

Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530



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ZONING MAP AMENDMENT PETITION A-9948
SPECIAL EXCEPTION APPLICATION NO. 4398
DEPARTURE FROM DESIGN STANDARDS APPLICATION No. 516

Application	General Data
Project Name: BP Amoco Station Location: Northwest corner of U.S. Rte. 301 and Village Drive West, known as 3507 S.W. Crain Highway Applicant: BP Amoco Corporation One West Pennsylvania Avenue Towson, Maryland 21204 Attention: John Lombardo	Date Accepted 11/30/00
	Planning Board Action Limit N/A
	ZHE Hearing Date N/A
	Plan Acreage 4.649 Acres
	Zone R-A and C-M
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 79
	Council District 06
	Municipality N/A
	200-Scale Base Map 205SE14

Purpose of Application	Notice Dates
Rezoning from R-A to C-M and Special Exception for Food or Beverage Store. AMENDED to include a Fast-Food Restaurant 5/24/01 Departure from driveway access to loading space being less than 50 feet from residential zone. Authorization for a structure within a proposed right-of-way.	Adjoining Property Owners Dec. 1, 2001 (CB-15-1998)
	Previous Parties of Record None (CB-13-1997)
	Sign(s) Posted on Site Jan. 4, 2002
	Variance(s): Adjoining N/A Property Owners
Staff Recommendation	Staff Reviewer
APPROVAL	Jimi Jones
APPROVAL WITH CONDITIONS	
DISAPPROVAL	
	X
	DISCUSSION

January 16, 2002

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board
The Prince George's County District Council

VIA: Arie Stouten, Zoning Supervisor

FROM: Jimi Jones, Planning Coordinator

SUBJECT: **Zoning Map Amendment No. A-9948**
Special Exception Application No. 4398
Departure From Design Standards Application No. 516

REQUEST: **Rezoning from R-A to C-M, a Special Exception for Food or Beverage Store with a Fast-Food Restaurant, a departure from driveway access to loading space being less than 50 feet from residential zone, and authorization to place a structure within a proposed right-of-way.**

RECOMMENDATION: **DENIAL**

NOTE:

These applications are on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, they will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3280.

FINDINGS:

- A. Location and Field Inspection: The subject property is located along the west side of Crain Highway (US 301), 250 feet north of its intersection with Danenhower Road and opposite the intersections of Old Crain Highway and Village Drive. It is developed with a one-story brick building with two garage bays and a dilapidated one-story structure. There are six gasoline dispensers in front of the brick gas station structure. A driveway is located near the northern edge of the property that allows southbound traffic to enter the site and a driveway at the southern end allows patrons to exit back onto southbound US 301.
- B. History: The May 24, 1994, *Sectional Map Amendment for Subregion VI* classified the developed portion of the property from the R-A Zone to the C-M Zone.
- C. Master Plan Recommendation: The resolution approving the 1993 Subregion VI Study Area Master Plan (CR-66-1993), in Amendment 5 (p. 288), designates a striped land use pattern indicating potential for retail or service-commercial land use on the 4.7-acre Wells property (the subject property). The portion of the property to the west of the retail/service-commercial area is shown for Urban residential densities as part of a comprehensive mixed-use planned community. Also, proposed highway A-61 is shown through the property.
- D. Request: The applicant is proposing to raze and rebuild its existing gas station. This project will entail the razing of all existing improvements on the subject property and the construction of a 4,312-square-foot food and beverage store, a canopy and eight multiproduct dispensers. In order to construct this facility, the applicant will require a rezoning to the C-M Zone of that portion of the subject property retained in the R-A Zone (1.39 acres) after the adoption of the Subregion VI Sectional Map Amendment in 1994.

The applicant will also require the approval of a special exception for a food and beverage store in the C-M Zone. The applicant is also requesting a departure from design standards. Specifically, Section 27-579(b) requires that loading spaces and any driveway leading to the loading spaces shall not be located within 50 feet of residentially zoned property. The access leading to the proposed loading space associated with this proposal is located less than 50 feet from the adjoining residentially zoned property. Finally, since the entire property is located within the Master Plan right-of-way for Crain Highway, the proposal will require authorization to build within a proposed right-of-way.

- E. Neighborhood and Surrounding Uses: The subject property is surrounded by the following uses:
- North: Single-family home in the R-A Zone and developed land farther north also in the R-A Zone.
- South: Undeveloped property in the R-A Zone.
- East: Across US 301 is single-family attached dwellings and undeveloped property in the L-A-C Zone.
- West: Undeveloped property in the R-A Zone, beyond which is undeveloped property in the R-S Zone.

The neighborhood is defined by the following boundaries:

North: Leeland Road

South: Marlboro Pike

East: US 301 (Crain Highway)

West: Collington Branch

These boundaries differ from the neighborhood identified by the applicant. The applicant has defined the neighborhood as the Mount Pleasant community as shown on page 251 of the Subregion VI Master Plan. This community is bounded by the Mount Nebo Branch to the north, the Prince Georges County-Anne Arundel County line (Patuxent River) to the east, Pennsylvania Avenue to the south and the Collington Branch to the west. In land use planning, a neighborhood is generally viewed as a subunit to a larger community. As defined in *Largo Civic Association v. Prince Georges County* (21 Md. App. 76, 318 A. 2d 834 (1973)), a neighborhood is an area having common geographical, physical, and social characteristics which affect its physical development or maintenance. Roads, for example are natural barriers that give reference to borders of neighborhoods. US 301 is a major road that, in our opinion, divides the Mount Pleasant area which is, in fact, identified in the Master Plan as a community (pg 91). The plan goes on to mention several neighborhoods within the Mount Pleasant community such as Sugar Hill and Meadowbrook.

The neighborhood is residential in character with a majority of the residential development located on the east side of US 301 (Marlboro Meadows and Meadowbrook). Although the property located on the west side of US 301 is currently undeveloped, those portions zoned R-S will be developed with the Beech Tree subdivision.

F. Zoning Map Amendment Request:

The applicant is requesting that 1.39 acres of the subject property be rezoned from the R-A to the C-M Zone pursuant to Section 27-157. This section provides that:

(a) Change/Mistake rule.

(1) No application shall be granted without the applicant proving that either:

(A) There has been a substantial change in the character of the neighborhood; or

(B) Either:

(i) There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment; or

- (ii) **There was a mistake in the current Sectional Map Amendment and such mistake occurred not more than six years prior to the filing of an application for the proposed zoning map amendment providing, however, that for those properties for which the current Sectional Map Amendment has been adopted prior to 1990 such mistake shall have occurred not more than ten (10) years prior to the filing of an application for the proposed zoning map amendment.**

The Sectional Map Amendment for the Subregion VI Study Area was approved in 1994. Therefore, the applicant is precluded from arguing mistake and must demonstrate that there has been a substantial change in the character of the neighborhood since the adoption of the Sectional Map Amendment in 1994. The applicant provides the following rationale for the proposed rezoning:

■ . . . a portion of the subject property was rezoned from the R-A Zone to the C-M. The purpose of this rezoning was to ensure the continued existence of the gas station use on the subject property. It should also be noted that the rezoning line was drawn so as to allow the commercial uses to remain, but prevent the expansion of commercial uses in the area. The applicant's proposal does not call for the expansion of commercial uses on this property, but rather, the redevelopment of the existing use in such a manner as to allow it to service the changing demands of consumers in the neighborhood.

■ Since the adoption of the Sectional Map Amendment for the Subregion VI Study Area (the "SMA"), retail gasoline marketing has changed the commercial character of the community. Specifically, prior to the adoption of the SMA, this community was served by the subject gas station, a Shell gas station located in the southwest quadrant of 301 and Old Marlboro Pike and a Texaco gas station located in the northwest quadrant of 301 and Old Marlboro Pike. Two of these stations (the Texaco and the subject property) provided for the retail sale of gasoline and automotive repair. The Shell station, however, had just been constructed at the time of the SMA. It represented the new breed of gasoline filling stations which responded to a whole new way of marketing gasoline sales as a convenience driven commodity to the consumer. Characteristic of this new marketing approach is a much more spacious site layout; the combining of gas sales with convenience goods, light refreshments, and prepared foods; and the elimination of any type of repair or maintenance on the premises, so as to present an attractive and clean facility at all times to the motoring public. Numerous multi-product dispensers are arranged beneath an overhead canopy, affording patrons with protection from the elements of weather. Formerly, stations were designed with a minimal number of multiproduct dispensers that were not under the cover of a canopy.

■ Since the adoption of the SMA, two other properties were altered to address the changing demands of the consumer. The Texaco station, pursuant to SE 4203, closed its auto repair facility and converted into a gas station with canopy and fast food restaurant (Dunkin' Donuts). Then another gas station has been added to the market. A 7-11 gas station and convenience store is now located in the northeast

quadrant of 301 and Old Marlboro Pike. This station offers six multi-product dispensers under cover of a canopy. Each station now offers all the modern conveniences to the consumers in this neighborhood.

■This change to the other retail gasoline stations in this neighborhood is substantial and places a burden on the subject use to adapt in order to stay competitive. Consumers in this neighborhood now expect to be able to address both their gasoline needs and convenience needs in one stop. An operator's inability to address this one stop concept places it at a competitive disadvantage in this neighborhood. Consumers also do not like to wait in line for gas. Each of the stations in this neighborhood has been designed to offer the consumer at least six multi-product dispensers. Consumers also have come to expect a facility that provides protection from inclement weather. Each of the stations has been designed with a canopy to provide just such protection.

■The existing zoning line on the subject property inhibits the applicant's ability to redesign the site and address the change which has occurred in the neighborhood. The zoning line was located in an area which allows the existing use to remain, but does not allow for a modern layout. At the time of the Sectional Map Amendment, it was not anticipated that such a redesign of the subject property would be necessary. In order to provide a convenience store, additional multi-product dispensers, a canopy, a spacious layout and landscaped areas, additional property must be rezoned.●

The Community Planning Division, in a memo dated June 14, 2001, submits the following comments:

■Land Use Recommendation: The resolution approving the master plan (CR-66-1993), in Amendment 5 (p. 288), designates a striped land use pattern indicating potential for retail or service-commercial land use on the 4.7-acre Wells property (the subject property). The portion of the property to the west of the retail/service-commercial area is shown for Urban residential densities as part of a comprehensive mixed-use planned community. Also, proposed highway A-61 is shown through the property. It is important to note that the SMA, adopted one year after the master plan, refined the plan's policy recommendations and interpreted that policy to cover only the commercially developed portion of the subject property.

■SMA/Zoning: The May 24, 1994, *Sectional Map Amendment for Subregion VI* rezoned the developed portion of the property from the R-A Zone to the C-M Zone. The undeveloped portion was retained in the R-A Zone as a staging mechanism for future residential development, as has occurred in the adjacent Beech Tree comprehensive Design Zone. The SMA text (p. 252) refers to a dilapidated restaurant and an operating Amoco service station on the portion of the subject property rezoned. The SMA was explicit regarding the rationale for zoning the subject property, both the portion in the C-M and R-A Zones. Through this rationale, the District Council acknowledged the existing use but did not condone its expansion beyond what was deemed necessary for a gas station operation at the time. The SMA text describes the action as follows:

“The C-M Zone is approved in accordance with the Plan recommendation for Retail-or Service-Commercial land use for the dilapidated restaurant property. The adjoining service station property, which has operated as a nonconforming use, has been included in the zone change. Most of the 4.7 acre restaurant property is in steep slopes, floodplain or stream and only the remaining 0.58 acres is included in the zone change. The service station property (0.44 acres) is largely in use and is included in the zoning change in its entirety.”

■ In considering these joint applications, the first finding that must be made is the appropriateness of the rezoning from the R-A Zone to the C-M Zone, as requested in A- 9948. The applicant alleges “substantial change in the character of the neighborhood since the adoption of the [SMA] in 1994.” However, the definition of neighborhood, as required for the purpose of demonstrating change in neighborhood character, is not explained.

■ The applicant suggests that changing gasoline and convenience goods marketing trends equate to the type of “change” required to justify property rezoning. They explain how these changing marketing trends have placed the existing service station use on the property at a “competitive disadvantage in this neighborhood.” This is completely understood, however such marketing changes are inherent to all business operations.

■ The new and remodeled gasoline service stations described by the applicant were constructed or reconstructed within the limits of Euclidean zoning approved in the 1994 SMA. None of these stations required rezoning to enlarge, expand, remodel or otherwise adapt to changing gasoline marketing trends. There have been no zoning changes in the area referenced by the applicant to demonstrate a changed character in the “neighborhood.” Nor are we aware of any other events or planning changes that would constitute a change in neighborhood character.

■ In light of these findings, there is no doubt the nature of gasoline/convenience goods marking has changed and that “the existing zoning line inhibits the applicant’s ability to redesign the site.” Unfortunately, these marketing changes aren’t sufficient to warrant rezoning.

- 1. The SMA text in Zoning Change B-5 (p. 252) is clear that the C-M Zone is only approved in accordance with the plan recommendation for retail/service-commercial use but only for the developed and commercially utilized portion of the property to accommodate existing uses. The proposed applications together represent an intensification of use well beyond any intent to accommodate existing uses. Contrary to what is stated by the applicant, the proposal is an “expansion of commercial uses on this property.” That is why the requested rezoning onto R-A zoned land is necessitated.

- 2. It would be incongruent for the master plan to advocate in Transportation Guideline 1 (discussed above) to protect rights-of-way and advocate intensification and expansion of commercial use in an area proposed for these highway upgrades.
- 3. The plan (p. 144), discusses how individual commercial establishments along US 301 are a "Special Problem" for the area as they relate to both plans for US 301 and strip "commercial development" in general (p. 138).

Staff notes that the applicant defines the neighborhood as the entire Mount Pleasant community (see discussion in Part E of this report). While we do not agree with the applicant's neighborhood boundaries, staff recognizes that uses outside of a neighborhood can influence development or character of adjacent neighborhoods. It is important to note that the gas stations in the area have evolved to meet the changing demands of the consumer without requiring rezoning, thus developing in accordance with the Master Plan and the zone in which they are located. While the applicant contends that the proposed development is not an expansion of commercial uses in the area, it is difficult not to view this proposal as such. Currently, there are two existing commercial structures shown on the property (as shown on the ■ALTA/ACSM Land Title Survey map). One structure is a 1,500-square-foot service station and the other is the 1,980-square-foot former restaurant building. The total square footage of these structures is 3,480 square feet. The applicant is proposing to increase the land area of the C-M Zone and build a 4,224-square-foot structure that would contain a food and beverage store, fast-food restaurant with gasoline pumps in front of the building. Originally, the property contained a restaurant and a gas station.

The applicant, in a letter dated July 20, 2001 (attached), argues, among other things, that a change in conditions in a neighborhood is sufficient when arguing change in the character of the neighborhood. This argument is based on cases from Maryland court decisions in 1953 and 1964. Staff is guided by the more recent decision (Clayman v. Prince George's County, 266 Md. 409, 292 A. 2d 689 (1972)) which provides that ■Development of uses of a zone which is part of the initial zoning is not evidence of change in character because this development was anticipated when the map was adopted. Clearly, the gas stations referred to by the applicant are in the appropriate zones and were developed accordingly. These facts lead us to conclude that a change in the character of the neighborhood has not occurred.

G. Gas Station Requirements: A gas station is permitted by right in the C-M Zone, subject to Detailed Site Plan review and the requirements for gas stations, which are provided in Section 27-358(a)(1) through (10) as shown below:

(a) A gas station may be permitted, subject to the following:

- (1) The subject property shall have at least one hundred 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;**

The property has approximately 457 feet of frontage on and direct vehicular access to southbound US 301. The right-of-way width for US 301 is 150 feet.

- (2) **The subject property shall be located at least three hundred (300) feet from any lot on which a school, playground, library or hospital is located;**

The subject property is not within 300 feet of any school, playground, library or hospital.

- (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;**

The subject gas station will not include the display or rental of cargo trailers, trucks, or similar uses.

- (4) **The storage or junking of wrecked motor vehicles (whether capable of moving or not) is prohibited;**

The subject gas station will not include the storage or junking of wrecked motor vehicles. The applicant is eliminating the service bays and the vehicle repair service.

- (5) **Access driveways shall not be less than thirty (30) feet wide, 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;**

The property meets this requirement. The site plan shows a 35-foot-wide driveway on Village Drive.

- (6) **Access driveways shall be defined by curbing;**

Curbing is provided along all driveways as required.

- (7) **A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb to those areas serving pedestrian traffic;**

The site plan indicates that a five-foot-wide sidewalk is proposed.

- (8) **Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;**

The entire property is within the proposed right-of-way for US 301. A variance or permission (from District Council) to build within a right-of-way is therefore required.

- (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 site plan;**

There will be no repair service at this facility.

- (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.**

No architectural details have been submitted. This information must be submitted for review during the Detailed Site Plan process.

- H. Specific Special Exception Requirements: The applicant is proposing to develop the subject property with a gas station, food and beverage store and fast-food restaurant. The gas station is a use permitted by right in the C-M Zone, subject to detailed site plan review and conformance with specific requirements set forth in Section 27-358 of the Zoning Ordinance; but the food and beverage store and fast-food restaurant are only permitted by special exception. The specific requirements for food and beverage stores and fast-food restaurants are set forth in Sections 27-355 and 27-350 respectively. For the purposes of this review, staff will assume that the proper zoning is in place in evaluating the proposed special exception uses.

Section 27-355 provides that:

- (a) **A food and beverage store may be permitted subject to the following:**

- (1) **The applicant shall show a reasonable need for the use in the neighborhood;**

Staff notes that this criterion requires the applicant to demonstrate that the proposed food and beverage store is *reasonably convenient or expedient*. The applicant submits that the proposed food and beverage store is located directly across US 301 from one of the main entrances to a large residential subdivision and at the proposed entrance to a developing residential subdivision. This use will help serve the convenience needs of this growing residential area. Finally, the proposed food and beverage store will also serve the convenience needs of the traveling public on US 301. Specifically, the food and beverage store will accommodate the convenience needs of the heavy flow of vehicles on southbound US 301. The applicant believes there is no question the proposed location will be a convenient place to make minor food and beverage purchases for shoppers, commuters, residents and employees in the area. A market study dated June 20, 2001, was submitted to support the applicant's argument.

The Information Management Division, Research Section, reviewed the applicant's market study and in a memo dated July 13, 2001, from Joseph Valenza, Planner Coordinator, submits the following comments:

- I have reviewed the market report included in the application for SE-4398. I disagree with the applicant's conclusion regarding market support for the proposed convenience retail space. The table at the end of this memo presents a comparison between the applicant's finding and mine and highlights the factors that contribute to the different findings.
- The amount of supportable space is reduced from the applicant's estimate when a more realistic figure is used for the percentage of income spent at convenience stores. The applicant assumes two percent of income is spent at convenience stores based on *1997 Consumer Expenditure Patterns* and a number of assumptions about what is purchased and how much of it is purchased at convenience stores. These assumptions could be eliminated by using the *1997 Economic Census*. The *Economic Census* reports sales at convenience stores and also sales at gas stations with convenience stores. If we assume ten percent of the sales at a gas station with a convenience store is for nongas items, the percent of income spent at all convenience stores is one percent, not the two percent used by the applicant. This reduces supportable space in the applicant's trade area to 6,443 square feet.
- Additionally the applicant identifies a long, narrow trade area. The northern boundary of this trade area, Central Avenue, is nearly four miles from the site. The southern boundary, on the other hand, is within half a mile of the site. This seems unreasonable. MD 4, which is two miles from the site, would appear to be a more reasonable southern boundary.
- This expanded trade area includes more households and jobs and one additional convenience store, the Shell ETD at the southwest quadrant of MD 725 and US 301. The 7-Eleven at the northeast quadrant of MD 725 and US 301 is already on the applicant's list of competitive convenience stores even though it is outside the trade area identified by the applicant. The expanded trade area contains 10,756 square feet of convenience store space and support for 7,877 square feet, so there is not market support for the proposed use.●

Staff believes the standard of reasonable need does not entail a particularly onerous test. The issue of convenience to the consumer is, in our opinion, central to this test. The more stringent test is to show that the use is ■necessary,● which carries the burden of showing an actual deficit exists which can be filled by the requested use. The proposed use would be strategically located near homes in the Marlboro Meadows, Beach Tree and other nearby subdivisions. Also, the use would serve traffic on southbound US 301, which is a heavily traveled highway. We therefore believe the use will be reasonably convenient for motorists and residents of nearby subdivisions.

(2) The size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;

The subject property will have access on both US 301 and the proposed Village Drive extension. This access on US 301 will offer residents, workers and the traveling public excellent access to the subject property on their way to and from work. Furthermore, customers from the developing Beech Tree subdivision who wish to use a food and beverage store will be provided with an opportunity to

use the facility without having to compete with the regional traffic on US 301. Customers from the Meadowbrook and Marlboro Meadows Subdivisions can easily access the site also via Village Drive.

- (3) The proposed use will not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses;**

Once again, the applicant is redeveloping an existing gas station and through the addition of the food and beverage store, the applicant is merely bringing the site into conformance with the current marketing trends in the industry. The combination of a food and beverage store and gas station is an efficient use of commercially zoned property, and rather than restrict the availability of land, this combination frees up other commercially-zoned property for alternative 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;**

This section is not applicable to this request.

- 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.**

The applicant does not propose the sale of alcoholic beverages.

Section 27-350 provides the following specific requirements for a drive-in or fast-food restaurant:

Sec. 27-350. Drive-in or fast food restaurant.

- (1) All proposed buildings or structures, and outdoor facilities (including vehicle parking), shall be located at least two hundred (200) feet from the nearest property line of any land in any Residential Zone, or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan. The District Council may reduce this setback requirement when it determines that the landscaping, screening and buffering requirements in the Landscape Manual, or other conditions, will adequately protect abutting residential property;**

This proposal does not comply with the 200-foot setback. The proposed building is 122 feet from the nearest property line of land (to the northeast) in the R-A Zone. The proposed loading space is about 52 feet from the residential property line. There is a single-family detached home on the property to the northeast. The applicant is retaining an existing stand of trees on the western portion of the subject property and proposing a buffer along the northern property line. The neighboring residential property will be well shielded from the proposed use. In light of this, staff believes there is justification to reduce the 200-foot setback as permitted under this criterion.

- (2) **A bicycle rack for at least six (6) bicycles shall be provided on the premises, unless the applicant demonstrates to the satisfaction of the District Council that the requirement is inappropriate because of the location or nature of the establishment;**

The proposal complies with this requirement.

- (3) **The use will not restrict the availability, or upset the balance, or land use in the neighborhood for other commercial uses; and**

The proposed fast-food restaurant will not unduly restrict the availability of land, or upset the balance of land use, in the area for other commercial uses. The applicant's proposal is designed to address a trend in services that are provided at gas stations. Staff notes that there are several gas stations in the general vicinity that have been constructed or renovated to address the demand for convenient fast food for motorists. The proposed fast-food restaurant is consistent with the evolution of gas station services.

- (4) **Special consideration shall be given to advertisement, outdoor display, outdoor activity, lighting, hours of operation, and other aspects of the proposed operation to assure the health safety and general welfare of the community will be protected.**

The applicant provides that the site has been designed to address the new BP image. The signage will be limited to that shown on the site plan and architectural elevations submitted in conjunction with this application. Additionally, outdoor lighting will be installed that will illuminate the subject property to allow for the safe internal flow of cars and customers during the evening hours, but not cause undue glare onto abutting properties. The applicant further provides that the primary purpose of this special exception is to provide an additional convenience for those customers who would prefer to consume their purchases on site. Most of the outdoor activity generated by this use will be a result of the gas station, not the fast food component. No information is given regarding hours of operation.

I. Parking Regulations: The site plan provides the following parking schedule for the proposed uses:

Food & Beverage	1space/ 150 sq.ft. (3,000 sq.ft.) + 1 space/200 sq.ft. (666 sq.ft.) = 24 pkg. spaces
Gasoline	1 sp/employee (2 employees) = 2 pkg. spaces
Fast Food	1 sp/3 seats (15 seats) + 1 sp/40 sq.ft. (196 sq.ft.) = 5 pkg. spaces
Total Required Parking =	31 spaces

The applicant has incorrectly computed the parking requirement. The fast-food standard is 1 space per 3 seats plus 1space per 50 square feet, not 1 space per 40 square feet as shown on the plan. The parking schedule should indicate that 5 parking spaces are required ($15 / 3 = 5$) in addition to 4 spaces generated by the 1 space per 50 square feet. The correct total required parking is 24 spaces for food and beverage plus 2 spaces for gas and 9 spaces for fast-food equals 35 parking spaces. When the 20 percent reduction (for combined uses) is applied, (i.e., 20 percent of $35 = 7$) the total

required parking is 28 (35 - 7 = 28). The parking schedule also indicates that 37 parking spaces will be provided. The parking schedule must be revised to correctly show required parking computations.

- J. Landscape Manual Requirements: The Urban Design Review Section reviewed the landscape plan submitted by the applicant and, in a memo dated January 18, 2001, submits the following comments:

■ Since the proposal is a new use on the property and the proposed structures are new, it must comply with the requirements of Sections 4.2 (Commercial and Industrial Landscaped Strip Requirements), Section 4.3 (Parking Requirements) and 4.7 (Buffering Incompatible Uses) of the Landscape Manual.

■ **Determination of Compliance with Section 4.2**

■ **Along Crain Highway**

■ Frontage:	284 linear feet (excluding driveways)
■ Required per Section 4.2:	a minimum 10 foot wide landscaped strip to be planted with a minimum of one shade tree and 10 shrubs per 35 linear feet of frontage, excluding driveway openings
■ Required:	Landscaped strip: 10' wide 8 shade trees 85 shrubs
■ Proposed:	A 10-foot-wide landscape strip planted with 8 shade trees and 85 shrubs.

■ **Along Village Drive**

■ Frontage:	252 linear feet (excluding driveways)
■ Required per Section 4.2:	a minimum 10 foot wide landscaped strip to be planted with a minimum of one shade tree and 10 shrubs per 35 linear feet of frontage, excluding driveway openings
■ Required:	Landscaped strip: 10' wide 7 shade trees 70 shrubs Two evergreen or ornamental trees can be substituted for one shade tree and five shrubs can be substituted for one evergreen tree.
■ Proposed:	Along 156 linear feet A ten-foot-wide landscape strip planted with 3 shade trees, 8 ornamental trees, 4 evergreen trees and 34 shrubs is proposed. <u>16 additional shrubs are required to comply with the Landscape Manual.</u> Along the remaining 96 linear feet, a 25-foot-wide landscape strip with existing woodlands is proposed.

Determination of Compliance with Section 4.7

West Property Line along the George Wells Property

■Subject use:	High impact
■Adjacent use to the south -	residential vacant
■Type of Bufferyard required:	•D•
■Required:	Minimum building setback - 50' Minimum width of landscape buffer - 40' Linear feet of landscape buffer - 381' Number of Planting units - 160 planting units per 100 linear feet
	Planting units required for this proposal ■ $160 \times 381 / 100 = 620$
■Proposed:	Building setback: more than 30'
■Landscaped strip -	A 40-foot-wide landscape strip with existing woodland is proposed. <u>The existing woodland must be trees with a 2.5 to 3" caliper to substitute for the required planting units.</u>

North Property Line along the residential property with the single-family dwelling

■Subject use:	High impact
■Adjacent use to the east single family residential	
■Type of Bufferyard required:	•D•
■Required:	Minimum building setback - 50'
■Minimum width of landscape buffer	40'
■Linear feet of landscape buffer	185'
■Number of Planting units	160 planting units per 100 linear feet
■Planting units required for this proposal	$160 \times 185 / 100 = 300$
■Proposed:	Building setback: more than 30' A 40'-wide landscape strip planted with 142 planting units is proposed along 69 linear feet of property line. A 40-foot-wide landscape strip with existing woodland is proposed along 117 linear feet of property line. <u>The existing woodland must be trees with a 2.5 to 3" caliper to substitute for the required planting units.</u>

Determination of Compliance with Section 4.3 (interior parking)

■Area of Parking Compound -	16,116 sq.ft.
■Interior landscaped area required -	8% 1288.8 sq.ft.
■Required planting:	5 shade trees
■Proposed planting:	5 shade trees

■We have no comments regarding the Rezoning and DDS applications. A wall is shown behind the proposed food and beverage store. If this wall is more than six feet high, it must comply with the building setback requirements. Authorization to plant within the ultimate right-of-way must also be obtained.

■Staff recommends the following for compliance with the requirements of *Landscape Manual*:

- 1. Sixteen additional shrubs shall be proposed along Village Drive.
- 2. The existing woodland shall be trees with a 2.5- to 3-inch caliper to substitute for the required planting units.
- 3. All building setbacks and landscape buffer widths shall be shown on the Landscape Plan.
- 4. The height of the wall behind the proposed food and beverage store shall be shown. If the height of the wall exceeds 6 feet, it shall comply with the 50-foot building setback requirement.
- 5. Permission shall be obtained from the State Highway Administration for planting in the ultimate right-of-way.
- 6. A note stating that all the landscaping within the ultimate right-of-way will be relocated when Crain Highway is widened according to the requirements of the State Highway Administration shall be added to the Landscape Plan.

■Alternatively, alternative compliance should be applied for. Section 1.3 (Alternative Compliance) of the *Landscape Manual* allows alternative compliance for project conditions where normal compliance is impractical or impossible. In this case, because of existing conditions and site constraints, a request for alternative compliance may be justified.•

The applicant has submitted revised site and landscape plans (dated January 8, 2002) that address the above concerns.

- K. Zone Standards: If the rezoning is approved, there would be no need for variances from C-M Zone regulations. However, if the site is redeveloped within the existing development envelope, variances from certain setback requirements may be necessary.
- L. Sign Regulations: The signage table on the site plan notes that building and canopy signs are proposed. A 61.77-square-foot freestanding sign is also proposed. The height of the freestanding sign is 21 feet. The proposed signs appear to meet the requirements of the Sign Regulations. However, the table also notes that a total of 460 square feet of signage is permitted for a freestanding sign. The maximum allowable sign area for freestanding signs is 200 square feet. The signage table should be revised to show the correct maximum sign area for freestanding signs.

M. Other Issues: The entire property is located within the Master Plan right-of-way for Crain Highway. Section 27-259 authorizes the District Council to issue building or sign permits for structures within a proposed right-of-way. This section does not require a review by the Planning Board.

N. Required Findings:

Section 27-317(a) of the Zoning Ordinance provides that a special exception may be approved if:

(1) The proposed use and site plan are in harmony with the purposes of this Subtitle.

The proposed use and site plan are not in harmony with the purposes of Zoning Ordinance which are contained in Section 27-102(a). Based on the comments from the Community Planning Section, the proposed use would not be in harmony with purpose number two which seeks to implement the *General Plan*, Area Master Plans, and Functional Master Plans.

(2) **The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.**

With approval of the companion DDS and request to build within a right-of-way, the proposed use would generally be in conformance with all applicable requirements.

(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 Map Plan, the General Plan.**

The proposed use will substantially impair the integrity of the Subregion VI Master Plan which recommends residential development for a portion of the property. If approved, these applications will not invalidate a substantial element of the Master Plan.

(4) **The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area.**

The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area. The property has contained a gas station for many years. The addition of a food and beverage store and a fast-food restaurant would allow the applicant to keep up with changing consumer demand and provide a convenient service to motorists and residents of nearby subdivisions.

(5) **The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.**

The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood. The redevelopment would have a beneficial impact through the provision of a clean and modern facility developed in accordance with current standards.

(6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

The proposed site plan is not in conformance with an approved Tree Conservation Plan. The Environmental Planning Section, in a memo dated, January 14, 2002, submits the following comments:

■A Special Exception Site Plan is not a recognized legal boundary property under the Woodland Conservation Ordinance. As a result, a Forest Stand Delineation and Type I Tree Conservation Plans were required to be submitted for the legal property limits of the two affected properties. An FSD and TCPI were submitted for site totaling 5.902 acres. This conforms to the submitted Boundary Survey.

■An FSD consists of a map and text. The purpose of a Forest Stand Delineation is for use during the review process to determine the most suitable areas for woodland conservation or tree preservation, and it is required to identify specific natural areas for priority preservation areas and for expansion and enhancement through afforestation or reforestation. The FSD submitted includes wooded nontidal wetlands, specimen trees, contiguous wooded areas, and conceptually identified 25 percent and greater slopes. The FSD map fails to identify wooded 100-year floodplain, wooded stream corridors, and wooded slopes on erodible soils at 15 to 25 percent slopes. In addition, the FSD indicates the location of specimen trees by number, but does not include any information about their species, size or condition. Information has not been provided about whether the locations of the specimen trees are approximate field locations or surveyed. The Forest Stand Delineation text indicates that there is one forest stand located on the site, Stand A, which covers both the floodplain and the slopes. Stand A is identified as having primary stand value. The correct category for the forest structure value on this site is priority, as indicated on the Forest Stand Summary Sheet. The FSD map key includes a category for non-vegetated waters of the United States, but no symbol has been provided to identify this feature.

■Comment: A complete and correct FSD is a necessary part of any development review application; without this information the environmental review of this case is incomplete.

- (1) A Tree Conservation Plan, TCPI/32/01, has been reviewed for this site. The woodland conservation threshold for this site is based on a 5.90-acre site, with 2.39 acres in the C-M Zone, if the requested rezoning application is approved, leaving 3.51 acres in the R-A Zone. As a result the required woodland conservation threshold is 35.82 percent of the net tract, or a total of 2.11 acres, if there is no 100-year floodplain on the site. The Site Plan nor the TCP properly identify the presence of the 100-year floodplain.

■Comment: Because the FSD and an adjacent development application have identified a 100-year floodplain on the site, and the woodland conservation calculations depend on this information, the proper amount of woodland conservation required cannot be accurately calculated.

- (2) The TCPI proposes to clear 3.43 acres of the site, resulting in clearing below the woodland conservation threshold, that, for a site with R-A land remaining undeveloped should be unnecessary. The TCPI proposes to meet the requirement with 1.86 acres of on-site preservation, and a fee-in-lieu based on 1.30 acres of woodland conservation required.

■When woodlands must be disturbed, woodland conservation should follow a sequence of actions consisting of avoidance, minimization of disturbance, restoration on-site, followed by replacement off-site. Fee-in-lieu is the least desirable of all alternatives and considered a last alternative for properties with only a small amount of requirement remaining. In addition, fee-in-lieu cannot be used to fulfill any part of the WCT requirement. The TCP I is 0.25 acre short of the woodland conservation requirement, and has failed to consider other preferred actions prior to proposing fee-in-lieu.

■*Comment: The TCP has so many required revisions, that it is not possible to make a finding consistent with those necessary for an SE approval.*

- (3) If rezoning is granted for the Special Exception area to be developed in the C-M Zone, this will result in a reduction to the woodland conservation threshold for the site. But this reduction should not be viewed as an approval for clearing the commercially-zoned area of the site, which continues to contain substantial areas of priority woodlands and sensitive environmental areas recognized in the Master Plan. The intensity of development allowed in the C-M Zone and within this application does not reduce the need to protect priority woodlands. Instead it makes a complete identification of sensitive areas and proposed impacts even more necessary during the design process.

■The limits of disturbance as shown on the TCP I propose major intrusions into the priority woodland identified on the site. These include the direct placement of structures, such as parking areas, the 24-foot-high retaining wall, a proposed septic package treatment facility, and an outfall pipe with 50 feet of the top of the stream bank. This also includes the grading necessary to place these structures, as well as provide work zones for construction of the retaining wall, permanent access for placement and maintenance of the packaged septic facility, and other associated grading. In addition, the limits of disturbance shown on the TCPI exceed the limits of disturbance as shown on the Special Exception site plan.

■*Comment: Because no grading is shown on either plan, the full extent of disturbance necessary for the development proposed cannot be fully accessed. The steep and varied nature of this site necessitates that conceptual grading be developed to support the TCPI concept proposed. Based on this, a finding cannot be made by the Environmental Planning Section that priority woodlands on the site have been retained to the fullest extent possible.*•

If this application is approved, conditions of approval are recommended by the Environmental Planning Section to address these concerns. These conditions are included in the memo attached to this report.

O. DDS-516:

The applicant proposes the installation of a loading space along the northern property line. Although the actual loading space will be located 52.9 feet from the property line, the driveway leading to the space is located only 40 feet from the property line. Section 27-579(b) of the Zoning Ordinance requires loading spaces and associated vehicular entrances be located at least 50 feet from

residentially zoned property. The property located directly to the northeast of the subject property is zoned R-A. The applicant therefore requests a departure of 10 feet.

The criteria for obtaining approval of a Departure from Design Standards (DDS) are contained in Section 27-239.01 of the Zoning Ordinance. Staff will evaluate the requested departure assuming that the proper zoning is in place for the proposed special exception uses.

(A) In order for the Planning Board to grant the departure, it shall make the following findings:

- (i) The purposes of this Subtitle will be equally well or better served by the applicant's proposal;**
- (ii) The departure is the minimum necessary, given the specific circumstances of the request;**

The departure being requested is the minimum necessary given the site constraints.

- (iii) The departure is necessary in order to alleviate circumstances, which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949;**

The departure is necessary in order to alleviate circumstances which are unique to the site. The site has been designed in such a manner as to place the entrance along Crain Highway at a location that will not interfere with the proposed refueling positions. As noted above, the location of this entrance is ultimately guided by the location of the underground storage tanks. The applicant, given the physical constraints of the site, is unable to relocate these tanks without inhibiting its ability to resupply the site.

- (iv) The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.**

The proposed redevelopment would significantly enhance the appearance of the subject property. Additionally, and with specific regard to the loading area, the applicant is proposing a six-foot, sight-tight fence between the loading area and the residential property. In addition, the applicant is proposing a landscape area between the loading area and associated entrance and the residential dwelling to the north. Therefore, the departure will not impair the visual, functional or environmental quality of the site and will help lead to the visual enhancement of the subject property and the surrounding neighborhood.

CONCLUSION:

The applicant has failed to demonstrate a substantial change in the character of the neighborhood to justify the requested rezoning. In addition, the rezoning is a prerequisite to the requested special exception uses as delineated on the proposed site plans. Furthermore, the requested departure is necessitated by the extent of the proposed special exception uses. Therefore, staff recommends

- DENIAL of A-9948

- DENIAL of SE-4398
- DENIAL of DDS-516

In fairness to the applicant, staff points out that with the proper zoning in place, the proposed special exception uses and the requested departure could be recommended for approval with conditions.