

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

**SPECIAL EXCEPTION  
4846**

**DECISION**

Application: Gas Station and Food or Beverage Store  
Applicant: RF East-West Hyattsville, LLC  
Opposition: Donna Nelms, Chris Watling, et. al.  
Hearing Date: August 3, 2022  
Hearing Examiner: Maurene Epps McNeil  
Disposition: Approval

**NATURE OF PROCEEDINGS**

- (1) Applicant RF East-West Hyattsville, LLC is requesting approval of a Special Exception to construct a Gas Station and a Food or Beverage Store on 1.90 acres of land in the CGO (Commercial General and Office) Zone.<sup>1</sup> The subject property is located in the southwest quadrant of the intersection of East-West Highway (MD 410) and Riggs Road, and identified as 1821 East-West Highway, Hyattsville, Maryland. The property does not lie within the boundaries of the City of Hyattsville.
- (2) The Technical Staff recommended approval of the request with conditions, and the Planning Board accepted Staff's recommendation as its own. (Exhibits 3 and 62)
- (3) Several individuals appeared in opposition to the request at the hearing held by this Examiner.
- (4) At the close of the hearing the record was left open to allow the submission of additional documents and the record was closed August 12, 2022. (Exhibits 85-91)

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<sup>1</sup> The property was in the C-S-C (Commercial Shopping Center) Zone prior to April 1, 2022, when the Countywide Map Amendment and the revised Zoning Ordinance took effect. The instant Application was filed and accepted prior thereto. Accordingly, it may be reviewed and decided in accordance with the Zoning Ordinance and Subdivision Regulations in existence at the time of acceptance. (Prince George's County Zoning Ordinance, Section 27-1703 (2021 Edition) )

## FINDINGS OF FACT

### Subject Property and Surrounding Uses

(1) The property is improved with one structure, a shopping center, on one 1.9- acre parcel of land, Parcel A of the Parklawn subdivision, recorded among the Prince George's County Land Records in Plat Book WWW 17, page 79, dated June 1950. It was developed in the 1960s as a shopping center, and the 15,301-square-foot structure will be razed if the instant request is approved. (Exhibit 23)

(2) Most of the site is located outside of the designated network of the Countywide Green Infrastructure Plan of the 2017 Prince George's County Resource Conservation Plan, although a small area approximately 20 feet wide at its widest point is mapped within the regulation portion of the network. (Exhibit 62, Backup p. 16) The subject property has an approved Natural Resources Inventory Equivalency Letter (NRI-012-2021) that indicates there are no regulated environmental features on the property or no on-site regulated environmental features will be impacted. (Exhibit 28)

(3) The subject property is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because the site has less than 10,000 square feet of woodland, has no prior tree conservation plan approvals and was cleared and graded prior to enactment of the law. (Exhibits 47 and 62, Backup pp. 7-8, 16)

(4) The subject property is surrounded by the following:

North – East-West Highway (MD 410) and beyond, commercial/retail and single-family residential uses in the CGO and RSF-65 Zones

South - Parklawn Park and single-family residential dwellings which front on a service road parallel to East-West Highway, in the ROS and RSF-65 Zones, respectively

East - Riggs Road and beyond, retail/commercial uses in the CGO and RSF-65 Zones

West - Parklawn Park and single-family residential dwellings which front on a service road parallel to East-West Highway, in the ROS and RSF-65 Zones, respectively

(5) The neighborhood proffered by Applicant includes a mix of residential and commercial/retail uses. It has the following boundaries: the PEPCO right-of-way to the northwest; Ray Road and Sligo Creek to the southwest; the Northwest Branch to the east; and Drexel Street to the north. The neighborhood proffered by the Technical Staff is much smaller, and this Examiner finds Applicant's to more realistically capture the

environs of the subject property. Moreover, the “neighborhood” is of more import in the review of a rezoning request.

### **General Plan/Master Plan/Sectional Map Amendment**

(6) The 2014 General Plan (Plan Prince George’s 2035) placed the subject property within the Established Communities. These are areas appropriate for context-sensitive infill and low- to medium- density development that maintains/enhances existing public services, facilities and infrastructure to ensure that the needs of residents are met. (2014 General Plan, p.20) The General Plan’s “Generalized Future Land Use” Map notes that one must refer to the property’s relevant sector or master plan to identify the future land use designation for a specific site. (2014 General Plan, p. 101)

(7) The subject property is located in an area governed by the 1989 Master Plan for Langley Park- College Park- Greenbelt and Vicinity and Sectional Map Amendment for Planning Areas 65,66, and 67. The Master Plan designates the area as one to be used for retail-commercial uses. (1989 Master Plan for Langley Park-College Park-Greenbelt and Vicinity, Comprehensive Plan insert) Some of the objectives listed for commercial areas include:

- The enhancement of the economic base of the Planning Areas and the County, and to create more job opportunities
- To locate commercial activities where vehicular access is adequate and where pedestrian walkways and bikeways can be integrated into the design, and
- To maintain, intensify and expand existing commercial areas where appropriate

(1989 Master Plan for Langley Park-College Park-Greenbelt and Vicinity, p. 87)

(8) The Master Plan provided the following discussion of commercial areas, including the area surrounding the subject property:

Except for the Greenbelt Center, all other commercial areas in the Langley Park-College Park-Greenbelt Planning Areas are clustered at highway intersections or are located along major highways. A substantial portion of commercial activity is located on University Boulevard/Greenbelt Road, U.S. Route 1, New Hampshire Avenue, Chillum Road, East-West Highway, Rhode Island Avenue and Riggs Road. Commercial development on U.S. Route 1 and some sections of University Boulevard and New Hampshire Avenue is almost continuous, has a distinct strip character with numerous fast-food stands, gas stations, and too many curb cuts. Often the design and development of these commercial areas has had little relationship to nearby land uses. Many of the commercial areas lack amenities and their designs are outmoded. In addition, some of these have been undergoing functional obsolescence and physical decline, including deterioration of building facades and signs.

There are approximately 2,100,000 square feet of retail and approximately 1,400,000 square feet of office floor space in the Planning Areas, which is emerging as a major

office center in the County because of the accessibility and attractiveness of its Beltway and Baltimore-Washington Parkway locations.

### **Existing Conditions**

An analysis of the commercial development in the Planning Areas has identified several problems.... Most commercial areas have a basically single-purpose retail nature. They generally do not provide the various public service facilities that are needed to render a full range of community, social and recreational facilities.

Most of the commercial areas display an absence of site plan review for conventional euclidean zoning that has resulted in poor siting of structures, poor vehicular circulation, inadequate parking, and a lack of pedestrian walkways. A majority of the shopping areas have very little or no landscaping along highways, no landscaping in the parking areas and no landscaping/buffering to protect adjacent residential areas....

(1989 Langley Park-College Park-Greenbelt Master Plan and Sectional Map Amendment, p. 88)

(9) The Master Plan also included transportation and circulation guidelines that urged the creation of trails and walks for pedestrians and bicyclists that could provide a connection between neighborhoods, commercial areas, employment areas, etc., and the incorporation of bikeways in the local road system.

(10) The Sectional Map Amendment retained the subject property in a commercial zoning category but placed it in the C-S-C Zone as the C-1 Zone was being phased out as an obsolete category.

### **Applicant's Request**

(11) Applicant has entered into a long-term lease (with opportunity for renewals) of the subject property owned by Child Care Properties Limited Partnership. (Exhibits 21 and 62, Backup p. 1; T. 108) The State Department of Assessments and Taxation has issued a Certificate in Good Standing authorizing Applicant to conduct business within Maryland. (Exhibit 69)

(12) Applicant proposes to develop the site with a Gas Station with 8 multi-product fueling stations, able to service up to 16 vehicles, and located in the northeast corner of the site closest to the intersection of East-West Highway and Riggs Road. Applicant also requests approval to construct a 4,649-square-foot Food or Beverage Store (referred to throughout the record as a "convenience store")<sup>2</sup>. Both uses will be located

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<sup>2</sup> A condition of approval has been added for Applicant to revise the Site Plans to reference the correct square footage of the Food or Beverage Store since the amount varies within the record. This square footage is taken from the revised Need Analysis prepared by Applicant's witness accepted as an expert in the area of market analysis.

outside of the limits of the approved floodplain on site. (Exhibit 91) Applicant will provide a bicycle lane along its frontage on Riggs Road, subject to the Maryland Department of Transportation State Highway Administration's ("SHA") approval. (Exhibit 62, Backup p. 20) A condition of approval will also require Applicant to include a detail for bicycle racks on site.

(13) Mr. Tom Ruszin testified on Applicant's behalf. He is the fuel and environmental leader for Royal Farms charged with overseeing compliance with all applicable state and federal regulations. (T. 107-108) He was authorized to testify on Royal Farm's behalf. (Exhibit 77) Mr. Ruszin noted that Applicant chose the subject property for its Gas Station and convenience store because of its location at a well-traveled intersection, its zoning, the number of residences in the area and the demographics of the area. (T. 112). He is aware of several meetings that Applicant's agents had with various residents/civic associations in the area and of the additional information provided those requesting "more information about the operation, maintenance, [and] aesthetics of the stores." (T. 115) He proffered that If the request is approved approximately 30-40 full and part-time employees will be hired at an opening hourly wage of approximately \$14.00. (T. 116)

(14) Mr. Ruszin also testified that the existing building is very old and there is virtually no stormwater management on site since it is fully impervious. If allowed to construct the uses he believes they will be of benefit:

We would be putting in up to date stormwater management facilities. There's no landscaping there currently, so we will be meeting County's general landscaping [requirements].... [W]e will be bringing a modern design [that is] much more aesthetically appealing.... We'll also be providing ... gateway signage for the northern gateway imaging program.

We've also worked very closely for more than two years with the MNCPPC and Department of Parks and Recs on making improvements to the Parklawn Park and have agreed to a recreational facilities agreement to provide significant upgrades to that park....

[I]t's also worth mentioning that we're going to be bringing ... our world-famous fried chicken and food service offerings to this community, and along with commuters passing by this location. It's going to increase the tax base for motor fuel tax and sales tax along with real estate property tax. And this will be a location that's open 24/7 so very convenient for anyone at any time of the day stopping and ... us[ing] our amenities....

In general [we agree with the technical staff report]. But there is one point of contention [concerning] the proposed parking. Generally, we like to provide about 50 spaces for our operation and that is for a couple of reasons.

We're a very kind of peaky use. We get rushes. We get periods of rushes and then periods of downtime.... We need to have adequate parking facilities to ... let those

people maneuver the site and park and then walk into our store. There appears to have been some requirements that they only ... recommended the 15 spaces to address our convenience [store] and not so much our food service, so we disagree with that.

Another hot topic has been electric vehicle charging. We have a few different partners that we work with and it seems to be a very important part of this proposal. And as EV charging grows we would like to have more parking spaces available to expand and install EV chargers. Most of the partners that we work with will require four to eight spaces dedicated to EV charging, so if we don't have adequate spaces, you know around the perimeter to the site to put these amenities in, then we would not be able to offer those.

(T. 117- 120)

(15) Upon redirect, Mr. Ruszin explained that the State requires Applicant to construct a vapor recovery system. Royal Farms uses a below-ground fueling system that is 97% effective, at a minimum, in recovering all vapors from fueling. (T. 159-161) The witness also noted that "there are devices on any automobile that was manufactured after 2001 that has onboard refueling vapor recovery so it captures the vapors that ... would potentially come out of a nozzle during refueling of an automobile." (T. 161) Mr. Ruszin provided additional information concerning Applicant's fuel system operations:

Royal Farms has prepared this letter in order to outline its fuel system design; and highlight certain policies and procedures as they pertain to fuel system operations. Royal Farms and its team of petroleum industry experts take pride in designing and installing state of the art fuel systems that go above and beyond State and Federal guidelines in order to ensure that releases of petroleum to the environment do not occur.

Royal Farms installs double-walled fiberglass reinforced plastic (FRP) tanks and sumps, supplied by Containment Solutions, Inc., that come with a 30-year warranty. The containment sumps are equipped with rigid entry fittings for the product piping and FRP entry fittings for the vent piping. Double-walled OPW Flexworks II product piping is installed within a corrugated plastic chase pipe, with all fittings located within liquid tight containment sumps.

Royal Farms performs continuous interstitial monitoring of the double-walled tank and piping secondary containment. This is accomplished by installing liquid sensors in all containment sumps and in the interstice of the storage tanks (the space between the primary and secondary containment). These sensors are tied into an automatic tank gauge (ATG). The ATG continuously monitors the amount of fuel in the tanks through probes located in the storage tanks, and also monitors sensor status. This provides 24/7 monitoring of the secondary containment for the storage tanks and piping. Should liquid hit a sensor located in any of the containment sumps (liquid/fuel alarm), or if there is a change in level of brine in the interstitial space of the storage tanks (high level alarm/low level alarm) the ATG will sound an alarm inside the store. Additionally, the alarm is sent to the corporate headquarters where they are monitored daily. In all states of operation, with the exception of Delaware and New Jersey, any sensor fuel

alarm [will] trigger automatic shut-down of the fuel system.

Federal and State regulations require a form of release detection for storage tanks and pressurized product piping. Again, Royal Farms satisfies requirements for release detection of product piping by utilizing interstitial monitoring of double-walled product piping in conjunction with an automatic line leak detector. Royal Farms also pays a certified testing company to perform a precision tightness test of the product piping during its annual compliance testing of the fuel system, which constitutes a second form of release detection for the piping. During this annual compliance testing, the functionality of the ATG, along with each probe and sensor, are certified per manufacturer guidelines.

Though not required, Royal Farms contracts petroleum vendors and utilizes in-house technicians to perform preventative maintenance site visits on a semi-monthly (every other month) basis. However, Royal Farms performs preventative maintenance at stations located in well head areas, Delaware, and New Jersey on a monthly basis. During a portion of the preventative maintenance site visits, monitoring pipes are inspected for the presence [of] petroleum impact. Two permanent monitoring pipes are required to be installed vertically and in opposing corners of new or replacement storage system installations. Royal Farms installs four permanent monitoring pipes, with one located at each corner of the tank field.

Spill and overfill protection are required through Federal and State regulations. Spill protection is required in the form of spill catchment basins at the fill ports for the storage tanks. There are currently no regulations requiring double-walled spill catchment basins; however, these are standard on the fuel systems installed by Royal Farms. All underground storage tank (UST) systems receiving more than 25-gallons of fuel per delivery are required to have one form of overfill protection. Royal Farms utilizes two forms of overfill protection. Royal Farms installs an audible and visual high level alarm at the point of fuel delivery which engages when the fuel level in the storage tank reaches 90% capacity. This is also monitored through the ATG. In addition, Royal Farms installs automatic shutoff devices in the form of drop tube flapper valves, which cut off the flow of fuel to the storage tank should the level of fuel reach 95% capacity.

Royal Farms also provides a strong corporate structure and oversight to store level personnel to ensure that employees are informed and prepared. All store level personnel are required to complete a "UST Operator Training" through our World-Famous Training Centers "Learn" program. This training module addresses inspection of the fueling area, dispenser hanging hardware (i.e., hoses, nozzles, etc.), and aspects of the stage I vapor recovery system. Inspections of the fueling areas are required to be performed at a minimum of once every shift (i.e., three times per day). These inspections must be documented in Royal Farms "Blue Book", which are handed out quarterly. Daily inspections are reported to Royal Farms Facilities Support Center and are noted on a monthly log which is placed in a fuel compliance box in the manager's office and retained in the box for five years.

Additionally, the training module informs the employees on how to respond in the event of fuel spills, both small and large. These instructions are also posted in the manager's office, and include contact information for emergency services and key corporate staff members. Procedures on how to respond to various ATG alarms are also posted at each location. Furthermore, all Royal Farms management team (i.e., District Leaders, Store Leaders, and Assistant Managers) are certified Class A/B UST Facility Operators, and the remaining store level personnel are certified Class C UST Facility Operators....

(Exhibit 81)

(16) Mr. Edward Steere, Managing Director of Valbridge Property advisors, prepared a Need Analysis in support of the instant Application, that found a need for both the Gas Station and the Food or Beverage Store. (Exhibit 27) It included the following reasoning in support of the finding:

The proposed Royal Farms gas station in Hyattsville is a rectangular shaped land parcel bounded by MD-410 (East-West Highway) and MD-212 (Riggs Road). The proposed improvements to the site include a gasoline station with eight multi-product dispensers (MPD's) under a canopy. In addition, there will be a convenience store of approximately 4,64 sq. feet with indoor/outdoor seating.

The Maryland Department of Transportation State Highway Administration published an estimated annual average daily traffic (AADT) count in 2020 on MD-212 between MD-410 and Red Top Road as 28,933 average annual weekday traffic (AAWDT). MD-410 serves as a major commuter route which runs through the inner northern suburbs of Washington DC., connecting the commercial districts of Bethesda, Silver Spring and Hyattsville. Additionally, it provides a highway connection to a transit and commercial hubs centered around Washington Metro subway stations in Bethesda, Takoma Park, Hyattsville, Silver Spring, and New Carrollton. This site location provides an opportunity for commuters and consumers traveling on MD-410 to have convenient access to fresh food and competitive fuel prices before continuing to and from home....

Under the assumption that the special exception conditions have been met at the proposed site, we are of the opinion that granting the request is appropriate. Valbridge believes that the proposed convenience store with gas will be more convenient and therefore necessary to the residential households and commuters in the trade area. We do not believe that the proposed gas station will detract from or impair the health, morals, or welfare of residents in any conceivable way, given the considerable number of residential households and employment opportunities in the area as well as the significant volume of daily pass-thru traffic who are in need of expedient fuel and convenience store services. Recent industry surveys reveal that while the price per gallon is still one of consumer's top considerations when choosing a gas station, an increasing proportion of consumers are more likely to go out of their way to visit a certain brand of station which has the quality of in-store offerings such as fresh food and loyalty programs they value. This trend is likely to continue going forward as in-store sales numbers climb and more people report entering the store during their visit. Overall, we estimate total fuel demand



in the trade area at approximately 17.80 million gallons per year....

Our survey revealed 18 existing gas stations in the subject's trade area. Based on our assessment of each station and using the average motor fuel gallonages sold per month data from NACS, trade area stations are estimated to supply an aggregate of 16.1 [million] gallons per year. Throughout our survey we evaluated conditions that are important to the marketing of goods and services, such as clean, well-lit facilities, quality fresh food products, visibility and access from the highway and neighborhood, modern design and cover from the elements. Based on this analysis we found that for the majority, gas stations that populated this area followed a classic service station design with three or more service garage bays or were formatted as small kiosk/mini convenience stores. These stations are unlikely to draw the same volumes of customers as the subject site as further demonstrated by our estimates of annual fuel sales volumes which are slightly below average.

We believe that only two trade area stations are realistically competitive with the subject as these stations have larger convenience store formats and modern designs with service such as a Bank of America ATM. The remaining 16 trade area stations have little competitive advantage over one another in terms of the services they offer and benefit solely from the fact that they are well-positioned to capture traffic along commuter routes. On average, existing neighborhood stations do not meet modern consumer demands. Performance data from NACS and ITE traffic generation models reinforce that a modern convenience store such as the subject will generate more than double the customer traffic of the traditional and smaller gas stations....

### **Convenience Store**

Although there are other existing convenience stores in the neighborhood, there are none that offer the selection of fresh foods and fuel proposed on this site. All of the other stores are smaller and limited in scope of offerings. Industry trends show that a majority of drivers who purchased fuel are also entering the food and beverage stores (52% in 2020 vs. 35% in 2015) and that younger consumers are likely to shop convenience stores daily, purchase healthy food offerings and base their fuel purchase decision on what they plan on purchasing inside the convenience store. The necessity or demand of the gas station creates a reasonable need for a food or beverage store, given the increase in sales for both product offerings when offered in unison. The establishment of a hyper convenience store with gasoline sales on East-West Highway will provide a convenient and expedient service to the community.

### **Conclusions**

Valbridge concludes, therefore, that there is public need/necessity for the proposed Royal Farms automobile filling station and food and beverage store in Hyattsville, due to the facts presented above. The site and use is, "convenient, useful, appropriate, suitable, proper or conducive" to the public in this area, by providing a single location for the purchase of fuel and a wide variety of food and convenience options. The store and fueling station complement the surrounding retail character of the area and is positioned at one of the high traffic volume locations along MD-410. This area is a mixture of residential,

commercial, and civic uses and the proposed site has the unique benefit of being in close proximity to two high ridership bus stop routes and the Sligo Creek Trail allowing it to serve pedestrian demand. Traveling to the site is unlikely to increase traffic on side roads or the distance traveled by residents/commuters on their standard daily journeys. the subject [property] will be an attractive improvement over existing commercial uses located at this site which are partially vacant.

There are few opportunities in the market area for customers to find fuel and associated convenience items paired in a clean, well-lit environment that is in demand at this time. With two exceptions, the gas stations in the trade area are all outdated, and many do not offer a full range of fuels or convenience items. We judge that the few modern facilities, that offer larger convenience spaces and services are attractive to a broader market of consumers and present a greater convenience than the existing stock in the marketplace.

(Exhibit 79, pp. 1-4)

(17) Mr. Steere, accepted at the hearing as an expert in the area of market analysis, offered further support for the need for both uses at the subject property. He first noted that he revised his analysis because the original one was nearly two years old and he wanted to better capture any changes in the community since completion of the original. (Exhibit 79; T. 220) He next explained that the trade areas were not identical for his analysis of the Gas Station and the Food or Beverage Store because the statistical data (produced by the National Association of Convenience Stores or NACS) reveals that consumers will travel 10 minutes out of their way to get the cheapest gas, but usually select the nearest convenience store that sells whatever they're interested in purchasing at that moment. (T. 221) Mr. Steere evaluated every convenience store within the trade area, ranging in size from a kiosk in the middle of the Gas Station aisles, to a limited or traditional convenience store (roughly 2,000 square feet – the size of older 7-Elevens), and found on average they were constructed in 1966. (T. 226) Those gas stations that had a kiosk or smaller convenience store were located on small sites that “don't have the accommodations to bring in people, park them, and go into the convenience store and use gas [so] they are limited in their ability to meet the current consumer demands.” (T.226) After examining the number of residences in the area, the number of people working in the area, and the number of drivers passing through the area he determined that the demand for gasoline in the area is 17.8 million gallons. (T.226-227) He believes there is “probably more demand than that, but it's very difficult to separate the overlap between the residential and...the workforce.” (T.227)

(18) Mr. Steere did not agree with Mr. Manjarrez' testimony (discussed infra) concerning the lack of need given the number of gas stations in the area:

I know of course the stations on New Hampshire Avenue are in Montgomery County and I can't include those .... We could have done a 10 minute drive time analysis, ... but that wouldn't make sense in an urban community such as this because 10 minutes is different at any time of the day in driving around this side of Prince George's County...

[I do not agree that the trade area can be a 1.5 mile radius because] 1.5 miles isn't a factor in anybody's studies. Like I say, if anything, you would use a drivetime analysis or the vendor may use vehicle volume, pass by volume trips on the roads in front of their store, their store site. Those are more common.

The other that Mr. Ruszin had mentioned is looking at the number of rooftops in the area, looking at ... customer base in the area. So that's why I run numbers on the population, the demographics of a community to see if there is a demand there. And what we end up with, and what was important to show on both my map and ... [Mr. Manjarrez'] ... map that was turned in before, is that the Royal Farms site is in the middle of the community. And almost all the other gas stations except for the Exxon across the street are on the perimeter.

And those gas stations on the perimeter are serving other markets. So gas stations on New Hampshire Avenue and University Boulevard are really serving markets that are north of them or west of them. And this Royal Farms will be a—would be more dedicated to the actual community than those stations out there will.

I think that this particular location is actually an excellent location for a proposed gas station. We have a median break in both roads—or a median—not a median break. We have a median in both roads in front of the station and the Exxon station across the street. So they will actually complement each other as far as gas production from morning and evening pass by traffic.

And it's in the center of the community. You have a great pedestrian network on the road and on the trail behind it. And you have bus stops on both sides of the site. So the convenience ... of commuters ... to stop here and use this convenience store is something that doesn't exist today.

(T.229-232)

(19) Mr. Joseph DiMarco, accepted as an expert in the field of civil engineering, testified on Applicant's behalf. He and his firm prepared the Special Exception Site Plan, Landscape Plan and site development concept plan (the stormwater management plan). (Exhibits 26, 35-36, and 68; T. 170) He explained that the site is currently 100% impervious, improved with a building that has been the home of several retail uses over the years and parking.

(20) There are currently three entrances to the site -two from East-West Highway and one from Riggs Road. One access from East-West Highway will be closed, and the Riggs Road access will have a right-in, right-out entry and will be located further north towards the Parklawn Park property. (T. 177) The realignment of the Riggs Road access "is a better fit with the on-site drive that houses the underground fuel tanks" and will "add an additional parking island to the park parking lot itself." (T. 178) The realignment will also provide additional separation from the proposed bus shelter to the south on the Parkland

Park property and improves the pedestrian pathway along the park. (T. 179)

(21) Parking will be located around the perimeter of the site. At the suggestion of the Technical Staff the Special Exception Site Plan was amended to add additional sidewalks that would connect from both East-West Highway and from Riggs Road directly to the sidewalk along the frontage of the Food or Beverage Store. The Technical Staff also provided comments and made requests concerning the changes to the MNCPPC park, set forth in the Parklawn Park Concept Plan. (Exhibit 80; T. 176)

(22) The site has been granted stormwater concept approval (No. 1747-2021-00). (Exhibit 46) Exhibit 33 shows the existing floodplain delineation. Exhibit 34 reveals the proposed development plan overlaid over the site and what the resulting limits to the floodplain will be. Mr. DiMarco provided the following elucidation as to the impact to the floodplain as illustrated on Exhibit 34:

[T]he area [in] purple on the bottom ... depicts a regrading along the southern portion of the site. It currently has a retaining wall on the south boundary that would be removed and graded into a hillside up to grade with the rest of the site. That actually creates capacity within the floodplain itself by sort of taking that wedge and increasing the volume that exists within the floodplain.

This impact that we have proposed here for the site development, that has gone through a process with [DPIE] site road division. And we've obtained a floodplain impact waiver approval that would allow for the impact here....

The area that is shown in purple is the area that we would be excavating within the floodplain creating additional capacity in the floodplain. I guess to be clear, the green area is sort of a continuation of the existing area floodplain modified for any of the site grading improvements. And one thing that I would like to note is that the fueling components of the site, the building, the pumps are located outside of the floodplain area [,including the underground tanks]....

The tanks are actually shown here behind the building, but they've been shifted ... [as shown on Exhibit 75.] That shows it. And then it also shows increased landscaped area behind the building which we've actually further reduced impervious areas since this impact was approved.... [On Exhibit 34, a prior exhibit,] [t]hat area is being represented as a paved drive aisle and a service drive behind the building....

(T. 182-185)

(23) Subsequent to the hearing, an additional exhibit was submitted to clearly show the location of the underground tanks, and the delineated floodplain. (Exhibit 91)

(24) Mr. Joe Caloggero, accepted as an expert in traffic engineering, testified on Applicant's behalf. (Exhibit 71; T. 128) Mr. Caloggero noted that he is familiar with the subject property and the transportation network in the area. A traffic study was not required for this Application, but Mr. Caloggero and his coworkers prepared a trip generation analysis which found that the number of new vehicular trips expected to be generated if this request is approved would be approximately 102 during the AM peak hours and 88 in the PM peak hours. (Exhibit 41; T. 130-131) He also analyzed the number of new trips that would occur under the existing use and found it to be 114 during the AM peak hours and 113 during PM peak hours. Thus, the proposal would attract less net new trips to the site.

(25) Mr. Caloggero also stated that Applicant will remove a current access point along East-West Highway that is closest to the intersection. He opined that this will improve safety in the area. (T. 132) the remaining access will be designed as a right in, right out access. All of the accesses will require approval of permits from the State Highway Administration. (T. 35)

(26) The Technical Staff's Transportation Planning Section reviewed Mr. Caloggero's traffic analysis and found it acceptable. (Exhibit 51; discussed *infra*). The witness concluded that the Application will not adversely affect the adjacent properties or the surrounding neighborhood from a traffic engineering perspective. (T. 136) Similarly, the witness opined that the proposed uses would not detrimentally affect pedestrians since "the sidewalk is displayed around the entirety of the buildings as well as the subject property frontage along East-West Highway and Riggs Road [and there is ] parking shown along the north, east and south frontages of the site [and] directly adjacent to the proposed building." (T. 137)

(27) On cross-examination, homeowners that live adjacent to what is described as an access road and a service road near the subject property asked whether he evaluated the effect that the removal of one access will have on traffic near them, or the number of accidents that occur at the location. (T. 142 – 147) Mr. Colaggero testified that Applicant was not required to do an accident analysis but believes changing the access to right in, right out should prevent accidents. (T. 147) Mr. Colaggero was also asked whether his analysis considered traffic flow when the school schedules and presence of school crossing guards or pedestrian traffic using the Sligo Creek Trail crosswalk, and he provided the following response:

[T]oday there's an access point there already. So traffic coming in and out will have to make that maneuver today. So this isn't a new maneuver. And there's two other things. Traffic, you know, with traffic and [vehicles], they see and hopefully they're mostly familiar with this area because most of the people using this facility will more than likely be traveling through this intersection on a daily

basis anyway. They're going to know there's crossings at that location and it's up to the .. motorist to ensure that it is safe to exit the property or enter the property and watch for a pedestrian as well as pedestrians to ensure that they have a safe crossing....

They still have to follow the rules of the road. You know ... they're going to have to watch for pedestrians. Now, it doesn't mean because there's more cars and there's more pedestrians that it's an unsafe crossing because ... you can see the vehicles and the vehicles leaving can see the pedestrian scan the vehicles and the vehicles leaving can see the pedestrians....

(T. 154-155)

(28) Mr. Mark Ferguson, accepted as an expert in land use planning, testified on Applicant's behalf and submitted a Land Planning Analysis. (Exhibit 76) Mr. Ferguson prepared a neighborhood for the Application that varied from the one proffered by the Technical Staff, noting that staff "limited the ... zoning neighborhood to the subject property and 11 houses to the west." (T. 271) His proffered neighborhood has been accepted by this Examiner.

Mr. Ferguson also reviewed the applicable zoning and planning documents for the subject property – including the 1989 Langley Park, College Park, and Greenbelt Master Plan, the 1999 Sectional Map Amendment for Planning Areas 65, 66 and 67, and prior Master Plan and SMA for the area and determined that the property has been commercially zoned for approximately sixty years. He concluded that the request can be found to implement the various plans, reasoning as follows:

- Although the Growth Policy Map and Generalized Future Land Use Map in the 2014 General Plan designates the site for Residential Medium land use, the Generalized Future Land Use Map "is generally intended to replicate the recommendations of the Master Plan or Sector Plan in force at the time of the approval of the General Plan", and the 1989 Langley Park-College Park-Greenbelt Master Plan recommends retail commercial land use for the property (Exhibit , pp. 5-6). Moreover, the Generalized Future Land Use Map notes that designations for a specific property are identified in the relevant master or sector plan. (2014 General Plan, p. 101)
- The Master Plan suggested that the recommendations proposed for the US Route 1 commercial strip be considered for the retail/commercial uses along New Hampshire Avenue, Greenbelt Road, Riggs Road, Sargent Road, and Chillum Road. The instant request will implement many of those recommendations including increased landscaping where, as here, the use extends to a residential

street; minimization of commercial driveways; and upgrades to parking compounds. (Exhibit 76, p. 7)

- The Site Plan's design that "reduce[s] existing impervious area within the 100-year floodplain, while providing a pervious, landscaped compensatory storage area to offset the land disturbance in the floodplain necessary to safely reconfigure the existing entrance from Riggs Road" will implement the provisions in the Resource Conservation Plan. (Exhibit 76, p. 8)
- While the subject property is within 1,000 feet of the environmental setting of County Historic Site 65-008 (the former Digges' Chillum Castle Manor estate) the residence itself is beyond and is screened by intervening development and woodland, ensuring no impact to the Historic Sites and Districts Plan. (Exhibit 76, p. 8)
- Approval of the request will not conflict with the Countywide Master Plan of Transportation's recommendation that both East-West Highway and Riggs Road be 120' arterial roadways and that on-road bicycle facilities be located along East-West Highway. (Exhibit 76, p. 8)

(29) The witness' land planning analysis explains in detail why he opined that the request satisfies the purposes of the Zoning Ordinance, in general, and the purposes of the Commercial Zones and C-S-C Zone, in particular. (Exhibit 76, pp. 5-14) I agree with the analysis, and would highlight just a few of Mr. Ferguson's reasons for his position:

- This proposed redevelopment of a long-existing commercially-used property will promote a conservation of the existing community and will satisfy applicable adequate public facility laws. Moreover, as a redevelopment of an existing commercial use at the intersection of two arterial roadways the uses will generate fewer trips to the area (than the uses formerly operating on site), and the elimination of one access along East-West Highway will minimize traffic conflicts.
- The development will have to meet all regulations pertaining to fire, floodplain, stormwater management, setback distances and height regulations, thereby providing adequate light, air, and privacy, and protecting from fire, flood, panic, and other dangers.
- Constructing the use, paying property taxes, and hiring employees will help provide a broad, protected tax base, and will further the economic stability of the County.

- Approval of the Gas Station and Food or Beverage Store of the size requested, at this location will provide a useful and convenient site for a needed service.
- The redevelopment of this property with a combination of a retail commercial use and service commercial use will revitalize the existing development and increase the stability of commercial areas.
- The two uses are in keeping with the character of commercial uses in the area, and not incompatible with general retail uses.

(30) Mr. Ferguson also believes the Application satisfies Section 27-317, 355 and 358 of the Zoning Ordinance (2019 Edition), for the following reasons:

- The uses are in conformance with all applicable provisions of the Zoning Ordinance once the playground is removed.
- The proposed uses will not substantially impair the integrity of the Master Plan (for reasons noted above).
- Compliance with all applicable laws result in uses that “represent a high level of protection against adverse effects to the public health, safety and welfare.” (Exhibit 76, p. 13)
- A relatively small amount of floodplain exists in the southeastern corner of the site and all of it is currently paved. If the request is approved 40% of the existing imperviousness will be removed and planted compensatory storage provide, thereby restoring a regulated environmental feature.
- The site has over 371 feet of frontage and direct vehicular access to East-West Highway, and over 215 feet of frontage on and direct vehicular access Riggs Road, two arterials with rights-of-way in excess of 70 feet. The two streets are designated as master plan arterials. East-West Highway has a right-of-way width of approximately 150 feet and Riggs Road has a variable right-of-way width of approximately 100 feet. Both access driveways are defined by curbing and are more than 30 feet wide. The subject property is a corner lot and the access driveways are more than 20 feet from the point of curvature and more than 12 feet from the side or rear lot line of any adjoining lot. Gasoline pumps are located approximately 60 feet from the right-of-way line of East-West Highway and over 50 feet from the right-of-way of Riggs Road. Sidewalks at least 5 feet wide are provided along both streets and wider ones are provided along the sides of the



proposed store. No repair service is proposed, nor storage or junking of wrecked motor vehicles. Architectural details for each façade demonstrate compatibility with the surrounding commercial character of the surrounding commercial development. The topography of the subject property and abutting lots is shown for a depth of at least 50 feet. The location and details for the construction of the trash enclosure is shown on the Special Exception Site Plan. No exterior vending machines or a vending area are proposed. Applicant states it will comply with the procedures that will be triggered upon the abandonment of the gas station. No lots containing schools, libraries or hospitals are located within 300 feet of the subject property. An outdoor playground does exist on the adjacent MNCPPC park but Applicant and the Parks Department have entered into an agreement to remove the playground.

- Once the playground is removed per the agreement between Applicant and MNCPPC Parks and Recreation the site meets the requisite 300-foot setback from a school, outdoor playground, library, or hospital.
- There will be no repair services, rental or display of cargo trailers, trucks, or similar uses nor storage or junking of any vehicles on site.
- Architectural elevations were submitted and indicate the structures on site will harmonize with the commercial character of the area.

In conclusion Mr. Ferguson opined that “because of: (1) the varied character of uses in the surrounding neighborhood; (2) the proposed deletion of one existing vehicular entrance from East-West Highway; (3) the provision of modern stormwater management; and (4) the provision of modern conforming landscaping, ... the approval of this particular application would not entail a more adverse impact on the public health, safety, and welfare than those inherently associated with food or beverage stores or with gas stations, irrespective of their location in the C-S-C Zone.” (Exhibit 76, p. 18)

(31) One resident provided the following testimony in favor of the Application:

I reside about a mile from this location.... And I have listened to everybody's testimony but also on the flip side, I have been here for 27 years and I have been president of my homeowner's association for 25 years. And we have 71 units and since living here we have not had too many establishments in our community where we could sit down, relax.

Now, I did get an opportunity to go look at a couple of the Royal Farms and you know, I like the seating, the atmosphere. I like having the variety of foods, like,

health foods. All different types of foods. It's like a one-stop store and so I ... would like to see some type of establishment of that kind in our neighborhood.... I am truly in favor of having an establishment here. I do understand that there's a lot of traffic, but that space has been sitting there empty ... it started with it being pretty full and watched it become empty.

And so just for the people in my community and as a resident of this area I am for having an establishment down on East-West Highway.

(T. 52-53)

### **Opposition Concerns:**

(32) Eleven homes are located along an access/service road to the west of the subject property. One of the homeowners, Mr. Powell, questioned the continued safety of using what he described as a one-way road, especially if one of the accesses to the subject property is removed. (T. 142)

(33) Some in opposition questioned Applicant's assertion that the Food or Beverage Store would offer quality fresh foods. The area is believed to be a food desert, and "another fried chicken joint in the area that brings along a potential environmental hazard to our water ways" should be denied. (T. 80, 85)

(34) It was suggested that the uses would run counter to the County's Climate Action Plan since a main driver of climate change has been burning of fossil fuels, including gas. (T 41; 88-89, 98) Concern was also expressed as to the effect that the uses would have on groundwater and Sligo Creek, believing the underground gas storage tanks to be very close to the 100-year flood plain. (T. 42, 77, 83-84) Mr. Michael Wilpers and the Friends of Sligo Creek did not believe the proposal's two stormwater installations would prove sufficient, since "their ability to handle high impact storms doesn't seem to be described in the available documents ... [nor] the crucial cross-section views that would allow us to see where the outfall pipes for each stormwater features would send overflow water in high rain events." (Exhibits 85 and 88)

(35) Others were concerned with the lack of concentrated economic development in this area, noting elsewhere along Route 1 in Hyattsville, Prince George's Plaza and Tacoma Park "the type of development that we see [is] ... sort of a more concentrated commercial type of district that's going to be multi-use occupancy." (T. 76-77)

(36) Many were opposed to the removal of the playground from the adjacent MNCPPC Park. (T. 84-85) Others shared concerns over the possibility of exacerbating the high volume of traffic in the area and an increase in the number of accidents in the area. (T. 11-13, 96-98)

(37) Mr. Chris Watling testified that he is opposed to the request due to concerns over pedestrian/bicyclist safety and the removal of the playground from MNCPPC property:

As most of us know Sligo Creek Track runs behind the proposed site of Royal Farms. It receives heavy use from recreation and commuters, bikers, and ebikers, pedestrians, and also students ... and families going to and from Cesar Chaney Elementary school which is only a few hundred [feet] southeast of the proposed location.

The plans for Royal Farms show an exit in the southbound direction of Riggs Road, immediately before the Riggs Road pedestrian crosswalk for the Sligo Creek Trail.

The proposed Riggs Road entry and exit for Royal Farms is approximately the same locations as the [existing] one for the old Rite Aid. The bus stop is about 50 feet south of that entry/exist. The Sligo Creek Trail pedestrian crosswalk is another 40 feet south of there. Traffic volume is extremely heavy on Riggs Road at East-West Highway.

The existing crosswalk is treacherous. A pedestrian or biker must rely on three lanes of southbound traffic to hopefully stop at flashing yellow lights and wait on a small concrete island then cross three northbound lanes whenever the oncoming traffic allows. Imagine if you were trying to cross Riggs Road just south of the Royal Farms egress and a bus stop at the bus stop in the right lane. Vehicles leaving Royal Farms and vehicle heading south on Riggs Road will swerve to the left to avoid the bus, directly into the path of the Sligo Creek Trail crosswalk enabling Royal Farms to build a gas station at this location will drastically compound the pedestrian and bicyclist safety issues at the Sligo Creek Trail... .

[A] Gas station cannot be built within 300 feet of a playground. The solution apparently supported by MNCPPC and the County allows for the destruction and removal of the existing playground. ... [R]oyal Farms will [then] provide the equivalent of the cost of the playground in park improvements.

The improvements that Royal Farms indicate they are going to make to the park land are vague and minimal. [I]t seems like they are going to raze the playground, add a couple of parking spaces, plant a few bushes, and create ... "multipurpose fields." The fields ... on the diagram are too small [for] regulation soccer league games per FIFA... .[And there] is an access hatch of the WSSC sanitary sewer lines [in the middle of a field] and that means this pad cannot be moved to accommodate a recreational field.

To add further insult ... MNCPPC recommends a black vinyl-clad chain-link fence in between Royal Farms and the park land. These types of fences ... [are] extremely ugly.

(T. 16-19)

(38) Mr. Carlos Manjarrez debated the need for a gas station at this location. He was not recognized as an expert witness but has researched Market Watch, a magazine of the national petroleum news service, and Loopnet. These sources note that gas stations often fail after a few years, and at least one is for sale in the Hyattsville area. Additionally, gas stations may sit vacant until they are sold. (T.25-26) Mr. Manjarrez prepared an Exhibit showing all gas stations within ½ mile of the subject property. (Exhibit 83) Mr. Manjarrez stated there are approximately 20 stations; however, upon cross examination it was determined that one gas station was listed twice and a few others were located outside of the County and could not be considered. (T. 35-36) He argued it would be improper to approve the request at this location for the following reasons:

Folding in another gas station does not mean that all boats will rise in terms of the gas station profits...[W]hat's likely to happen is it means that the slim projects that existing gas stations have to manage now will be further reduced when a shiny new gas station enters into their market.

For independent owners, many of whom own only one gas station, and this is from the National Association of Convenience and Fuel retailers, this...could be devastating.... The community does not need another gas station....

And for those who can't compete and are unable to sell their old gas station in a flooded market, we as residents have to bear the burden of living with another defunct property with potentially hazardous materials underground. If we allow this development to move forward...we do not really care what happens to the current merchants and vendors in our area....

(T.30-31)

(39) Mr. Manjarrez and Mr. Wilpers also provided some information as to the negative impact of benzene emissions which are a result of allowing clusters of gas stations in an area. (Exhibits 84 and 85; T. 31-32) Upon cross-examination Mr. Manjarrez did admit that he had not done any independent air quality assessment concerning the clustering of gas stations in the area of the subject property. (T. 35)

### **Agency Comment**

(40) The SHA confirmed that an access permit will be required to close one of the accesses to the stie from East-West Highway and to reconstruct the remaining two. (Exhibit 62, Backup p. 30)

(41) The Department of Permitting, Inspections and Enforcement ("DPIE") confirmed that "the 2018 Water and Sewer Plan designates the property in Water and Sewer Category 3, ... in the Growth Tier, and within Tier 1 under the Sustainable Growth Act, approved for development on the public sewer system." (Exhibit 62, p. 29)

(42) The MNCPPC Countywide Planning Division noted that the proposed uses would be less than two miles from the Mall at Prince George's Plaza and close to a multifamily residential community, single family homes, retail/commercial uses, the Sligo Creek Trail, bus stops, and a Capital Bike Share Station. It therefore agreed with Applicant that the Food or Beverage Store would serve the needs of the community, and the Gas Station would be necessary to the surrounding residents/businesses, if those terms are defined as reasonably convenient and useful to the public. (Exhibit 62, Backup pp. 33-34)

(43) The Environmental Planning Section's comment notes that the site "is fully developed and is not associated with any regulated environmental features ..., such as streams, wetlands, or associated buffers" although the "approved floodplain study [indicates that] the southeastern corner of the site is within the existing 100-year floodplain." (Exhibit 62, Backup p. 16) This portion of the floodplain is within the primary management area associated with a stream located to the south of the site and is required to be preserved in a natural state to the fullest extent possible. Any impact to the area should be limited to those necessary for the development of the site. The Environmental Planning Section supports Applicant's proposal and Applicant's proposed impact to the area "for the removal and replacement of an existing parking lot, and for the installation of an underground [stormwater management] facility with associated water conveyance piping" and for off-site impacts proposed for road improvements and utilities. (Exhibit 62, Backup pp. 17-18)

(44) The Department of Parks and Recreation reviewed the request and the applicable Master Plan and Functional Master Plans, and provided the following comment:

[T]he subject property directly abuts Parklawn Park Building to the south and west... a 15-acre M-NCPCC operated park which contains a playground, picnic benches, a one-open play fields. Vehicular access to the existing park is from East-West Highway, approximately 1,000 feet west of the subject property....

As the applicant has stated, they have been [in] discussion with The Department of Parks and Recreation (DPR) regarding the playground for some time now. DPR staff has analyzed the playground facility, and determined that the existing playground is not heavily used (perhaps due to its poor location) and that other facilities or replacement amenities would better serve the Park and its patrons. The existing playground is in fact, towards the end of its useful life and will be slated for replacement or removal in the near term. The site has been evaluated for opportunities for redesign consistent with its use as a linear park due to the trail facility and stream located onsite.

The applicant has proffered considerable Park improvements and amenities, to mitigate for the loss of the existing playground. The applicant and DPR have reached an agreement in principle and the playground will be removed should the Special Exception be approved. The new Park amenities and improvements are currently being designed in consultation with DPR staff. DPR staff and the applicant are reviewing both the proposed Royal Farms and Parklawn Park Building designs together so that the final developments for each will be compatible and harmonious with each other.

As part of our concepts review, DPR staff recommends that there be no direct connection from the proposed Royal Farms store to the Park, especially along the southwest corner of the subject property. The corner of the property contains the dumpster and loading areas for the store and will contain a landscaped bufferyard. We recommend that in addition to the landscaping, a black vinyl-clad chain link fence (4' high at a minimum) be added along the property line to discourage the cut-through of the store patrons to our park. Appropriate locations for park entry are identified....

In summary, DPR staff has no further issues with the applicant's request to develop a Royal Farms on the subject property. With execution of the RFA for additional park facilities and playground removal, Section 27-358 (a) (2) of the Prince George's County Zoning Ordinance will be met. DPR staff recommends approval of the Special Exception subject to the following condition:

1. The existing playground at Parklawn Park Building shall be removed prior to the issuance of a Building Permit for the proposed Royal Farms.

(Exhibit 49)

(45) The Historic Preservation Section's comment noted that the site "does not contain and is not adjacent to any Prince George's County historic sites or resources and, therefore, "will not impact any historic sites, historic resources or known archeological sites." (Exhibit 62, Backup p. 27) The Subdivision Section commented that the subdivision plat pertaining to the property dates from 1950 and "the development proposed is exempt from resubdivision under Section 24-111(c)(2) of the prior Subdivision Regulations, because the total development proposed does not exceed 5,000 square feet of gross floor area (GFA)." (Exhibit 62, Backup p. 25)

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

The subject application seeks to raze an existing building and replace it with a food and beverage store (specifically a Royal Farms) and a gas station. Specifically, the applicant proposes a 4,649 square-foot food and beverage store along with eight fueling dispensers. The property is located within the western quadrant of the intersection of East-West Highway and Riggs Road. Please note that the Special Exception application is subject to and was reviewed using the standards of Section 27 of the prior Zoning Ordinance...

There are no prior conditions of approval on the subject property....

This application is subject to 2009 *Approved Countywide Master Plan of Transportation* (MPOT)....

The subject property fronts East-West Highway (MD-410; MPOT Route ID #A-15) along its northern border and Riggs Road (MD-212; MPOT Route ID #A-12) along its eastern border. The MPOT recommends East-West Highway as a 4-6 lane arterial roadway constructed within 100-120 feet of right-of-way. The MPOT recommends Riggs Road as

a 6-lane arterial roadway constructed within 120-feet of right-of-way. Both roadways fronting the subject property fall within the *1989 Langley Park – College Park – Greenbelt Approved Master Plan and Adopted Sectional Map Amendment* which recommends similar improvements. No additional right-of-way dedication is sought along either of these roads...

The 2009 Approved Countywide Master Plan of Transportation (MPOT) recommends the following facilities:

Planned Bicycle Lane: East-West Highway and Riggs Road  
Hard Surface Trail: Sligo Creek Trail...

The applicant's submission displays a bicycle lane along the subject property's frontage of Riggs Road, subject to Maryland State Highway Administration (SHA) approval. Staff supports the design of this facility as depicted on the site plan. While the subject property's frontage of East-West Highway is also a planned bicycle lane per the MPOT, staff does not find the current lane configuration and available right-of-way to be suitable for a bicycle lane at this location. SHA can require the construction of the master plan recommended bicycle lane along this portion of East-West Highway as appropriate, or it may be installed by SHA as part of a future roadway repaving or capital improvement project.

Additionally, a portion of the Sligo Creek Trail has already been constructed to the immediate south and west of the subject property. This trail originates along Riggs Road south of the site and runs west-northwest, where it connects to East-West Highway, providing an additional pedestrian connection between the subject property to both roads...

The subject property falls with the *1989 Langley Park – College Park – Greenbelt Approved Master Plan and Adopted Sectional Map Amendment*. Pages 137-140 contain a series of guidelines related to circulation and transportation. Guidelines 17 and 21 are copied below:

17. A system of trails and walks for pedestrians, bicyclists and equestrians should be developed to connect neighborhoods, recreation areas, commercial areas, employment areas, and Metro stations.

21. As the local road system is expended and improved, bikeways should be incorporated in new highway designs, consistent with proposals in the Trails Plan and in this Master Plan.

Staff finds that the proposed uses do not impair the ability to make transportation related recommendations that are supported by an approved Master Plan or Functional Master Plan. In this case, staff has requested the installation of a bicycle lane on the subject property's frontage of Riggs Road, per MPOT recommendations. Additionally, staff believes that the recommendations for a bicycle lane is consistent with the Sector Plan guidelines 17 and 21 listed above.

In regard to circulation, the current configuration of the site allows for two points of

vehicle access along East-West Highway and an additional point of access along Riggs Road. The applicant's submission seeks to close the eastern most point of access along East-West Highway, thereby consolidating points of access to one point along each road frontage. Staff supports this design feature.

The applicant's submission includes a "Stop & No Left Turn" sign for vehicles egress at the access driveway along East-West Road. Staff supports the restricted movements at this location, but requests that the applicant provide a detailed sheet of the sign at the time of building permit. The point of vehicle access along Riggs Road functions as a right-in/right-out due to the center median which is currently in place along Riggs Road.

The proposed use results in a requirement of 58 onsite parking spaces and one loading space. The applicant's submission displays 63 parking spaces and one loading space. Staff finds the parking to be in conformance with the zoning ordinance.

Per staff request, the applicant has submitted a trip generation analysis comparing the proposed use for a convenience store/ gas station with the current uses. The analysis uses the Institute of Transportation Engineers (ITE) Trip Generation Manual 11<sup>th</sup> Edition. The applicant analyzed trips generated using 4,655 SF of convenience store/ gas station use which resulted in the generation of 102 AM peak period trips and 88 PM peak period trips. As a point of comparison, the applicant supplied trip generation for current uses which include 1,767 SF of retail use, 3,534 SF of fast food without drive-thru use, and 10,000 SF of pharmacy without drive-thru use, which resulted in 114 AM peak period trips and 113 PM peak period trips. Based on the results of the trip generation analysis, the site will generate fewer trips than the current uses onsite, and therefore will not have an impact to the existing road network. While the subject property does not fall under the purview of an approved preliminary plan of subdivision and therefore is not held to AM and PM peak-hour trips, staff finds the applicant's trip generation analysis to be suitable for the purposes of a special exception.

The applicant has also provided truck turning plans that shows truck access and circulation within the site, as well as access to the location of the underground gas tanks, which staff finds to be suitable. The truck turning plans show that trucks maneuvers to the fueling tanks onsite are sufficient. However, the trunk turning plans do not indicate how trucks will access the loading zone area, located directly west of the proposed convenience store. Staff believes that the loading area is adequate, and the site provides sufficient space for truck movements to the proposed loading area.

Lastly, regarding pedestrian circulation and facilities, a sidewalk is displayed surrounding the entirety of the building as well as along the subject property's frontage of East-West Highway and Riggs Road. Parking is shown along the north and east frontages of the new building, as well as along the north, east, and south frontages of the site. A continental style crosswalk is displayed at both points of vehicle entry. As discussed, a loading area is located to the west of the new building. Bicycle parking is provided directly adjacent to the proposed building. Staff request the applicant provide a detail sheet for the bicycle parking racks...

(Exhibit 51 and 62, Backup pp.19-22)



(47) The Technical Staff agreed with Applicant's Need Analysis and concluded that the Food or Beverage Store would satisfy all criteria in Section 27-355 of the Zoning Ordinance (2019 Edition) since: the use would be convenient to commuters traveling along the two adjacent Master Plan arterials; the two access points to the site would provide safe access and are designed in a manner to ensure adequate traffic flow on-site and within the surrounding neighborhood; the uses are proposed in an existing retail strip shopping center so there should be no effect on the availability of land or the balance of land uses; the property is not in the I-1 or I-2 Zone; and there will be no sales of alcoholic beverages. It also opined that the Gas Station satisfied all criteria in Section 27-358 of the Zoning Ordinance (2019 Edition) since: the property has 371 feet of frontage along East-West Highway and 200 feet of frontage along Riggs Road; East-West Highway has a right-of-way width of 150 feet and Riggs Road has a right-of-way width of 100 feet near the access points; the site is located at least 300 feet from any lot on which a school, library or hospital is located, and the playground on MNCPPC property is within 300 feet it will be removed prior to the issuance of a building permit; the plan does not include the display and rental of cargo trailers, trucks or similar uses, nor does it include the storage or junking of wrecked vehicles; the property is a corner lot and the two accesses are 35-foot-wide and 30.9-foot-wide, respectively, are more than 20 feet from the point of curvature and more than 12 feet from the side and rear lot lines of any adjoining lots; access driveways are defined by curbing; there is 13.2-foot-wide sidewalk along the front of the building, a 6.7-foot-wide sidewalk along the east side of the building, and a 4.7-foot-wide sidewalk along the west side of the building, and there is an existing sidewalk along both rights-of-way; staff recommends connecting all proposed and existing sidewalks to the building; all gas pumps are more than 25 feet behind the street line; there will be no vehicle repair services at the site; architectural elevations incorporate PVC trim, cementitious siding, brick veneer and stone veneer, and the gasoline pumps and canopy are designed to coordinate well with the architecture and materials of the main building.

(48) The Technical Staff ultimately recommended approval of the Gas Station and Food or Beverage Store, reasoning as follows:

The purposes of Subtitle 27 ... as set forth in Section 27-102(a)(1-15) of the Zoning Ordinance, are generally to protect the health, safety and welfare of the public, to promote compatible relationships between various land uses, to guide orderly development, and to ensure adequate public facilities and services. Staff finds that the proposed use will provide jobs within the area. The proposed use will provide services, including food, beverage, and gas for the convenience of the surrounding Community. There will be additional tax revenue created by sales tax and gasoline tax, ensuring economic stability within all parts of the County.

[The site is located within the Established Communities policy area. The 2014 Plan Prince George's 2035 General Plan 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. The proposed food [or] beverage store, in combination with a gas station, serves the needs of both vehicles and pedestrians along the heavily trafficked MD 410 commercial corridor....

The subject property is located in the C-S-C Zone, and each of the proposed use designations are permitted as special exceptions. The master plan ... goal for commercial activities included locations that provided integrated transportation systems composed of pedestrian and bicycle movements, a variety of commercial uses and spaces, and commercial activities that are convenient to dwelling units, in order to minimize the need for frequent automobile trips. The proposed development displays a bicycle lane along the subject property's frontage of Riggs Road, subject to Maryland State Highway approval [and]...a condition has been added [concerning] sidewalks from the street frontages to food [or] beverage store for improved pedestrian circulation to and from the site. ...

The food [or] beverage store will screen the gas pumps from nearby residential development. ...The proposed development provides a safe, internal circulation for vehicles and pedestrians, in addition to safe ingress and egress of vehicles from surrounding public rights-of-way. The number of access points along MD 410 will be reduced from two to one, and an additional point of access will remain on Riggs Road. ...

Staff finds that the proposed use is compatible with the surrounding existing commercial and residential development. The development shall comply with required site design standards, physical features, and align with the harmony of the community ultimately, the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. ...

A special exception use is considered compatible with uses permitted by right within the Commercial Shopping Center (C-S-C) Zone if specific exception criteria are met. A special exception must be approved if the applicant satisfies the criteria which are intended to address any distinctive adverse impacts associated with the use.

Based on the applicant's statement of justification, the analysis contained in the technical staff report associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings, as set forth in Section 27-317 ..., Section 27-355 ..., and Section 27-358 of the prior Prince George's County Zoning Ordinance. ...

Therefore, staff recommends [approval] of Special Exception SE-4846 for Royal Farms #393, ... subject to ... conditions.

(Exhibit 62, pp 5-7,14)

## APPLICABLE LAW

(1) As noted, *supra*, the subject property was rezoned to the CGO Zone upon the effective date of the Countywide Map Amendment (April 1, 2022). However, the recently revised Zoning Ordinance allows Applicant to choose to develop pursuant to the

provisions of the prior Zoning Ordinance provisions applicable to its prior C-S-C zoning. (Prince George's County Code, Section 27-1703) The District Council also amended the provisions in Section 27-358 upon its adoption of CB-48-2021. The bill included a new Section 27-358 (a)(12) that notes the new provisions would not apply to Applications accepted prior to January 1, 2022 and ultimately approved. The instant request was accepted on November 18, 2021. Accordingly, it is reviewed for compliance with the provisions of Section 27-355 in effect prior to the adoption of CB-48-2021. (I have included both versions of that Section below for ease of reference). Both uses may be approved if they satisfy Sections 27-317, 27-355 and 27-358 of the Prince George's County Zoning Ordinance (2019 Edition). These Sections provide as follows:

**Sec. 27-317. Required findings.**

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

**Sec. 27-355. Food or beverage store.**

- (a) A food or beverage store may be permitted, subject to the following:
  - (1) The applicant shall show a reasonable need for the use in the neighborhood;

- (2) The size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;
- (3) The proposed use shall not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses;
- (4) In the I-1 and I-2 Zones, the proposed use shall be located in an area which is (or will be) developed with a concentration of industrial or office uses;
- (5) The retail sale of alcoholic beverages from a food or beverage store approved in accordance with this Section is prohibited; except that the District Council may permit an existing use to be relocated from one C-M zoned lot to another within an urban renewal area established pursuant to the Federal Housing Act of 1949, where such use legally existed on the lot prior to its classification in the C-M Zone and is not inconsistent with the established urban renewal plan for the area in which it is located.

**Sec. 27-358. Gas station. (As revised by CB-48-2021)**

- (a) A gas station may be permitted, subject to the following:
  - (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;
  - (2) The nearest gas pump on the subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, hospital, or a structure used as a residence is located;
  - (3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417;
  - (4) The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;
  - (5) Access driveways shall be not less than thirty (30) feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Permitting, Inspections, and Enforcement, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than twenty (20) feet from the point of curvature (PC) of the curb return or the point of curvature of the edge of paving at an intersection without curb and gutter. A driveway may begin or end at a point not less than twelve (12) feet from the side or rear lot line of any adjoining lot;
  - (6) Access driveways shall be defined by curbing;
  - (7) A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic;

- (8) Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;
  - (9) Repair service shall be completed within forty-eight (48) hours after the vehicle is left for service. Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for the storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.
  - (10) Details on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development.
  - (11) At least two (2) Level 3 or DC fast charger electric vehicle charging stations must be provided on-site for public use.
  - (12) Any Special Exception or Detailed Site Plan application filed prior to January 1, 2022, and approved shall not be subject to this provision and shall be deemed a conforming use.
- (b) In addition to what is required by Section 27-296(c), the site plan shall show the following:
- (1) The topography of the subject lot and abutting lots (for a depth of at least fifty (50) feet);
  - (2) The location and type of trash enclosures; and
  - (3) The location of exterior vending machines or vending area.
- (c) Upon the abandonment of a gas station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the owner of the property. For the purpose of this Subsection, the term "abandonment" shall mean nonoperation as a gas station for a period of fourteen (14) months after the retail services cease.
- (d) When approving a Special Exception for a gas station, the District Council shall find that the proposed use:
- (1) Is necessary to the public in the surrounding area; and
  - (2) Will not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

**Sec. 27-358. Gas station. (Prior to enactment of CB-48-2021 and used to evaluate the request)**

- (a) A gas station may be permitted, subject to the following:
- (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;
  - (2) The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located;
  - (3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417;
  - (4) The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;
  - (5) Access driveways shall be not less than thirty (30) feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Permitting, Inspections, and Enforcement, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than twenty (20) feet from the point of curvature (PC) of the curb return or the point of curvature of the edge of paving at an intersection without curb and gutter. A driveway may begin or end at a point not less than twelve (12) feet from the side or rear lot line of any adjoining lot;
  - (6) Access driveways shall be defined by curbing;
  - (7) A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic;
  - (8) Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;
  - (9) Repair service shall be completed within forty-eight (48) hours after the vehicle is left for service. Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for the storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.

- (10) Details on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development.
- (b) In addition to what is required by Section 27-296(c), the site plan shall show the following:
  - (1) The topography of the subject lot and abutting lots (for a depth of at least fifty (50) feet);
  - (2) The location and type of trash enclosures; and
  - (3) The location of exterior vending machines or vending area.
- (c) Upon the abandonment of a gas station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the owner of the property. For the purpose of this Subsection, the term "abandonment" shall mean nonoperation as a gas station for a period of fourteen (14) months after the retail services cease.
- (d) When approving a Special Exception for a gas station, the District Council shall find that the proposed use:
  - (1) Is necessary to the public in the surrounding area; and
  - (2) Will not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

(2) The request must also satisfy the purposes of the commercial zones, in general, and the C-S-C Zone, in particular, found in Sections 27-446(a) and 454(a) of the Zoning Ordinance (2019 Edition):

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

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

- (7) To increase the stability of commercial areas;
- (8) To protect the character of desirable development in each area;
- (9) To conserve the aggregate value of land and improvements in the County; and
- (10) To enhance the economic base of the County.

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

(a) **Purposes.**

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

(3) Applicant is requesting some indoor and outdoor seating at the Food or Beverage Store and the Special Exception Site Plan notes that there will be an “Eating or Drinking Establishment” on the site (Exhibit 40). This necessitates a brief review of the definitions section of the Zoning Ordinance. An “Eating or Drinking Establishment” and a “Food or Beverage Store” are defined in Sections 107.01 (a)(81.1) and (91.1), respectively, as follows:

- (81.1) **Eating or Drinking Establishment:** An establishment that provides food or beverages for consumption on or off premise, which may be developed freestanding, on a pad site or attached to another building, or located within another building or located within a group of buildings, which may include a drive-through service, carryout, outdoor eating, music of any kind, patron dancing, or entertainment, excluding adult entertainment uses.
- (91.1) **Food or Beverage Store:** A use providing the retail sales of food, beverages, and sundries primarily for home consumption, and may include food or beverage preparation. Does not include a Department or Variety Store that provides incidental sales of candy, gum and similar non-refrigerated items at a check-out counter, or in a standard vending machine.

Clearly, the “Food or Beverage Store” is defined in a manner that would allow limited indoor and outdoor seating since it merely adds that the use is “primarily for home consumption.” Eating or Drinking Establishments, on the other hand, are defined to allow much more (i.e., drive through service, music, dancing and certain entertainment). Additionally, it is slightly nonsensical to refer to all of the proposed Store as a “Food or Beverage Store” but refer to the seating alone as an “Eating or Drinking Establishment”. For these reasons I would remove “Eating or Drinking Establishment” from the Site Plan, and from the Parking and Loading Schedule. While the Parking Regulations in the Zoning



Ordinance do not specifically list a “Food or Beverage Store” use in the parking tables Section 27-571 notes “[f]or uses not specifically listed, the requirement of the most nearly similar use shall be applied.” The uses are very similar, so it would be proper to use the Eating or Drinking Establishment parking calculations in determining how many parking spaces will be required for the amount of indoor and outdoor seating that will be provided with the Food or Beverage Store.

### **Necessity/Need**

(4) The Zoning Ordinance and the County Code do not define the terms “necessary” or need. However, undefined words or phrases shall be construed according to common usage, while those that have acquired a particular meaning in the law shall be construed in accordance with that meaning. (Prince George’s County Code, Section 27-108.01(a)) Webster’s New World Dictionary (2<sup>nd</sup> College Edition) defines it as “essential” and “indispensable”. The Oxford Languages Dictionary (online) defines “need” as “circumstances in which something is necessary” or “a thing that is wanted or required.” Thus “need” and “necessary” share similar definitions.

(5) In Brandywine Enterprises, Inc. v. County Council, 117 Md. App. 525,540 (1997), the Court of Special Appeals addressed the definition of “necessary” in the County’s Zoning Ordinance as it relates to rubble fills and noted that “‘necessary’... means necessary rather than reasonably convenient or useful.” The Court went on to note that the best method for determining need for a rubble fill would be to assess whether there would be an actual deficit of capacity. In a case involving liquor licenses, Baltimore County Licensed Beverage Association, Inc. v. Kwon, 135 Md. App. 178, 194 (2000), the Court of Special Appeals held that the meaning is dependent upon the context in which “necessary” is used. The Court then found that “‘necessary,’ in this instance, means that the transfer of the liquor license to the transfer site will be ‘convenient, useful, appropriate, suitable, proper, or conducive’ to the public in that area.” Accordingly, I believe the proper standard to apply in the review of both special exception requests is whether the Gas Station/Food or Beverage Store will be “convenient, useful, appropriate, etc.” given the nature of the use, and the District Council has adopted this definition of need/necessity in prior Gas Station Special Exception and Food or Beverage Store Special Exception heard by it.

### **Special Exception**

(6) The Court of Appeals provided the standard to be applied in the review of a Special Exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

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

### CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102 (of the 2019 Edition). I agree with the expert land planner's analysis as to why/how the request meets all applicable purposes (Exhibit 76, pp. 5-13) but would note that the instant Application satisfies the following purposes for the following reasons in particular:

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

The Gas Station will serve the needs of all County residents that rely on the automobile as a means of transportation. The Food or Beverage Store will further the comfort and convenience of all purchasing gas at the site as it will provide a "one-stop" shopping experience. It will also be convenient for pedestrians or others not purchasing gas in the area since it will provide an opportunity to purchase items of food or drink on their way to work, school, home, or exercise.

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

The 2014 General Plan placed the property within the Established Communities. This proposal furthers the General Plan's vision of context sensitive infill development, and the requested uses are permitted in the zone. While the Master Plan has no particular recommendation for the subject property, it did address the need to update the older commercial centers in the planning area, and the SMA retained the commercial zoning of the site (imposing the C-S-C Zone due to the phasing out of prior obsolete zoning categories) thereby recognizing the need for retail/ commercial uses such as those proposed in the instant request. The record indicates no impact upon any Functional Master Plan. Accordingly, this purpose is satisfied.

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

Development of the subject property in the manner proposed by the Applicant will have no negative impact on the public facilities within the area since all vehicular trips are within the trip caps previously imposed on development on the property, no residential development is proposed, and no impact to other public facilities has been identified.

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

The two uses will be developed in accordance with all applicable laws once the playground is removed from the MNCPPC Park. The developer will be providing stormwater management and landscaping to a site that is currently 100% impervious, adding new sidewalks for safe access to the store and better connection to the adjacent trail, adding fencing between the store and the park property, and will decrease the current number of driveway accesses, thereby reducing the possibility of car/pedestrian accidents along two highly traveled arterials. The architectural elevations reveal that the uses will be designed in an attractive manner that should not detract from the other properties in the area. This purpose is, therefore, met.

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

Both uses ensure that a certain number of jobs will be provided and that sales taxes will be collected, thereby contributing to the County's tax base.

The Application satisfies the purposes of the commercial zones and the C-S-C Zone since the applicable general purposes of the Zoning Ordinance are implemented (for reasons noted *supra*); the uses will be a redevelopment of an existing commercial site and Applicant has demonstrated that both would serve the needs of the residents and businesses in the area; the site is of sufficient size to accommodate the proposed retail uses in a safe manner; these commercial/retail uses are located at a compatible commercial node which already includes a similar mix of uses; the development will satisfy all setback requirements, add landscaping and fencing, and should therefore adequately protect adjacent properties; the reduction of peak hour vehicular trips, removal of one access and relocation of the remaining two to reduce pedestrian or other conflict will improve traffic efficiency; the redevelopment of this site will provide stability to the commercial uses and the design of both uses will protect the character of development in the area; active uses on the site will conserve the aggregate value of land and will

enhance the economic base of the County; the new commercial/retail uses are being developed on a site that has been used for such uses for decades, and neither will detract from the character of the area; and the proposed uses are compatible with existing uses and with service and general retail shopping uses in general.

(Sections 27-317(a) (1), 446(a) and 454(a))

(2) The Food or Beverage Store and (once the playground removal occurs) the Gas Station can be found to be in conformance with the applicable provisions of the Zoning Ordinance. (Section 27-317 (a)(2))

(3) Again, both uses conform to the General Plan's vision of context sensitive infill development, the Master Plan's goals for existing, older commercial sites, the Functional Plans' requirements concerning bicycle lanes and environmental policies, and the SMA's determination that C-S-C zoning and uses should be preserved on the site. (Section 27-317(a)(3))

(4) The uses will offer needed services to residents, visitors, and employees within the area - useful and convenient to those who live/work near or travel in the area; the developer will be adding much needed landscaping, sufficient parking and lighting; and the site will be designed in an attractive manner that does not detract from the diverse character of the neighborhood. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area, nor be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317(a)(4) and 27-317(a)(5))

(5) The subdivision plan was approved for this property prior to the adoption of the Woodland and Wildlife Habitat Conservation Ordinance was enacted, the site is completely impervious, and the site has received an exemption letter from the requirement for a Tree Conservation Plan. Moreover, Staff has indicated there are no regulated environmental features on the site with the exception of the southeastern corner that lies within the existing 100-year floodplain, and it will be minimally impacted to provided underground stormwater assistance, to remove and replace existing parking and for safety improvements to the existing entrance on Riggs Road. (Section 27-317(a)(6) and (7))

(6) The subject property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317 (b))

(7) The Food or Beverage Store satisfies the criteria found in Section 27-355 of the Zoning Ordinance. Applicant's expert prepared a market study that established a reasonable trade area near the site and noted that, given the dearth of fresh food options

at the other Food or Beverage Stores within said area, their age, and their smaller size, there is a reasonable need for the proposed store if need is defined as “useful, appropriate, and convenient.” (Section 27-355 (a)(1)) The subject property is adjacent to two arterials, East-West Highway and Riggs Road; there is adequate parking; there are interconnecting sidewalks providing safe access to the Store; and, the Store is of sufficient size to offer a bevy of fresh and packaged foods. Thus, the Store can be found to meet the needs of the neighborhood. (Section 27-355 (a)(2)) The Store will be a redevelopment of an existing commercial property and is a use that works well with the mix of retail/commercial/residential uses in the immediate area, so approval should not unduly restrict the availability of land or upset the balance of land use in the area for other allowed uses. (Section 27-355 (a)(3)). The property is not located in the I-1 or I-2 Zones. (Section 27-355 (a)(4)) There will be no sale of alcoholic beverages in the Store, and a note will be added to that effect. (Section 27-355 (a)(5))

(8) Similarly, once the playground’s removal is addressed the Gas Station can be found to satisfy the express provisions regarding its approval. The property has approximately 371 feet of frontage along East-West Highway, an arterial with 100-120-foot of right-of-way, and 200 feet of frontage along Riggs Road, an arterial with 120 feet of right-of-way. (Exhibit 62, p.10 and Backup p. 19). (Section 27-358(a)(1). However, this record is replete with differing by similar figures and the Special Exception Site Plan should be revised to expressly note the among of frontage and the right-of-way widths.

(9) There are no schools, libraries, or hospitals on a lot within 300 feet of the subject property. Applicant filed its request prior to January 1, 2022 and pursuant to the provisions of CB-48-2021 it is not required to provide a 300-foot setback from any lot on which a structure used as a residence is located, nor to provide electric vehicle charging stations. There is an existing playground on a lot within 300 feet of the Gas Station, but it is slated for removal and a condition of approval will prohibit the issuance of any building permits for the use prior to the playground’s removal. (Section 27-358(a)(2))

(10) The Applicant states that there will not be any display or rental of cargo trailers, trucks, or similar uses; and the storage/junking of wrecked motor vehicles is prohibited. (Sections 27-358(a)(3) and (4)) However, notes to this effect should be added to the Special Exception Site Plan.

(11) There are two access driveways into the special exception site and each is over thirty feet wide, in excess of 12 feet from any side or rear lot line, and more than 20 feet from the point of curvature. (Section 27-358(a)(5)) However, the exact dimensions should be clarified on the Special Exception Site Plan since varying amounts, all beyond the minimum prescribed in the law, were discussed in the record.

(12) The access driveways will be defined by curbing. (Section 27-358(a)(6))

(13) There is 13.2-foot-wide sidewalk along the front of the building, a 6.7-foot-wide sidewalk along the east side of the building, and a 4.7-foot-wide sidewalk along the west side of the building, and there are existing sidewalks along both rights-of-way. (Section 27-358 (a)(7))

(14) The concrete upon which the gasoline pumps sit is more than 25 feet from the street line of Riggs Road and East-West Highway. (Section 27-358(a)(8))

(15) There will be no repair services offered on site, but a note to that effect should be added. (Section 27-358(a)(9))

(16) Applicant submitted architectural elevations which depict each façade and exterior finishes and the proposed building and canopy on site will not detract from the surrounding development. (Section 27-358 (a)(10))

(17) Applicant filed its request prior to January 21, 2022. It, therefore, need not provide electric vehicle charging stations on site. ((Section 27-358(a)(11) and (12))

(18) The Special Exception Site Plan shows the topography of the subject property and abutting lots for a depth of at least 50 feet, as well as the location and type of trash enclosure, and the location of air pump stations and vacuums. There will be no exterior vending machines. (Section 27-358(b))

(19) A note should be added to the Special Exception Site Plan to state what must be done upon the abandonment of the Gas Station. (Section 27-358(c))

(20) Applicant provided sufficient evidence to show that the Gas Station is necessary to the public in the surrounding area, in that it is reasonably convenient and useful to the traveling public within the trade area established by the expert marketing witness. It will not upset the balance of land use in the area for other trades and commercial uses, since it is a redevelopment of a fairly small parcel that has been slated for retail/commercial use for nearly sixty years, the 1.9 acres is a mere fraction of the total land area in the C-S-C Zone, and most of the surrounding properties are developed. (Section 27-358(d))

(21) The Technical Staff recommended a condition limiting the number of parking spaces on site and the Applicant objects. I believe the Applicant should be allowed the number of spaces shown on its site plan since the Staff Report only noted that the number of spaces far exceeds the minimum but did not give further justification for its position, while Applicant supported its parking request as the number of spaces requested is what they've found to be workable given the varied periods of rush and downtime that its stores experience, it would like to avoid folks parking in the Gas Station lanes and running into

the Store, and it would like to have sufficient spaces to convert into electric vehicle charging spaces in the future.

(22) The Technical Staff also requested that Applicant erect a vinyl-clad chain link fence between the park property and the subject property. I agree with the resident that noted such a fence would detract from the character of the neighborhood and have added a condition that the fence either be iron or board-on-board and that it be five-foot-tall (at a minimum) in order to reduce the possibility of customers wandering onto park property and to be aesthetically pleasing.

(23) Finally, I would commend all of the citizens that appeared at the hearing and offered testimony on the Application, and briefly address the majority of their concerns. Many were concerned with the possible increase in traffic and traffic accidents. Applicant's expert witness on transportation planning, the SHA and the Technical Staff's Transportation Planning Section reviewed the proposal and expressly or tacitly agreed that the proposed uses would generate fewer peak hour vehicular trips than those that have been permitted by right at the location, and that limiting the accesses will further reduce traffic conflict. Others testified to the increasing number and severity of storm events and believed the uses would adversely impact Sligo Creek or regulated environmental features. Again, the experts disagree: the site has an approved Natural Resources Inventory Equivalency Letter that determined no on-site regulated environmental features will be impacted, and Applicant is only allowed to disturb the small amount of floodplain on site to remove and replace an existing parking lot, install an underground much-needed stormwater management facility with associated water conveyance piping, and make changes to aid in the reconfiguration of Riggs Road. All of these limited impacts are permitted by law. Moreover, Applicant will be bringing stormwater management to a site that has none.

Some were opposed because they believed that the addition of a gas station would adversely impact the health of those residing in the area. I did read the materials provided concerning benzene admissions and would agree that this is an area of concern. However, the model used in the article concluded that clustering of gas stations causes additional harm and defined a "cluster" as four gas stations at an intersection, which is not a factor in this case. The article also assumed no buildings to be present when measuring emissions- also not a factor in this case. Applicant noted that, pursuant to State and Federal law, it is required to construct a vapor recovery system, and provided detail on its system and the checks and balances to ensure that vapors are not emitted, spills not occur, and constant monitoring takes place.

Many were concerned with the removal of the playground. However, the facts surrounding the removal are not germane to my review of the request since they pertain to a separate governmental entity and Applicant. The only issue for me is whether a

playground will be located within the required setback and a condition of approval will ensure that not be the case.

Finally, Applicant must only prove that its request satisfies the Zoning Ordinance and there is nothing in Sections 27-317, 355 or 358 that would mandate denial of the request based on testimony/articles that generically note that gas emissions may impact health, or because the food choices may be undesirable to some, or because the uses may limit competition, or because there is a trail and a creek near the property. Additionally, caselaw makes clear that Applicant need not prove that its request would be a boon to the community, just that it will not adversely affect the community at this particular location more than it would at another location within the Zone. (Rockville Fuel & Feed Co. v. Board of Appeals, 257 Md. 183 (1970)) I don't believe the impact of this Gas Station and Food or Beverage Store will more adversely impact its surroundings at this location since it is a redevelopment and improvement to an existing retail/commercial property and it implements many of the goals of the various planning documents. For these reasons I would approve the request.

## DISPOSITION

Special Exception 4846 is Approved, subject to the following conditions:

1. Prior to signature approval of the Special Exception Site Plan, the following revisions shall be made:
  - a. All plan drawings shall be revised to show 4,655 square feet or less square footage for the gross floor area of the Food or Beverage Store.
  - b. The Gateway and Pylon sign setbacks shall be shown on the Special Exception Site Plan.
  - c. A sign location key map shall be provided on the signage plan.
  - d. The Special Exception Site Plan shall be revised to include notes addressing compliance with all provisions of Section 27-355 and Section 27-358 (in effect immediately prior to the adoption of CB-48-2021), including what must occur upon abandonment. The term "For Concept Purposes Only" shall be removed from the Special Exception Site Plan as well.
  - e. The parking table shall be revised to: delete reference to an "Eating or Drinking Establishment" and insert "Food or Beverage Store"; to specify the



- number of employees and the number of indoor seats provided; and, to show loading space dimension standards.
- f. Include a general note that states that the EV charging stations provided will be Level 3 or DC fast charger stations.
  - g. Revise the Special Exception Site Plan to provide a 5-foot-wide sidewalk from each street frontage to the Food or Beverage Store.
  - h. Provide a six-foot-tall iron or (board on board fence) to be added along the southern property line between the park property and the subject property.
2. Prior to issuance of a building permit, Applicant shall revise the Special Exception Site Plan as follows and submit it to the Office of the Zoning Hearing Examiner for approval and inclusion in the record:
- a. Remove the existing playground at Parklawn Park Building.
  - b. Provide a detailed sheet for the Stop & No Left Turn signage assembly at the point of vehicle exit along MD 410 (East-West Highway).
  - c. Provide a detail sheet for the bicycle racks, specifically an inverted U-style or similar model that provides two points of contact to secure a parked bicycle of at least 20 inches in width.

[Note: The Special Exception Site Plan Landscape Plan and accompanying plans and details are set forth in Exhibit 40]