

From: [Robeson Hannan, Lynn](#)
To: [Butler, Patrick](#)
Cc: [Beall, Mark](#); [Behanna, Sara](#); [Andrea LeWinter](#); [Harris, Patricia A.](#); [Penn, Joshua](#)
Subject: RE: S-847-B, Burtonsville Wawa
Date: Friday, April 5, 2024 1:08:06 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Thank you. I will review all responses.

Lynn Robeson Hannan
Director
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, MD 20850
(240) 777-6660

From: Butler, Patrick <patrick.butler@montgomeryplanning.org>
Sent: Friday, April 5, 2024 1:06 PM
To: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>
Cc: Beall, Mark <mark.beall@montgomeryplanning.org>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Andrea LeWinter <alewinter@taylorlegal.com>; Harris, Patricia A. <paharris@lercheary.com>; Penn, Joshua <joshua.penn@montgomeryplanning.org>
Subject: RE: S-847-B, Burtonsville Wawa

[EXTERNAL EMAIL]

Hello Director Robeson,

The Application was accepted by the Board of Appeals and forwarded on to Staff as an accepted Special Exception Major Modification and Staff agreed with the Board of Appeals and Hearing Examiner this was a Special Exception Major Modification. Furthermore, Section 59.7.7.1.B.3(c) states a Special Exception approved under the code in effect on or before October 29, 2014, may be expanded under the applicable standards and procedures in effect on October 29, 2014, without regard to the limitations of this Section.

The Applicant team has previously replied to your inquiry (See Attachment) and Planning Staff concurs with their response on the items that were addressed. The following are the two items Planning Staff were requested to clarify:

(b) The reference to 5,000 square feet was a typo. It should read 5,919 square feet.

(c) Staff feels the proposed signage is similar in size to the existing signage onsite as well as the signage that exists for other businesses along Route 198.

Please let us know if you have additional questions or concerns.

Exhibit 24
S-847-B

Thank you,



Patrick Butler

Chief, Upcounty Planning Division

Montgomery County Planning Department

2425 Reedie Drive, 13th Floor, Wheaton, MD 20902

patrick.butler@montgomeryplanning.org

o: 301-495-4561 c: 240-772-6736



WE'VE MOVED!

THE NEW PARK AND PLANNING HEADQUARTERS IS NOW LOCATED AT
2425 REEDIE DRIVE, WHEATON, MD 20902

From: Butler, Patrick

Sent: Wednesday, April 3, 2024 1:52 PM

To: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>

Cc: Beall, Mark <Mark.Beall@montgomeryplanning.org>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Andrea LeWinter <alewinter@taylorlegal.com>; Harris, Patricia A. <paharris@lercheearly.com>; Penn, Joshua <Joshua.Penn@montgomeryplanning.org>

Subject: RE: S-847-B, Burtonsville Wawa

Hello Director Robeson,

We have received your request, and we are working on a response. We should have that to you by this Friday at close of business.

Thank you,



Patrick Butler

Chief, Upcounty Planning Division

Montgomery County Planning Department

2425 Reedie Drive, 13th Floor, Wheaton, MD 20902

patrick.butler@montgomeryplanning.org

o: 301-495-4561 c: 240-772-6736



WE'VE MOVED!

THE NEW PARK AND PLANNING HEADQUARTERS IS NOW LOCATED AT
2425 REEDIE DRIVE, WHEATON, MD 20902

From: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>

Sent: Wednesday, April 3, 2024 7:38 AM

To: Harris, Patricia A. <paharris@lercheearly.com>

Cc: Beall, Mark <Mark.Beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Andrea LeWinter <alewinter@taylorlegal.com>

Subject: Re: S-847-B, Burtonsville Wawa

From: [Butler, Patrick](#)
To: [Robeson Hannan, Lynn](#)
Cc: [Beall, Mark](#); [Behanna, Sara](#); [Andrea LeWinter](#); [Harris, Patricia A.](#); [Penn, Joshua](#)
Subject: RE: S-847-B, Burtonsville Wawa
Date: Wednesday, April 3, 2024 1:51:45 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

[EXTERNAL EMAIL]

Hello Director Robeson,

We have received your request, and we are working on a response. We should have that to you by this Friday at close of business.

Thank you,



Patrick Butler
Chief, Upcounty Planning Division
Montgomery County Planning Department
2425 Reedie Drive, 13th Floor, Wheaton, MD 20902
patrick.butler@montgomeryplanning.org
o: 301-495-4561 c: 240-772-6736



WE'VE MOVED!

THE NEW PARK AND PLANNING HEADQUARTERS IS NOW LOCATED AT
2425 REEDIE DRIVE, WHEATON, MD 20902

From: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>
Sent: Wednesday, April 3, 2024 7:38 AM
To: Harris, Patricia A. <paharris@lercheary.com>
Cc: Beall, Mark <Mark.Beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Andrea LeWinter <alewinter@taylorlegal.com>
Subject: Re: S-847-B, Burtonsville Wawa

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Staff acts as our objective experts, so we would look to Staff for a response, although you may certainly respond as well.

we would also appreciate Staff's rationale for applying the standards of the 2004 CRT Zone.

Mark/Patrick, is there a problem getting a response? Do you need more time?

Exhibit 24
S-847-B

From: [Harris, Patricia A.](#)
To: [Robeson Hannan, Lynn](#)
Cc: [Beall, Mark](#); [Butler, Patrick](#); [Behanna, Sara](#); [Andrea LeWinter](#)
Subject: RE: S-847-B, Burtonsville Wawa
Date: Wednesday, April 3, 2024 1:28:11 PM
Attachments: [Responses to ZHE"s 4 2 24 email\(5814864.1\).docx](#)

[EXTERNAL EMAIL]

Ms. Robeson,
Attached please find the Applicant's responses to your questions. Thank you.
Pat

Patricia A. Harris, Attorney
Lerch, Early & Brewer, Chtd. rising to every challenge for over 70 years
7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814
T 301-841-3832 | F 301-347-3756 | Main 301-986-1300
paharris@lerchearly.com | Bio

Attention: This message is sent from a law firm and may contain information that is privileged or confidential. If you received this communication in error, please notify the sender by reply e-mail and delete this message and any attachments. Thank you.
www.lerchearly.com

From: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>
Sent: Wednesday, April 3, 2024 7:38 AM
To: Harris, Patricia A. <paharris@lerchearly.com>
Cc: Beall, Mark <mark.beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Andrea LeWinter <alewinter@taylorlegal.com>
Subject: Re: S-847-B, Burtonsville Wawa

Staff acts as our objective experts, so we would look to Staff for a response, although you may certainly respond as well.

we would also appreciate Staff's rationale for applying the standards of the 2004 CRT Zone.

Mark/Patrick, is there a problem getting a response? Do you need more time?

Just let me know.

Get [Outlook for iOS](#)

From: Harris, Patricia A. <paharris@lerchearly.com>
Sent: Tuesday, April 2, 2024 9:07 PM
To: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>
Cc: Beall, Mark <mark.beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>

From: [Butler, Patrick](#)
To: [Robeson Hannan, Lynn](#)
Cc: [Beall, Mark](#); [Behanna, Sara](#); [Andrea LeWinter](#); [Harris, Patricia A.](#); [Penn, Joshua](#)
Subject: RE: S-847-B, Burtonsville Wawa
Date: Wednesday, April 3, 2024 1:51:45 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

[EXTERNAL EMAIL]

Hello Director Robeson,

We have received your request, and we are working on a response. We should have that to you by this Friday at close of business.

Thank you,



Patrick Butler
Chief, Upcounty Planning Division
Montgomery County Planning Department
2425 Reedie Drive, 13th Floor, Wheaton, MD 20902
patrick.butler@montgomeryplanning.org
o: 301-495-4561 c: 240-772-6736



WE'VE MOVED!

THE NEW PARK AND PLANNING HEADQUARTERS IS NOW LOCATED AT
2425 REEDIE DRIVE, WHEATON, MD 20902

From: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>
Sent: Wednesday, April 3, 2024 7:38 AM
To: Harris, Patricia A. <paharris@lercheearly.com>
Cc: Beall, Mark <Mark.Beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Andrea LeWinter <alewinter@taylorlegal.com>
Subject: Re: S-847-B, Burtonsville Wawa

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Staff acts as our objective experts, so we would look to Staff for a response, although you may certainly respond as well.

we would also appreciate Staff's rationale for applying the standards of the 2004 CRT Zone.

Mark/Patrick, is there a problem getting a response? Do you need more time?

From: [Harris, Patricia A.](#)
To: [Robeson Hannan, Lynn](#)
Cc: [Andrea LeWinter](#); [Behanna, Sara](#); [Beall, Mark](#)
Subject: RE: SE 847-B, Burtonsville Wawa
Date: Wednesday, April 3, 2024 10:48:31 AM

[EXTERNAL EMAIL]

Correct CRTF.

Patricia A. Harris, Attorney

Lerch, Early & Brewer, Chtd. rising to every challenge for over 70 years

7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814

T 301-841-3832 | F 301-347-3756 | Main 301-986-1300

paharris@lerchearly.com | [Bio](#)

Attention: This message is sent from a law firm and may contain information that is privileged or confidential. If you received this communication in error, please notify the sender by reply e-mail and delete this message and any attachments. Thank you.

www.lerchearly.com

From: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>
Sent: Wednesday, April 3, 2024 10:39 AM
To: Harris, Patricia A. <paharris@lerchearly.com>
Cc: Andrea LeWinter <alewinter@taylorlegal.com>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Beall, Mark <mark.beall@montgomeryplanning.org>; Harris, Patricia A. <paharris@lerchearly.com>
Subject: RE: SE 847-B, Burtonsville Wawa

I will review your response as soon as possible.

A point of clarification, however, is that the property is now zoned CRTF, not CRT, by virtue of an LMA.

Lynn Robeson Hannan

Director

Office of Zoning and Administrative Hearings

100 Maryland Avenue, Room 200

Rockville, MD 20850

(240) 777-6660

From: Harris, Patricia A. <paharris@lerchearly.com>
Sent: Wednesday, April 3, 2024 9:31 AM
To: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>
Cc: Beall, Mark <mark.beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Andrea LeWinter <alewinter@taylorlegal.com>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Vaias, Emily <Emily.Vaias@mncppc.org>
Subject: RE: SE 847-B, Burtonsville Wawa

[EXTERNAL EMAIL]

Ms. Robeson,

We have reviewed your email below and believe that the Special Exception may be modified under the 2004 Zoning Ordinance (ZO) in accordance with the CRT provisions as we have proposed. However, if you do not agree, we believe that consistent with your explanation in your email below, the Special Exception may be modified under the 2004 ZO in accordance with the CRN provisions. We note that there is no difference in the 2004 ZO's standards and procedures for the CRT and CRN as it relates to this Special Exception.

The Zoning History of the Property is as follows:

1967 -2012 – The Property was zoned C-2 and was subject to the SE originally approved in 1967.

2012 – The Property was rezoned CRN in accordance with the recommendations of the 2012 Burtonsville Master Plan and the subsequent Sectional Map Amendment.

2014 – The County adopted the new Zoning Ordinance. The County-wide District Map Amendment G-956, did not change the zoning of the Property

2019 – The Property was rezoned from CRN to CRT by LMA H-134.

ZO Section 7.7.1.B.3.c. provides as follows: “Without regard to the limitations of this section, a special exception approved under the code in effect on or before October 29, 2014 may be expanded under the applicable standards and procedures of the code in effect on October 29, 2014.”

The SE was approved under the code in effect before October 29, 2014. Therefore it may be expanded under the standards and procedures of the code in effect on October 29, 2014 (i.e. the 2004 ZO). Our logic in applying the CRT provisions that were in place in the 2004 ZO is as follows: CRT is the current zoning of the Property and the provision directs us to use the “applicable standards and procedures” of the 2004 ZO. We read “applicable” to mean the applicable provisions of the 2004 ZO based on the current existing zoning. We reached this conclusion because unlike other Sections of 7.7.1 (such as 7.71.B.3.a) Section 7.7.1.B.3.c. does not provide “under the development standards and procedures of the property’s zoning on October 29, 2014.” There is no mention of the Property’s zoning in 7.7.1.B.3.c. and therefore it was our conclusion that the standards and procedures of the Property’s current zoning (CRT), pursuant to the provisions of the 2004 ZO would be applicable.

In reviewing your discussion below, it appears you are interpreting “applicable” to mean the standards and provisions based on what the property was zoned on October 29, 2014. Under that interpretation, the CRN standards and provisions would apply (the Property was zoned CRN, not C-2 on October 29, 2014). As noted at the outset, the relevant standards and provisions of the CRN and CRT zone in the 2004 ZO are identical, so there is no substantive difference if it is determined that this interpretation is applicable.

It is also important to note that Section 7.7.1.B.3.c. refers only to the “applicable standards and procedures” and does not refer to the Land Uses, which are set forth in a separate division of the 2004 ZO than the standards and procedures. We mention this given that the CRN Zone does not permit gas station uses, but this should have no relevance.

Finally, you state that Section 7.7.1.C.5 only applies to LMAs that were approved under the 2004 ZO. I see nothing in that Section relating to LMAs. Section 7.7.1.C.5 provides as follows: “Without regard to the limitations of Section 7.7.1.C, a special exception approved under the code in effect on or before October 29, 2014 may be expanded under the applicable standards and procedures of the code in effect on

October 29, 2014.” Can you please clarify this, if necessary.

We look forward to your guidance.

Pat

Patricia A. Harris, Attorney

Lerch, Early & Brewer, Chtd. rising to every challenge for over 70 years

7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814

T [301-841-3832](tel:301-841-3832) | F [301-347-3756](tel:301-347-3756) | Main 301-986-1300

paharris@lercheearly.com | [Bio](#)

[Subscribe to the Zoned In blog](#)

Attention: This message is sent from a law firm and may contain information that is privileged or confidential. If you received this communication in error, please notify the sender by reply e-mail and delete this message and any attachments. Thank you.

www.lercheearly.com

From: Robeson Hannan, Lynn <Lynn.RobesonHannan@montgomerycountymd.gov>

Sent: Tuesday, April 2, 2024 11:11 AM

To: Harris, Patricia A. <paharris@lercheearly.com>

Cc: Beall, Mark <mark.beall@montgomeryplanning.org>; Butler, Patrick <patrick.butler@montgomeryplanning.org>; Andrea LeWinter <alewinter@taylorlegal.com>; Behanna, Sara <Sara.Behanna@montgomerycountymd.gov>; Vaias, Emily <Emily.Vaias@mncppc.org>

Subject: SE 847-B, Burtonsville Wawa

Importance: High

Ms. Harris, upon review of all of the documents filed in the above case, it appears that the Applicant has misapplied Section 7.7.1.C.1 and 7.7.1.B of the 2014 Zoning Ordinance for the reasons below.

Based on our preliminary review of the application and the grandfathering provisions of the current Zoning Ordinance, it appears that there are two options for development on the property: (1) modifying the existing special exception under the standards of the 2004 C-2 Zone and 59-G of the 2004 ZO, or (2) filing for a new conditional use to implement the CRTF Zone. There is also a concern whether the Applicant waived its rights to proceed under the 2004 Zoning Ordinance when it voluntarily applied for the CRTF Zone under the current Zoning Ordinance.

According to the file, the property was zoned C-2 prior to October 30, 2014 (the effective date of the 2014 Zoning Ordinance (2014 ZO)). It was rezoned to CRN by SMA after the 2014 ZO was adopted. It was then rezoned by LMA to the CRTF Zone in 2019 under the 2014 ZO.

The Applicant's Land Use Report (p. 2) (cites to Section 7.7.1.C.5 to justify grandfathering the special exception. That section applies only to LMAs that were approved under the 2004 Zoning Ordinance (2004 ZO). The LMA approved for this property was approved in 2019 under the 2014 Zoning Ordinance (2014 ZO). That section does not apply.

Your revised Pre-Hearing Statement states that the property is grandfathered under Section 7.7.1.C of the Zoning Ordinance. Based on that, you argue that the standards of the CRT Zone under the 2004 ZO apply. Section 7.7.1.C does not support this because it allows modifications only under

the “standards and procedures of the property’s zoning on October 29, 2014 (the 2004 ZO). The property’s zoning on that date was C-2.

We have more detailed comments on the case, but wanted to get your response to the above as soon as possible.

Thanks in advance for your prompt response

Lynn Robeson Hannan
Director
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, MD 20850
(240) 777-6660



For more helpful Cybersecurity Resources, visit:
<https://www.montgomerycountymd.gov/cybersecurity>