

February 7, 2025

Khandikile Sokoni, Esq.  
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  
Khandikile.Sokoni@montgomerycountymd.gov  
(for letter and affidavit only)

Re: Conditional Use Application CU 25-02

Dear Ms. Sokoni,

Attached please find our motion in support of our position regarding the Compliance Plan and the reasons why the current Application does not meet its requirements. In addition, I have included the affidavit of Mr. Ajay Patel enclosed outlining our inability to obtain an independent expert regarding gasoline markets. Thus, we will proceed with Mr. Patel on this issue. He has experience in gasoline stations, and tank capacity yield as outlined in my initial letter and he will be testifying to the matters set forth therein and his determinations based on his personal experience in the industry.

With respect to Mr. Harris's objections to my requested documents regarding the contracts among the various entities, he simply proclaims that they are irrelevant to the instant proceedings rather than addressing my bases for requesting them in my letter of February 5, 2025. These documents are indeed germane to the instant proceedings and I offer the following additional bases for the request.

First, the agreement between Third Try, L.C. c/o Elm Street purchasing the property for a single dollar may well contain additional provisions regarding the one-dollar purchase price of valuable real estate and the willingness of the Seller to convey it for that amount, including the encumbrances upon the property. These encumbrances are the subject of one of the disputes relating to the Application. Further, the current applicant, Elm Street now acting through CTC Retail, LC, may or may not be the actual owner of the real estate that is the subject of the current Application. (I have been unable to unearth any deed from Third Try to Elm Street.) Certainly, the actual owner of the realty should be a party to the Application. At that point, we are utterly unclear as to who is acting on behalf of whom and we are entitled to verify that there is, in fact, a factual basis for Elm Streets claimed authority to act on behalf of anyone. These companies are all separate entities. Even if they are wholly owned, it does not result in the loss of authority of the subsidiary entity and authority must still be granted to any parent company.

EXHIBIT NO. 61

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Second, the reason for the request relating to any agreement between CTC Retail and Elm Street goes specifically to whatever authority CTC Retail actually has to act on behalf of Elm Street and the above rationale applies. As I made plain to Mr. Harris, with respect to this agreement, I am not interested in what may be confidential business information relating to the financial components of any agreement but we should be permitted to challenge Mr. Harris's assertions. Simply asserting that it is an agent is not proof (and this is only based on the assumption that the c/o reference to Elm Street supports that contention).

Third, as to the alleged agreement between Weis Markets, Inc. and Elm Street, if there is only a letter of intent, as opposed to an actual contract of purchase, this goes to the validity of the inclusion of Weis Markets on the Application and the Application itself. It is well established that a letter of intent is only that. Likewise, an actual contract would reflect the required terms. For example, whether a gasoline station is a condition precedent to the sale. This again goes to the factual assertions made by the Applicant. Simply relying on an assertion, again, is insufficient and we should be permitted to know whether there is, indeed, a basis for this assertion. As with the CTC Retail agreement, we have already agreed to the redaction of financial components of the transaction.

I also advised that if there were other provisions that could reasonably be deemed confidential, we would certainly consider such a claim provided a basis is presented therefor. However, at a minimum, counsel should be able to determine whether they are relevant to the opposition to the Application before any additional redactions. Certainly, these documents should shed some light on these claims of the Applicant.

Thank you very much for your consideration.

Respectfully submitted,



Leslie A. Powell

Enclosures

cc: Robert Harris w/Encl. (by Email and First-Class Mail)  
Messrs. Patel