

January 17, 2025

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Office of Zoning and Administration  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850

**VIA FIRST CLASS MAIL**  
**AND EMAIL**  
ozah@montgomerycountymd.gov

Re: Opposition to Conditional Use Application No. CU 202502

Dear Examiner Sokoni:

This is submitted on behalf of a limited liability company owned by Shanker Limited (“Shanker”), Ark 25, LLC (“Ark25”), Aries Investment Group (Clarksburg), LLC (“Aries”), and the Patel family who are the owners of Shanker, Ark 25, and Aries. The Patels on behalf of themselves, Shanker, Ark 25, and Aries request that they be included as parties to the record and that further notices regarding this matter be provided to them. The addresses are set forth in part IV below.

Shanker and Aries operate two establishments within the historic district of the Clarksburg neighborhood (including an historic building which was moved by Montgomery County to its current location), the Clarksburg Market which includes a gas station and Clarksburg Beer and Wine which is located in the relocated historic building. The businesses are located at 23329 Frederick Rd, Clarksburg, MD 20871 and 23335 Frederick Rd, Clarksburg, MD 20871 respectively. The Patel family, Shanker, Ark25, and Aries have made substantial investments in the community and their small shops and gas station conform to the vision of the Plan which is described more fully below. Shanker, Ark25, Aries, and the Patel family oppose the Conditional Use Application CU 202502 submitted by CTC Retail, LC (“CTC Retail”). While the original application for a grocery store generally met the vision set forth in the Plan of Compliance, the gasoline filling station does not.

As Your Honor is well aware, approval of a conditional use application is contingent upon meeting the criteria set forth in the Montgomery County Zoning Code (“Code”). In this case, we request that this application be denied because there is no need for an additional gas station in the area and sufficient capacity exists to serve the general community. Code, Art. 7.3.1.E. In addition, CTC Retail’s proposed use does not satisfy standards set forth in the Code Art. 59-3. The proposed use is not consistent with the Plan of Compliance, is inconsistent with prior approvals, the designation of the neighborhood is artificially restricted does not take into account the nature of the proposed use, or the impact upon the neighborhood. The people who have invested in this community, including my clients, did so based on a set of representations regarding the nature of the neighborhood, a small-town feel, and walkability. This use is inconsistent with that vision and the intended purposes of the heart of the Town Center. For

these reasons, we request that you deny the conditional use requested. Further explanation is provided below.

## **I. Brief History**

In 2006, a group of residents named the Clarksburg Town Center Advisory Committee (“CTCAC”) stood up against the material failures of the then developer to develop the project in accordance with the approved plans. The CTCAC vigorously opposed the substantial expansion of the proposed plans in favor of a plan that incorporated features of both the historic and new parts of Clarksburg. The CTCAC complaints regarding the construction and changes within the community were referred to mediation. This mediation was held among the CTCAC, Newland Communities, and Bozzuto, Craftstar, Miller & Smith, NV, and Porten Homes. Plan of Compliance Design Concepts, Ex. 1 at 2. The goal of the mediation was to resolve the discord surrounding zoning, to ensure the creation of a pedestrian-oriented retail core, expand recreational opportunities, and establish a strong civil core for the Town. *Id.* at 3. The mediation resulted in a confidential settlement agreement and the Plan of Compliance (“Plan”) which reflected a compromise of the parties. The Plan of Compliance highlighted Clarksburg’s small-town environment and natural scenery whilst allowing for some modern structures like a 51,000 grocery store and parking garages concealed from direct view. *Id.* at 3-5. All parties agreed to and endorsed the plan. *Id.* at 3.

Over subsequent years, the Plan evolved, and the stated goals were eroded. The approved splash fountain was supposed to be a center attraction but now resides out of Clarksburg Town Center in front of an apartment complex. The live-work units meant to promote small local business ownership were replaced by apartment buildings. Although not at the direct doing of the current Applicant, the library was also removed from the Town Plaza. The two parking structures which were to have been included which would have concealed the automobiles were removed and surface parking introduced in its stead. Nonetheless, all changes were to be consonant with the goals of the original compliance plan. Until now, no gasoline station was included in any of these proposals or modifications.

## **II. Montgomery Zoning Code Section 7.3.1.E – Determination of Need**

### **A. The area for the determination of gas needs is overly restricted and should be rejected by the Hearing Examiner.**

A conditional use “may only be approved when the Hearing Examiner finds from a preponderance of evidence of the record that a need exists for the proposed use to serve the population in a general neighborhood, considering the present availability of identical or similar uses to that neighborhood[.]” Section 7.3.1.E. While the Applicant’s witness (a certified planner) posits that the use requirements of the neighborhood are not met based on extant gasoline service stations, the area considered by the Applicant deliberately omits the nearby location of numerous

stations to reach that conclusion. Moreover, the capacity of none of the stations is even considered by the Applicant in reaching its determination of need. *See* Valbridge Needs Analysis, Ex. 34.

The area surrounding Clarksburg has enough stations to fulfill the community's need. While the Applicant's witness has relied on publicly available data to determine need, it has artificially restricted the area thereby excluding nearby gas stations to create a paucity of gas. Indeed, the Applicant includes in its area a station to the north but does not consider similarly situated stations located just as close but to the south. If the Town Center is the locus, however, and a similar radius is applied numerous stations exist, including a Sunoco, two Exxons, Marathon, and a Shell. Radius Map, Ex. 2. Yet, none of these is considered by the Applicant notwithstanding that they are located in commuter areas near highway entrances and exits which are no doubt the path of travel for the residents of Clarksburg. Staff Report, Ex. 36 at 4; OnTheMap, United States Census Bureau, <https://onthemap.ces.census.gov/> (last visited Jan 16, 2025), Ex. 3. The analysis is thus materially flawed. There is no reason people will only drive north to buy gas.

Valbridge makes the argument that the need for gasoline should be studied differently as a "niche" market to justify giving little "attention to pass-by commuter traffic." Ex. 34 at 6. The Applicant cannot have it both ways. Valbridge, however, contradicts itself a few pages later positing that "the site will provide a unique opportunity for *thousands* of drivers to access fuel and convenience items prior to entering the interstate highway system." Ex. 34 at 14 (emphasis added).

The artificial restriction to five gas stations is made solely to create a "need" because "there is very little competition within the defined Clarksburg Weiss Market Gas Station trade area for the available consumer demand for gasoline and diesel." *See id.* at 2. The reason for this artificial limitation is obvious. The Applicant does not want to include the other nearby stations that already exist on the commuting corridor very close to the interstate and Clarksburg and that meet the needs of "thousands of drivers." *Id.* at 14. It is also wildly inconsistent to assert that the additional stations located next to the interstate should be ignored while simultaneously claiming that the new station would meet the needs of commuters.

Thus, while the Applicant's witness notes that commuter patterns have an impact on gasoline purchases (*Id.* at 14) (and yet downplays them in its analysis) it ignores that the vast majority of individuals living in Clarksburg travel to the south, not the north. Ex. 3. The map of the service area on page 16 of the report pushes the area northward rather than southward which is the direction of most commuters. Anyone driving on 270 would readily acknowledge this fact. In this case, within five miles there are over fourteen gas stations – most of them located "prior to entering the interstate highway system." Ex. 34 at 14. These should be considered in conducting any needs analysis. Indeed, Valbridge concedes that the need is in fact met outside the "immediate trade area." *Id.* at 3.

**B. Adequate capacity is available to meet the needs of the community.**

With respect to the second point, Valbridge has determined demand in the area to be roughly 13.2 million gallons per year. *Id.* at 2. The capacity of the five stations that Valbridge did include is 203,000 gallons and no limit is imposed on these stations as to how much gasoline they can purchase. Tank Storage Capacity, Ex. 4. These alone meet 8 million gallons of the Valbridge stated need. Mr. Patel used actual numbers of gallons sold and tank capacity from two gas stations owned and controlled by the Patel family. If one applies a five-mile radius from the Town Center in the Needs Analysis, there are eight more gas stations with additional capacity of 294,000. Ex. 4. As indicated above, these stations are also located close to the interstate and are part of the commuting pattern. If one considers all the gas stations shown on the attached, the existing stations can fulfill a demand of over 24 million gallons a year. *Id.* It does not appear that any of these gas stations have ever been closed because they are out of gasoline. The need for gas is already met by the current infrastructure and there is no need for any additional stations to serve the community.

The Report relies heavily on the Weiss “customer” and refers repeatedly to the viability of the grocery store. It also concludes that it is “expedient or reasonably convenient” and “useful” because it can undercut (perhaps) pricing in the area. Ex. 34 at 20-21. None of these assertions, however, demonstrate need. Economic viability is not the test nor is the developer’s ability to market the property without a gas station (which it has done in other areas). Indeed, there are many Weiss Markets without a gas station at all. More than two-thirds (2/3) of the Weiss Market locations do not have gas stations. Ex. 34 at 19-20.

We respectfully request that you deny the application based on a lack of demonstrated need for an additional station. If, however, you determine that the determination of need should not be rejected out of hand, there are other reasons that should result in the denial of this application.

**III. Montgomery Zoning Code, Article 59-3 –Additional Criteria  
Used in Evaluation of a Conditional Use**

Montgomery County Code article 59-3 sets forth further conditions that must be satisfied to grant a conditional use. While the Applicant states that these criteria are met, a review of the evidence set forth in the petitions demonstrates that these are conclusory statements without factual basis.

**A. Applicant’s use does not satisfy previous approvals of the subject site or the requirements of zoning standard use.**

In this case the Applicant characterized the use as being consonant with the hours of operation of the Weiss supermarket and would be used in conjunction with trips to the grocery store and originally stated that the hours would be from 7 a.m. to 11 p.m. to correlate with the

hours of the Weiss market shoppers. The gas station would have six filling spots, one on each side of the three pumps. In the subsequent submittal to the office of the OZAH, the Applicant advised that it was mistaken and that it sought to operate between the hours of 5 a.m. and midnight. Prehearing Statement, Ex. 34 at 1. However, at the hearing before the Planning Board, this changed again to move the hours of operation to start at 4:00 a.m. to attract even earlier business. Ex. 34 at 2; Ex. 36 at 7; *Planning Board Meeting*, [https://mncppc.granicus.com/player/clip/3142?view\\_id=7&meta\\_id=27227&redirect=true](https://mncppc.granicus.com/player/clip/3142?view_id=7&meta_id=27227&redirect=true) (last visited Jan. 10, 2025). During the meeting before the Planning Board, the Applicant also made mention of wanting to implement further changes at a future time including adding electric stations. *Id.* These moving target changes in operations and scope should give one pause – the next modification will be to add even more pumps creating an even bigger station.

**B. Applicant's plan does not substantially conform with the recommendations of the master plan.**

The current plan is inconsistent with the Plan and the stated purpose of the Town Center. Certainly, ever expanding the use and hours make it even more inconsistent. The nibbling away at the Plan over the years has strayed from the requirements of the Plan and the addition of a gas station placed in the middle of the Town Center will be its death knell. Traffic will increase, the area will be less walkable, noise will increase. The likelihood of individuals gathering around a gas station to commune with each other is slim to none.

Another material concern relates to the stated limits of annual gas purchases by the Applicant of 3.6 million gallons per year. Under filling station use requirements in Section 59.3.5.13.C.2, “any Filling Station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.”

The Planning Board found that the Applicant did not need to meet this requirement because of its self-imposed purchase limitation. Ex. 36 at 10. However, there is no enforcement protocol in place to ensure that the station does not go over that amount. There is no state cap on the amount of gas one can buy. Further, the ability of Montgomery County Code Enforcement to enforce such a restriction is limited at best with workloads of Code Enforcement and the fact that a violation of this limitation would be difficult to discern without regularly obtaining gas pumping data from the owner. It is far from likely that the filling station would ever post a sign stating “NO GAS” and there is certainly no commercial reason that it would do so. This limitation is simply an empty promise already belied by the Needs Analysis referring to the proposed site’s ability to serve “thousands” of commuters.

The proposed conditional use likewise does not conform to the Compliance Plan, even as amended. As the Applicant stated, the main purpose of the plan was to address residents’ desire

to reduce further development of their community. Since 2015, the Master Plan has been further changed. These incremental changes serve to erode the very purpose of the plan in the first place – an integrated community incorporating the historic district that promotes a neighborhood feel, gathering spaces and pedestrian friendly activity. Adding a gas station is not consistent with what was envisioned and completely guts what was to be the center of the community. The addition of the gas station does not promote a walkable, scenic neighborhood. The original intent should be honored.

Related to the lack of conformance with the Compliance Plan, the addition of a gas station does impact and alter the character of the surrounding neighborhood in a manner inconsistent with the plan. Here, the Applicant has narrowly defined the neighborhood excluding virtually all of the properties that were intended to be served by the Town Center. *See* Ex. 36 at 4. While the Montgomery County Code provides no guidelines on what constitutes the “neighborhood” for purposes of determining if a proposed use is of the same character as the existing neighborhood, case law provides that it “depend[s] upon the facts and circumstances of each case.” *Sedney v. Lloyd*, 44 Md. App. 633, 639 (1980). There, the Court of Appeals reversed the county council’s decision denying a request for rezoning because the hearing examiner’s delineation of the neighborhood was unduly restrictive. The area designated is likewise too restrictive here. The entire look and feel of the neighborhood to be pedestrian friendly and walkable. The addition of a gasoline station does not further that goal. Further, the entire purpose of the Town Center is being ignored. The entire planned unit development should have been part of the neighborhood because the purpose of the Town Center is to support and serve this entire neighborhood.

This project, consisting of over 1,200 residences, the inclusion of retail areas, and public amenities were all to be geared toward a viable Town Center “The focus was on reaffirming the connection between old and new Clarksburg, incorporating a pedestrian-oriented retail core: expanding recreational opportunities, and establishing a strong Civic core for the town.” Ex. 1 at 3. These were to be shared by all, and the purpose of the Town Center indicates that the narrow definition of the “neighborhood” by the Applicant is misguided. The people purchasing these homes made decisions based upon a set of representations that had been provided them – which were consistent with the goals of the Compliance Plan. These goals and representations are not furthered by a gas station.

This restricted neighborhood further limits the amount of notice that the Applicant had to provide to members of this planned community. As noted by the Applicant, no one appeared at the Board of Appeals hearing because they had no idea that the hearing was going to be held. Notice of the December hearing was posted on the Planning Board’s YouTube three days prior to the hearing. *Montgomery Planning at the Planning Board: Dec 19, 2024*, YouTube, [https://youtu.be/Lu\\_OtmcZ2DY?si=s8oWS8LRD90d7xE6](https://youtu.be/Lu_OtmcZ2DY?si=s8oWS8LRD90d7xE6) (last visited Jan 10, 2025). There is no evidence, however, of any real attempt to get the word out to the individuals who live in the community and fought long and hard to achieve the goals of the Comprehensive Plan.

**C. The proposed use is not harmonious with the character of the neighborhood and will cause undue harm.**

The proposed site sits directly across from a residential area. Ex. 34 at 10-11 (photos taken as part of the gas needs analysis by the Applicant show that the station would be adjacent to a populated residential area). In addition, approved multifamily building sites where more residents will reside are very proximate to the proposed gas station.

The placement of the filling station in the middle of the Town Center will bring with it tanker trucks and other loud, large vehicles to frequent the area, including at very early hours in the morning. It will serve the “thousands” of commuters. This is not consistent with the Compliance Plan or its goals. Additionally, grocery stores usually include discounted gas to customers, as Weis intends to do. Ex. 34 at 2. Although the discounts serve as a bonus to attract more business for the Applicant (*Id.*), it further burdens the neighborhood residents. Even the Applicant’s statements demonstrate that car traffic will increase based on its stated desire to serve commuters beginning at 4 o’clock in the morning to midnight. The filling station will disturb the enjoyment of those who reside there. Further, there is no way to police the comings and goings of the tankers. Even worse, at the Montgomery County Planning Board Hearing on December 19, 2024, the Board alluded that having set times of operation is an insignificant requirement in this case. *Planning Board Meeting*, [https://mncppc.granicus.com/player/clip/3142?view\\_id=7&meta\\_id=27227&redirect=true](https://mncppc.granicus.com/player/clip/3142?view_id=7&meta_id=27227&redirect=true) (last visited Jan. 10, 2025). This can hardly be the case when placing a gasoline station in a planned community.

For these additional reasons, we respectfully request that the Hearing Examiner deny the Conditional Use Application No. CU202502 because there is no need established for an additional gasoline station and the application does not meet requirements set forth in Art. 59-3.

**IV. Witnesses and Time**

The undersigned requests the opportunity to cross examine the Applicants witnesses and to present the representatives and owners of the Clarksburg Market and Clarksburg Beer Wine which will likely be two witnesses. The witness presentation would be limited to approximately 45 minutes. Cross examination of the Applicant’s witness may comprise approximately the same period of time. A closing statement may require an additional ten (10) minutes.

**WITNESSES:**

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Thank you for your consideration.

Respectfully submitted,



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cc: Mr. Ajay Patel without enclosures.  
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