, especially a use that will not hinder growth or redevelopment of the Arbor Street area.*

*The Tuxedo Road Sector Plan was approved in 2005 with the goal of transforming the existing industrial and service-commercial properties within a ¼ mile radius of the Cheverly Metro Station that developed between the 1960's and 70's into a "mixed-use main street infill" transit-oriented development. Of import to the subject application, the Tuxedo Road Sector Plan rezoned properties along Arbor Street to the M-U-I Zone and superimposed the Development District Overlay (D-D-O) Zone with the belief that these zones would catalyze the transformation of the area into a mixture of office, retail, residential, civic and commercial uses. But, over seventeen (17) years later, this grandiose vision has not even begun, let alone come to fruition. Despite espousing an ambitious redevelopment plan for the Arbor Street area, the Tuxedo Road Sector Plan is nevertheless cognizant of the barriers to said redevelopment. The first entry under both "Issues" and "Land Use and Zoning Recommendations" on Page 23 of the Sector Plan acknowledges that redevelopment will require assembling and consolidating the small lots along Arbor Street to facilitate redevelopment. Moreover, Objective 1 on Page 23 summarizes the action plan: "make incremental land use changes as market factors change, buildings are rehabilitated, public infrastructure is improved, properties are assembled, and adjacent subareas are developed. . . Existing uses are expected to continue until redevelopment occurs." However, market demand did not develop, incremental land use changes were not made to the Arbor Street Area, and there has been no property assemblage in this area since the approval of the M-U-I/D-D-O Zone through this Sector Plan.*

*The Greater Cheverly Sector Plan was approved in 2018 and carried forward substantially similar land use goals for the Subject Property*

*originally established in the Tuxedo Road Sector Plan. Policy LU 2.2, on page 43: “facilitate parcel assembly from east of the CSX Railroad tracks along MD 459 (Tuxedo Road and Arbor Street) to encourage redevelopment in the Local Transit Center and implement the vision of a walkable main street.” Policy UD 5, on page 108: “support the evolution of MD 459 (Arbor Street and Tuxedo Road) between Cheverly Avenue and the CSX Railroad bridge into a pedestrian-oriented, mixed-use new Main Street destination.” Policy UD 6, on page 109 continues this goal: “encourage the revitalization of MD 459 (Tuxedo Road) into a pedestrian-oriented, mixed-use retail destination with improved street design to support the establishment of a new street along MD 459 (Arbor) leading to, and within, the Town of Cheverly.”*

*The only real change from the Tuxedo Road Plan to the Greater Cheverly Sector Plan is that the latter seems unwilling to explicitly acknowledge the existing hurdles that continue to frustrate redevelopment since the M-U-I/D-D-O Zone was imposed. Instead, the Greater Cheverly Sector Plan only hints at these obstacles when promulgating policy. Policy such as Policy EP 2 on page 51: “create the social and physical infrastructure to support mixed-use development along MD 459 (Tuxedo Road and Arbor Street).” Additionally, Policy EP 2.1 on page 54, states: “conduct a feasibility study for commercial and residential mixed-use redevelopment potential along Arbor Street (as well as Tuxedo Road),” and Policy EP 2.2—also on page 54—to “establish a Redevelopment Group comprised of local stakeholders and property owners to champion redevelopment in the area.” No context is given for why parcel assembly would be necessary or why this particular area should have a Redevelopment Group to champion redevelopment. The lost subtext is that in this instance zoning alone has been insufficient to spur redevelopment*

*Unless, and until, the required assemblage occurs, there are no economically viable uses within the M-U-I/D-D-O Zone in this Sector Plan to occupy the Subject Property, nor is it reasonable for the Applicant to transform the only property he controls—at a little less than half an acre—into the type of development envisioned by the Tuxedo Road Sector Plan and the Greater Cheverly Sector Plan. Approval of the subject application will allow the Subject Property to continue to be economically viable, at least until such time that a large-scale assemblage could occur. This request is aligned with the Tuxedo Road Sector Plan’s acknowledgement that incremental changes will occur when “[there are] market factor changes, buildings are rehabilitated, public infrastructure is improved, properties are assembled, and adjacent subareas are developed.”*

*This request is merely to allow the owner of the Subject Property to maintain the economic viability of this property until such time as said forces coalesce and drive change. For these reasons, the subject*

*application does not substantially impair the implementation of either the Tuxedo Road Sector Plan nor the Greater Cheverly Sector Plan.*

*Finally, although the specific vision for the Subject Property espoused by the 2018 Greater Cheverly Sector Plan is untenable for the reasons discussed previously, other objectives and goals in general related to industrial uses within the Greater Cheverly Sector Plan are satisfied by the subject application. On page 19 of the Greater Cheverly Plan regarding the state of existing industrial areas: “industrial uses in the sector plan area have been vital and viable for over a century.” Moreover, the present state of existing industrial properties is a specific challenge to revitalization of the plan area, which is from page 37: “vacant and underutilized industrial properties are unattractive and show signs of deferred maintenance”. Policy EP 5.5 is to “coordinate economic revitalization and urban design strategies in the industrial area.” The retention of this use will prevent the proliferation of vacant industrial properties along Arbor Street that diminish the economic viability of the entire area. Permitting this use will also create economic incentives for the applicant to maintain his property in a good condition. For this reason, the subject application conforms with the goals and principles of the Greater Cheverly Sector Plan as it relates to industrial property.*

**B. Conformance with § 27-546.19(c):**

The Planning Board may not approve a detailed site plan in the M-U-I Zone unless the owner demonstrates conformance with enumerated criteria. For the reasons described in greater detail below, the subject application conforms to the requirements under § 27-546.19(c):

- (1) The site plan meets all approval requirements in Part 3, Division 9;

*The site plan is in accordance with approval requirements in Part 3, Division 9 of the Zoning Ordinance.*

- (2) All proposed uses meet applicable development standards approved within the Master Plan, Sector Plan, Transit District Development Plan, or other applicable plan;

*The Subject Property is exempt from development district standards since the existing improvements pre-dated the Sector Plan, and no new improvements are proposed.*

- (3) Proposed uses on the property will be compatible with one another;

*The requested wholesaling or distribution of food or beverage materials used or produced on the premises will be compatible with the existing light industrial/service-commercial uses along Arbor Street.*

- (4) Proposed uses will be compatible with existing or approved future development on adjacent properties and an applicable Transit or Development District or Development District; and

*The proposed wholesaling or distribution of food or beverage materials used or produced on the premises upon the Subject Property will be compatible with existing or approved future development on adjacent properties. As mentioned above, the proposed use is compatible with the existing development on adjacent properties, and the redevelopment of Arbor Street will require assembling the various lots into a coordinated development scheme. Even if some properties in the area were to undergo piecemeal redevelopment the requested use would permit a myriad of uses compatible with a walkable, urban environment, to wit: coffee roastery, bakery, distillery or microbrewery.*

- (5) Compatibility standards and practices set forth below will be followed, or the owner shows why they should not be applied:

- (A) Proposed buildings should be compatible in size, height, and massing to buildings on adjacent properties;

*No buildings are proposed.*

- (B) Primary facades and entries should face adjacent streets or public walkways and be connected by on-site walkways, so pedestrians may avoid crossing parking lots and driveways;

*The primary façade of the existing building faces north towards Arbor Street. There are no sidewalks along Arbor Street, and pedestrian access is not envisioned for this location.*

- (C) Site design should minimize glare, light, and other visual intrusions into and impacts on yards, open areas, and building facades on adjacent properties;

*No site improvements are proposed.*

- (D) Building materials and color should be similar to materials and color on adjacent properties and in the surrounding neighborhoods, or building design should incorporate scaling, architectural detailing, or similar techniques to enhance compatibility;

*No site improvements or modifications to the existing building are proposed.*

- (E) Outdoor storage areas and mechanical equipment should be located and screened to minimize visibility from adjacent properties and public streets;

*Outdoor storage areas on the east and west side of the property are enclosed with an existing six-foot high chain link fence.*

- (F) Signs should conform to applicable Development District Standards or to those in Part 12, unless the owner shows that its proposed signage program meets goals and objectives in applicable plans; and

*No signs are proposed as part of this application.*

- (G) The owner or operator should minimize adverse impacts on adjacent properties and the surrounding neighborhood by appropriate setting of:
- (i) Hours of operation or deliveries;
  - (ii) Location of activities with potential adverse impacts;
  - (iii) Location and use of trash receptacles;
  - (iv) Location of loading and delivery spaces;
  - (v) Light intensity and hours of illumination; and
  - (vi) Location and use of outdoor vending machines.

*Given the light industrial/service-commercial nature of surrounding uses, it is not anticipated that this use will have any impact, let alone, negative impact. Storage and parking areas on either side of the building abut outdoor storage and parking areas on abutting properties. Dumpsters are located within the storage areas and away from Arbor Street.*

## **VII. CONCLUSION**

For all of the above-stated reasons, the Applicant respectfully requests approval of the proposed Detailed Site Plan to add the use of “wholesaling or distribution of food or beverage materials used or produced on the premises” to the Table of Uses for the M-U-I/D-D-O Zone, as set forth in the Sector Plan in accordance with Subtitle 27 of the Prince George’s Zoning Ordinance.

Respectfully submitted,

O’MALLEY, MILES, NYLEN & GILMORE, P.A.

By:



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Lawrence N. Taub, Esquire



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Greenbelt, MD 20770  
301-572-3248

*Attorneys for Applicant*







June 7, 2023

**MEMORANDUM**

**TO:** Dominique Lockhart, AICP, Planner III, Zoning Section, Development Review Division

**VIA:** David A. Green, MBA, Planner IV, Long Range Planning Section, Community Planning Division 

**FROM:** Josephine Selvakumar, Planner III, Master Plan and Studies Section, Community Planning Division 

**SUBJECT: DSP-21032; 5801 Street Property**

**FINDINGS**

Community Planning Division staff finds that, pursuant to Section 27-548.26(b)(5) of the Prior Zoning Ordinance, the proposed amendment to the 2005 Tuxedo Road/Arbor Street/Cheverly Metro Area Development District Overlay Zone Table of Uses does not conform with the purposes and recommendations for the Development District, as stated in the 2018 Greater Cheverly Sector Plan and does substantially impair the implementation of the 2018 Greater Cheverly Sector Plan's vision to promote redevelopment to allow a mix of residential, retail and office uses.

**BACKGROUND**

**Application Type:** Detailed Site Plan in a Development District Overlay Zone Requesting a Change of Permitted Use

**Location:** 5801 Arbor Street

**Size:** 0.501 acres

**Existing Uses:** Industrial

**Proposal:** The applicant is requesting an amendment to the table of uses to allow the "wholesaling or distribution of food or beverage materials used or produced on the premises" to continue at the site.

**GENERAL PLAN, MASTER PLAN, AND SMA**

**General Plan:** This application is located within the Established Communities policy area. Plan 2035 describes Established Communities as areas appropriate for context-sensitive infill and low-to medium-density development and recommends maintaining and enhancing existing public services, facilities, and infrastructure to ensure that the needs of residents are met.

**Master Plan:** The 2018 Greater Cheverly Sector Plan recommends mixed-use land uses on the subject property. The subject property is also located within the Local Transit Center (LTC) boundary, and Section 3: Land Use Chapter, which recommends the following policy and strategies:

Policy:

LU 2: Define the Local Transit Center (LTC) boundary to focus redevelopment at the Cheverly Metro Station and along the MD 459 (Arbor Street and Tuxedo Road) corridor east of the CSX Railroad tracks, and to limit development in the floodplain. (p. 43)

Strategies:

LU 2.1 Promote redevelopment from east of the CSX railroad tracks along MD 459 (Tuxedo Road and Arbor Street to Cheverly Avenue to allow a mix of residential, retail and office uses. (p. 43)

LU 2.2 Facilitate parcel assembly from east of CSX Railroad tracks along MD 459 (Tuxedo Road and Arbor Street) to encourage redevelopment in the Local Transit Center and implement the vision of a walkable main street. (p.43)

**Planning Area:** 69

**Community:** Bladensburg-New Carrollton & Vicinity

**Aviation/MIOZ:** This property is not located in an Aviation Policy Area or the Military Installation Overlay Zone.

**SMA/Zoning:** The 2005 *Approved Sector Plan for the Tuxedo Road/Arbor Street/Cheverly Metro Area Sectional Map Amendment* rezoned the subject property from Commercial Miscellaneous (C-M) to Mixed-Use Infill (M-U-I) zone and superimposed a Development District Overlay Zone (DDOZ). On November 29, 2021, the District Council approved CR-136-2021, the Countywide Sectional Map Amendment ("CMA") which reclassified the subject property from Mixed-Use Infill (M-U-I) to Transit-Oriented/Activity Center (LTO-C) effective April 1, 2022.

## **DEVELOPMENT DISTRICT MANDATORY STANDARDS**

The development district standards are not applicable since the applicant is not proposing any site improvements on the subject property.

c: Long-range Agenda Notebook


Kierre McCune, Supervisor, Master Plan and Studies Section, Community Planning Division

November 9, 2022

**MEMORANDUM**

TO: Thomas Burke, Urban Design Section, Development Review Division

FROM: Jim Yang, Transportation Planning Section, Countywide Planning Division

VIA:  William Capers III., PTP, Transportation Planning Section, Countywide Planning Division

**SUBJECT: DSP-21032: 5801 Arbor Street Property**

**Proposal:**

The referenced Detailed Site Plan (DSP) application requests to validate the existing land use of “wholesaling or distribution of materials used or produced on the premises” and “contractor’s office with outdoor storage” in accordance with Subtitle 27-548.26 and 27-546.19(c) of the Prince George’s Zoning Ordinance. The property is approximately 0.46 acres of land and is improved with an existing 2-story, 9,053 SF building, located at 5801 Arbor Street, Hyattsville.

**Prior Conditions of Approval:**

The site is not subject to any prior development application approval.

**Master Plan Compliance**

**Master Plan Right of Way**

The site is governed by 2009 *Approved Countywide Master Plan of Transportation* (MPOT) and 2018 *Greater Cheverly Sector Plan*. Both plans indicate a 70-foot-wide right of way along Arbor Street.

**Master Plan Pedestrian and Bike Facilities**

The MPOT indicates a planned shared lane along Arbor Street and 2018 *Greater Cheverly Sector Plan* calls for major pedestrian-scale improvement along Arbor Street.

**Comment:** The latest DSP submission shows the limits of the master plan(s) recommended right-of-way along the property’s frontage on Arbor Street. Given the limited scope of the subject’s application to update the use table, the roadway dedication and the plan recommended bicycle improvements are not being postponed.

**Transportation Planning Review:**

### **Zoning Ordinance Compliance**

Section 27-283 of the Prince George's County Zoning Ordinance (Ordinance) provides guidance for detailed site plans. The section references the following design guidelines described in Section 27-274(a):

(2) Parking, loading, and circulation

(C) Vehicular and pedestrian circulation on a site should be safe, efficient, and convenient for both pedestrians and drivers. To fulfill this goal, the following guidelines should be observed:

(ix) Pedestrian and vehicular routes should generally be separate and clearly marked.

(x) Crosswalks for pedestrians that span vehicular lanes should be identified by the use of signs, stripes on the pavement, change of paving material, or similar techniques

(xi) Barrier-free pathways to accommodate the handicapped should be provided

(6) Site and streetscape amenities

(A) Site and streetscape amenities should contribute to an attractive, coordinated development and should enhance the use and enjoyment of the site. To fulfill this goal, the following guidelines should be observed:

(i) The design of light fixtures, benches, trash receptacles, bicycle racks, and other street furniture should be coordinated, to enhance the visual unity of site.

**Comment:** As part of the initial review of the DSP application, staff requested a trip generation table to assess the travel demand, for the land uses proposed to be incorporated as part of the use table, given that these land uses were not considered as part of the sectional master plan that established the list of uses within this area. The applicant refused to provide the trip generation table indicating that transportation adequacy is not relevant to this application. Staff acknowledges that transportation adequacy is not a requirement of the subject application but further asserts that understanding the travel demand of the proposed land uses is an important component in assessing the overall impacts and compatibility with neighboring land uses. However, the applicant indicates that the subject site is currently developed with the proposed land uses, and as such the trips associated with the site (and uses) are already on the network.

Access to the site is provided by multiple driveways along Arbor Street which provides a connection to the surface parking area adjacent to the building. There are nine parking spaces between the existing building and Arbor Street. The number of parking spaces meets the zoning requirements of the distribution warehouse, storage warehouse, and all other wholesale uses.

### **Conclusions**

Based on the information provided by the applicant, the property has been used for industrial/service-commercial uses since the 1970s. The applicant is not proposing changes in land use and the trips generated by the site are already on the transportation network. Staff finds that the existing access connections, site circulation, and the number of onsite parking spaces are sufficient and meet the zoning requirements.

November 4, 2022

**MEMORANDUM**

**TO:** Thomas Burke, Acting Planner IV, Urban Design Section  
**VIA:** Sherri Conner, Planning Supervisor, Subdivision Section *SC*  
**FROM:** Mridula Gupta, Planner III, Subdivision Section *MG*  
**SUBJECT:** DSP-21032; 5801 Arbor Street Property

The subject 0.50-acre site considered in this Detailed Site Plan (DSP-21032), includes Lots 1-8, Block 6, of the Tuxedo Subdivision, recorded in the Land Records of Prince George's County in Plat Book A at page 71. The subject property is in the Local Transit-Oriented-Core (LTO-C) Zone as per the current Zoning Ordinance. However, this application has been submitted for review under the prior Zoning Ordinance and Subdivision Regulations in accordance with Section 27-1900 of the Zoning Ordinance. Under the prior Zoning Ordinance, the property was in Mixed Use Infill (M-U-I) Zone with a Development District Overlay (D-D-O) Zone.

The property is improved with a two-story structure approximately 9,053 square feet in gross floor area (GFA), for nonresidential use. From the aerial imagery available through PGAtlas, the existing structure appears to have been constructed prior to 1977. The existing structure is proposed to remain, and no changes or additions to the structure is proposed. The use of the structure is also proposed to remain nonresidential.

There is no Preliminary Plan of Subdivision (PPS) associated with the subject property. The project is exempt from the requirement of a new PPS and new final plat pursuant to Section 24-111(c)(3) of the prior Subdivision Regulations, because the final plat predates October 27, 1970, the development was in existence prior to January 1, 1990, and no new development is now proposed. A PPS may be required if new development is proposed in the future.

**Additional Comments:**

1. None.

**Recommended Conditions:**

1. None.

The referral is provided for the purposes of determining conformance with any underlying subdivision approvals for the subject property and Subtitle 24. All bearings and distances must be clearly shown on the DSP and must be consistent with the recording reference for the property. There are no other subdivision issues at this time.



Angela D. Alsobrooks  
County Executive

THE PRINCE GEORGE'S COUNTY GOVERNMENT  
Department of Permitting, Inspections and Enforcement  
Site/Road Plan Review Division



**MEMORANDUM**

December 1, 2022

**TO:** Thomas Burke, Urban Design Section  
Development Review Division, M-NCPPC

**FROM:** Mary C. Giles, P.E., Associate Director *Mary Giles*  
Site/Road Plan Review Division, DPIE

**RE:** 5801 Arbor Street Property  
DSP 21032,

**CR:** Arbor Street (MDSHA)  
**CR:** 59<sup>th</sup> Avenue (County)

This memorandum is in response to the Detailed Site Plan No. DSP 21032 referral. The Department of Permitting, Inspection and Enforcement (DPIE) offers the following:

- The property is located at 5801 Arbor Street, Hyattsville, on the south side of Arbor Street, approximately 250 feet west of its intersection with 59th Avenue
- The applicant proposes to permit existing wholesaling or distribution of materials used or produced on the premises and contractor's office with outdoor storage uses to continue in the M-U-I/D-D-O zone
- The Site Development Concept Plan 29220-2022-0 application was submitted to DPIE on 7-27-22. According to epermits work description, "No work is being proposed this application is meant to fulfill the purpose of updating plat information." The applicant should continue the Concept application. The applicant shall provide documentation of previously issued permits for all built structures and site work.
- DPIE has no objection to the proposed Detailed Site Plan No. DSP 21032.

If you have any questions or require additional information, please contact Mr. Steve Snyder, P.E., District Engineer for the area, at 301.636.2060.

cc: Reynaldo de Guzman, Chief, S/RPRD, DPIE  
Steve Snyder, P.E., District Engineer, S/RPRD, DPIE  
Nabely Family Trust, 8316 Ardwick Ardmore Road, Landover, MD 20785  
O'Malley, Miles, Nylan & Gilmore, 7850 Walker Drive, Suite 310, Greenbelt, MD 20770



**Additional Back-up**

**For**

**DSP-21032**

**5801 Arbor Street Property**

# MEMO

To: Mayor and Council

From: Cheverly Planning Board

Regarding: 5801 Arbor Street

Date: May 2, 2023

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At the April 13, 2023 Cheverly Town Council Meeting, the Cheverly Planning Board presented a recommendation regarding 5801 Arbor Street. After a robust discussion, the Mayor and Council asked the Planning Board and land use attorney for the property to continue discussions and bring an updated proposal and recommendation to the Mayor and Council.

After further discussion, the Planning Board recommends that the Town of Cheverly support a modified request for DSP-21032 to amend the Table of Uses for the M-U-I/D-D-O Zone to add the use **“wholesaling or distribution of food or beverage materials used or produced on the premises.”**

Effectively, this addition to the table of uses would allow the current tenant, Sodibar, to remain in operation while not allowing the second tenant, a contractor with contractor storage yard to remain on the site.

This update to the Table of Uses would mean that all of the uses allowed in the current zoning of MUI/DDO and LTO-C remain as allowable uses while the use of “wholesaling or distribution of food or beverage materials used or produced on the premises” is added as an additional allowable use.

*(Multiple zones are in effect on this property due to the 2021 Countywide Sectional Map Amendment which rezoned the entirety of Prince George’s County. Both the prior zoning ordinance and new zoning ordinance are in effect until April 1, 2024, allowing development applications to be submitted for either ordinance.)*

The applicant’s attorney, Mr. Foreman, shared with the Planning Board that the applicant is willing to enter into a covenant with the Town in exchange for the Town’s support of the modified DSP to allow “wholesaling or distribution of food or beverage materials used or produced on the premises.”

This proffered covenant would require that the owner of the property accept a Fair Market Value offer of purchase for the property. At the time of this triggering event, the property owner would not renew any existing leases and would agree to sell the property for Fair Market Value.\*

While the Planning Board is generally hesitant to amend the Table of Uses for a single property, our membership does believe that this renegotiated request is a positive compromise which allows the following:

1. The property to remain in use by a long-standing locally owned Prince George's County business;
2. Visible improvement to the sightliness of the property;
3. To potentially entice a food or beverage producer and wholesaler to lease the other half of the building, or even the full site in the future; and
4. Will not inhibit future redevelopment of the Arbor Street/Tuxedo area due to the covenant agreement that the owner will accept a market rate offer to sell.

In addition, because the applicant is requesting an amendment to the table of uses for the MUI/DDO zone, a zone which will sunset as of April 1, 2024 (due to the Countywide rezoning mentioned above), this new/added use of "wholesaling or distribution of food or beverage materials used or produced on the premises" would expire if/when a development application is filed for the property.

In conclusion, the Planning Board recommends the Mayor and Council support this updated Modified Request DSP-21032 to allow "wholesaling or distribution of food or beverage materials used or produced on the premises" be added to the Table of Uses contingent upon the property owner ratifying a covenant with the Town of Cheverly as outlined above.

\*The Planning Board recommends that the Town Attorney review this Declaration of Covenants prior to Mayoral signature.



**TOWN MEETING**  
**May 11, 2023**  
**8:00 PM**

**Minutes**

Meeting called to order at 8:02pm

**In attendance: Mayor** Munyeneh, **Vice Mayor** Fry, **Council Members** Wade, Watson, Bryner, Dalaker, Garces, Fry

Town Attorney: Jason Deloach

Staff: Assistant to the Town Administrator -Priscilla Matthews, Public Works Director Steve Brayman, Chief Carl Miller, Town Clerk Giselle Richards,

Pledge of Allegiance

**Approval of Agenda**

Motion to amend the agenda to include acknowledgement of Senator Augustine, Delegate Ivey, addition of Child Care Providers Day Proclamation, adding grants for Women's Club and Cheverly Market to the consent agenda made by CM Fry. 2<sup>nd</sup> by CM ??? Approved unanimously.

Senator Augustine and Delegate Ivey presented citations to the new council members. District 47A presented a check to the town in the amount of \$1,4000,000 for the construction of the new public works building.

**Consent Agenda**

**Approval of Minutes** (Town Meeting – 04/13/23 Work Session 04/27/23)

Motion to approve the minutes by CM Watson, 2<sup>nd</sup> CM Wade. Approved unanimously.

Move to approve grant requests from Women's Club & Cheverly Market made by CM Watson. 2<sup>nd</sup> by CM ???? Approved unanimously.



### Resident Input-

- Laila Riazi Ward 1 – Asks council to consider not raising the taxes for the CYTR.
- Diane Swartz Ward 2 – Residents on the exchange had a lot of discussion regarding the raising of the taxes. Not in favor of proposed constant yield change.

### Committee Reports

Recreation Council – N/A

Green Infrastructure Committee – Sheila Salo –

- There will be a discussion on Red Maple Run (Tributary 4) on Monday June 5 @ 7:30pm
- Check out the Facebook page of the Friends of Red Maple Run
- PG Dept of Environment is planning a project for Red Maple Run

Planning Board – Joyce Tsepas & Aimee Olivo

- Presented proposal for 5801 Arbor St to expand the land table use to allow for food & beverage wholesale distribution to allow the current tenant Sodibar to stay on the property.
- Updated recommendation from the Planning Board and an updated covenant which will be filed with the property deed.
- Town administrator recommends that the mayor & council accept the Planning Boards recommendation for 5801 Arbor St.

Motion to adopt the recommendation from the Planning Board made by CM Bryner. 2<sup>nd</sup> by CM Dalaker. Approved unanimously.

Cheverly Day Committee – Micah Watson –

- Cheverly Day is 9/30/23
- No parade this year

**AANHPI Resolution R-5-23** – Councilmember Fry read resolution in honor of Asian American Native Hawaiian Pacific Islander Heritage Month

**Proclamations –**

- **Child Care Provider’s Appreciation Day** – Proclamation read by CM Fry