

IN RE:)	
)	
CONDITIONAL USE APPLICATION)	
)	
OF CTC RETAIL, LC)	CASE NO.: CU20-2502
)	
AND WEIS MARKETS, INC.)	

MEMORANDUM OF LAW

Applicants are submitting this Memorandum of Law in preparation for the resumption of the hearing on March 6, 2025. At that time, Applicants plan to have their expert on the issue of “need” for a filling station, present his report. Applicants also anticipate testimony from opponents on the same issue. This Memorandum of Law provides guidance on the issue of “need” based on the County's Zoning Ordinance, Maryland case law, and precedent both in Montgomery County and Prince George's County.

Section 7.3.1.E.5 of the Montgomery County Zoning Ordinance regarding “filling stations,” requires proof, by a preponderance of the evidence of record, “that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood. “This contrasts with the requirement for a finding of need for funeral homes, hotels, shooting ranges, drive-thru and landfills, incinerators and helipads where the standard in that same section is higher, requiring proof that a need exists for the proposed use “due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.” It is clear from the contrasting terms that the “need” for a filling station can be based on much broader criteria, that it does not require a finding of “an insufficient number of similar uses” and that the

goal is to serve the population in the general neighborhood irrespective of “a multiplicity or saturation of similar uses” which would prevent funeral homes, hotels, landfills, etc. The fact that there are many locations in Montgomery County where there are multiple gas stations located within close proximity to one another, sometimes right across the street or in the same block, demonstrates this allowance.

Maryland case law, and the approval of such filling stations throughout Montgomery County, confirm that the “need” provision does not mean “necessity.” Rather, need means “expedient, reasonably convenient and useful to the public.” Neuman v. Baltimore, 261 Md. 92, 246 A.2d. 583,587 (1967), Friends of Ridge v. Balt. Gas & Electric Co., 120 Md. App. 444,488, 707 A.2d 866 (1998); see generally Sara C. Bronin & Dwight H. Merriam, Sufficiency and interpretation of standards – Public need, necessity or convenience standards, 3 Rathkopf's The Law of Zoning and Planning, 61:26 (fourth edition). In a special exception case, where the “need” for a filling station was at issue, the court applied Neuman, holding that “the mere fact that these items can be bought somewhere else in Hereford does not mean there cannot be a need for them to be sold in another store, particularly if they are distinctive, different, and sold in combination with other products and services.” Graul v. Riverwatch, LLC, No. 978, Sept. Term, 2018, 2020 WL 6623283, at 32 (Md. Ct. Spec. App. Nov. 12, 2020) (attached hereto as Exhibit A). See Baltimore County Licensed Beverage Association v. Kwon, 135 Md. App. 178, 761 A.2d 1027 (2000) (stating the standard as “convenient, useful, appropriate, suitable, proper or conducive to the public in the area”); see also Springloch Area Citizens Group v. Montgomery County Board of Appeals, 252 Md. 717, 251 A.2nd 357 (1969).

Secondly, a finding of need does not require a consideration of the impact of the proposed facility on potential competitors. Protection of competition is not a relevant factor to consider. The

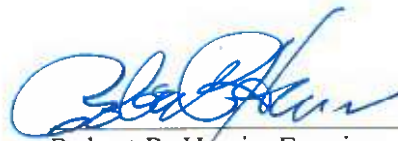
Maryland Court of Appeals has consistently held that “. . . the prevention of competition is not a proper element of zoning . . . [i]n appeals from zoning boards, a competitor is usually not regarded as an ‘aggrieved party.’” Kreatchman v. Ramsburg, 224 Md. 209, 167 A.2d 345, 351 (1961). Cf. Aspen Hill Venture v. Montgomery Cty. Council, 265 Md. 303, 314, 289 A.2d 303, 308 (1972) (stating, “. . . the prevention of competition is not a proper element to be considered in rezonings”). See also Balt. Cty. Licensed Bev. Ass'n v. Kwon, 135 Md. App. 178, 761 A.2d 1027, 1032 (2000) (stating, “[a]ccordingly, the Board may not subvert the ‘necessity’ standard to use it to shield license holders from increased competition.”)

Accordingly, Montgomery County has regularly approved filling stations, finding “need” even where there is substantial competition in the area. For example, in the Petition of Henderson Corner and 355 LLC, Case No. S2743 (attached hereto as Exhibit B), the Montgomery County Board of Appeals approved a 7-Eleven gas station even though there were 9 other filling stations in the designated trade area. Similarly, in the Petition of 2 Goshen Oaks Center, LLC and 7-Eleven, Inc., Case No. S2524 (attached hereto as Exhibit C), the Board approved a 7-Eleven gas station where there were 4 competitors in the same trade area. Finally, in the Petition of Southland Corporation, Case No. S2220 (attached hereto as Exhibit D), the Board also approved a 7-Eleven gas station even though there were 4 other filling stations in the area. They approved these filling stations despite testimony in opposition from a competitor opposed to the application, finding “the Board cannot base its decision about need on issues of competition.” (Southland, p. 2.) Similarly, Prince George’s County has a “need” requirement for filling stations and applicant’s expert witness, Mr. Edward Steere, has testified in such cases including RF East-West Hyattsville, LLC, Special Exception 4846 (attached hereto as Exhibit E) where a new filling station was approved

despite there being 18 filling stations in the trade area, and Two Farms, Inc., Special Exception 4816 (attached hereto as Exhibit F), where there were 4 other stations in the area.

As Mr. Steere will testify, the planned fuel pumps, accessory to the proposed Weis grocery store, present an important public convenience not otherwise provided in the trade area and support the grocery store that has been sought by the community for many years.

Respectfully submitted,



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Dated: February 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Law was e-mailed and mailed first-class this 24th day of February, 2025, to Leslie A. Powell, 19 North Court Street, Suite 201, Frederick, Maryland 210701 and by email to Amy Presley.



Robert R. Harris, Esquire