

WAVERLY GAS STATION-CONVENIENCE STORE ISSUES

Following is a summary of issues identified thus far, beginning with those which appear strongest. Of course the blue text are active links to referenced documents. At this time our only expert witness will be Tony Redman, who will cover the planning issues, Waverly Mansion, and Little Patuxent River impacts.¹

PROPOSED USES

A gas station and convenience store has been proposed for a 1.46-acre site abutting the Little Patuxent River at the northwest corner of Marriottsville Road and Barnsley Way. The components of the project are highlighted with the following colors on the **ORIGINAL** version of the Condition Use Plan posted at: <http://ceds.org/waverlywoods/ConditionalUsePlan.pdf>:

- Black: 3200-square foot convenience store;
- Brown: Retaining wall built at the edge of the floodplain and a few feet from the stream buffer (Photo: ceds.org/waverlywoods/LittlePatuxent+RetainingWall.pdf);
- Green: Proposed bioretention-permeable pavement areas;
- Yellow: Six, two-sided gasoline-diesel pumps;
- Pink-Purple: Underground fuel storage tanks; and
- Red: Six vehicle service bays.

The **REVISED** Conditional Use Plan submitted during the June 2nd Board of Appeals hearing was marked as Applicant's Exhibit #2 and is posted at: <http://ceds.org/waverlywoods/CUPlan.jpg>.

Following are the two other plans submitted during the June 2nd hearing:

- [Exhibit #1: Lighting Plan](#); and
- [Truck Turnaround Plan](#).

STAFF & HEARING EXAMINER OPPOSED USES

In the November 12, 2010, Technical Staff Report, the Howard County Department of Planning & Zoning strongly recommended denial of a Conditional Use Permit for this project. This report is posted at: <http://ceds.org/waverlywoods/TechnicalStaffReport.pdf>. The Howard County Hearing Examiner then issued a Decision and Order (D&O) last January formally denying approval of the Conditional Use Permit: ceds.org/waverlywoods/HearingExaminerDecision.pdf.

¹ Tony Redman's resume is posted at: <http://ceds.org/waverlywoods/Tony%20Redman's%20Resume.pdf>

PLANNING ISSUES

In the Conclusion Of Law section of the [Decision and Order](#) (D&O) dated January 19, 2010, Hearing Examiner Michele LeFaivre cited the following issues as the basis for denying a Conditional Use Permit.

Commercial Strip Development

The Hearing Examiner cited long standing General Plan policy² not to expand strip commercial development further west along major access roads. Instead, commercial uses should be integrated into mixed-use communities designed and located to fit the size and density of the area being served. This same policy was cited in Section IV.A.1., on page 6, of the TSR.

In [Chapter 5](#), of the [Howard County General Plan 2000](#), strip commercial development was described as:

"The stores and services were spread along the arterial roads that led to metropolitan employment areas. These strips were designed to be accessible only by automobile."

and

"Commercial strips were seldom planned to accommodate any civic presence, social institutions, open space or public spaces. They became extremely hostile environments for pedestrians and allowed no direct access to adjacent residential communities."

In Section IV.A.1., on page 6, of the November 12, 2010 [Technical Staff Report](#) (TSR), the following text characterized the project as "strip development":

"A freestanding gas station and convenience store development on this busy intersection should be avoided along a road like Marriottsville Road."

Rick Levitan and I have compiled documents regarding other existing PEC-zone gas stations in Howard County. One is the [Waverly Village Center Shell](#) station in the Weis Market parking lot. The other two are:

- [Exxon-On The Run](#), 6030 West Marshalee Drive, Ellicott City; and
- [Exxon-On The Run](#), 7570 Johns Hopkins Road, Laurel.

The plat and property records show that none of the three existing PEC-zone gas stations are "free-standing."

² The DPZ file for this case contained excerpts from the 1990 and 2000 General Plans. I assume these excerpts were cited during the Hearing Examiner hearing as supporting the General Plan prohibition against strip commercial development. These excerpts are posted at: <http://ceds.org/waverlywoods/GeneralPlanExcerpts.pdf>

Most of the PEC-zoned area west of Marriottsville Road³ is unbuildable because of the presence of the Little Patuxent River, wetlands, floodplain or the Transcontinental pipeline.⁴ The only buildable PEC west of Marriottsville is the proposed convenience store-gas station site and the southwest corner of Route 99 and Marriottsville Road

The D&O noted the following counter-arguments from the Petitioner:

- The General Plan was referring to limiting the extension of strip commercial zoning not Conditional Use Permits;
- The commercial and office center in Waverly Woods on the southeast corner of Marriottsville Road and Warwick Way belies this policy; and
- Since the proposed convenience store-gas station has access on a side road (Barnsley Way) and not a major road (Marriottsville Road) it isn't strip development.

The applicant's February 11, 2011, [Petition for Appeal](#) noted the following additional counter-arguments:

- "The issue of compliance with the General Plan is set out in Trail vs. Terrapin Run, LLC, 174 Md. App. 43, 920 A.2d. 597, the Court of Special Appeals stated the comprehensive plan is a mere guide and not binding, and there is nothing in the current or comprehensive plan which elevates the plan beyond a mere guide. Use of such terms as that is consistent with and in conformity with the plan offering semantically, and the subject case is only in general compatibility with the purpose of plan rather than strict adherence to the plan"; and
- "The issue of the Route 40 commercial strip development in the General Plan is, at best, a red herring. First, the property, though in the same district, is separated from Route 40 by Route 70, a major interstate highway. Also, the gas station does not enter onto Marriottsville Road but rather onto Barnsley Way. Nor is it a strip center. This is a less intense use than the retail development catty-corner to the property, which, though fronting on Marriottsville Road, as this gas station will, enters on Warwick Way, which on the west side of Marriottsville Road is known as Barnsley Way."

³ An excerpt of the zoning map is posted at: <http://ceds.org/waverlywoods/WaverlyExcerptsZoningMap.pdf>

⁴ A plat is posted at the following location which shows the PEC-zoned area along with the pipeline, wetlands, floodplain, stream and site: <http://ceds.org/waverlywoods/Plat Sheet 6 of 10+Zoning.pdf>

At the June 2nd Board of Appeals hearing applicant witness Joe Rutter presented two additional reasons why the project should not be considered strip commercial development:

- Access will no longer be provided off of Marriottsville Road (an arterial); and
- In 2008, the Howard County Council added regulation 36 to Section 116 (PEC) B. Uses Permitted as a Matter of Right which allowed a number of B-1 uses. By the way, this section allows convenience stores on PEC-zoned land provided there are a minimum of 500 dwelling units and the property is under a common master homeowners association. Rick raised a question as to whether it matters that there will only be 350 dwelling units west of Marriottsville Road. I looked at the 2007 to present PEC conditional use cases posted on the Hearing Examiner and Board of Appeals webpages and did not find any that addressed this issue. I also took a quick look at the Waverly Woods Master Declaration, dated September 17, 1997, and it does appear to include the area west of Marriottsville Road.

Logical Neighborhood Development

On D&O page 19, the Hearing Examiner concluded that the project would adversely affect the logical development of the neighborhood. The facts which led the Hearing Examiner to this conclusions were:

"DPZ, through the [TSR](#), opposes the proposed gasoline service station at the proposed Site in significant part because it will adversely affect the logical development of the neighborhood Analogizing to its conclusions in the TSR for the withdrawn [Board of Appeals Case No. 99-04E](#) petition for a gasoline service station across Marriottsville Road, DPZ reasons the gasoline service station outside the village center area is not conducive to the logical development Waverly Woods, in part because it would diminish the overall design character of Waverly Woods, and specifically, the Barnsley Way entrance to The Courtyards at Waverly Woods-West. The Hearing Examiner agrees. No commercial use is proposed for the site in the 2003 Waverly Woods conceptual plan and the evidence of record is devoid of any probative evidence that commercial uses at this specific site are part of the decades-long planning and development of Waverly Woods."

The Petitioner testified before the Hearing Examiner they would not object to limiting the hours to 5:00 a.m. to 12:00 a.m. seven days a week instead of the proposed 24/7. Operating hours were not addressed at the June 2nd hearing nor are they referenced on the revised [Conditional Use plan](#) or the [Petition of Appeal](#). I would suggest that our planning expert be prepared if asked whether limiting hours would resolve incompatibility with The Courtyards assisted living community.

Blighting

Section 131.N.25.A., requires that: *The use will not adversely affect the general welfare or logical development of the neighborhood or area in which the station is proposed and will not*

have a blighting influence as a result of a proliferation of gasoline service stations within a particular area. A Shell gas station and convenience store is presently located about a half-mile east in the Waverly Woods Village Center. The Shell station-store was the subject of [Technical Staff Report BA-08-049C](#). The Hearing Examiner did not address blighting because she had found that the proposed gas station would adversely affect logical development of the neighborhood.

Would it be helpful to address the blighting issue in testimony before the Board of Appeals?

Historic Preservation - Waverly House

In 1999, an Exxon gas station was proposed along the east side Marriottsville Road at about the present location of Warwick Way. The station would have been 250 feet from the Waverly Mansion, which is on the National Register of Historic Places. The Howard County Historic District Commission opposed this project because:

"The construction of a gasoline service station at this location, regardless of its arrangement or architecture, would be a terrible blight upon the historic character of Waverly due to the incompatible nature and appearance of a gas station with the historic site, and the excessive light and noise generated by such facilities."

In the [1999 TSR](#) for the Exxon station staff noted:

"Community Enhancement Policy 7.65 state; "increase emphasis on protecting or restoring historic landscapes and setting as well as individual structures". While the previously unimproved property around Waverly Mansion was developed as part of the mixed use area, the Zoning Board approved a site plan in ZB 929S which afforded protection to the historic site by almost surrounding the historic property with a golf course, driving range and the clubhouse for the golf course. The vista of and from the historic site would be' seriously impacted by the development of such a high visibility, brightly lit and intensely used special exception use so close to and along the principal view corridor of the historic property. Affecting the view of and from the historic site is not in harmony with the General Plan historic preservation policies, and this particular use in this particular location is inappropriate."

The proposed gas station and convenience store is just a couple of hundred feet further away from Waverly Mansion. Like the 1999 proposal, the proposed station would be brightly lit and affects the view of/from Waverly Mansion.⁵ This station will also have six service bays, which could generate considerable noise due to air lug wrenches and other equipment, particularly during the summer months when the bay doors are open. The station would be open 24 hours, seven days a week, though the applicant did offer to limit hours to 5:00 am – midnight during a Hearing Examiner hearing.

⁵ See preliminary sightline at: <http://ceds.org/waverlywoods/Sightline.pdf>

I have contacted Howard County Historic District Commission staffer Samantha Stoney (410-313-4428) about taking a position similar to that presented in the 1999 letter. Mr. Allan Shad signed in on June 2nd to testify on behalf of [Preservation Howard County](#).⁶ The [Howard County Historical Society](#) sent a letter to the Board of Appeals identifying the reasons why Waverly Mansion is important but did not state a position on the proposed gas station.⁷

LITTLE PATUXENT RIVER

The site abuts the Little Patuxent River floodplain and will place 1.25-acres of new impervious surfaces within 90 feet of the River.

The [Howard County Little Patuxent River Watershed Restoration Action Strategy](#)⁸ stated:

"Development in the watershed, much of which occurred prior to County adoption of stormwater management and environmental protection regulations, has eliminated and degraded habitat for both land and aquatic species. An assessment of water quality, based on impervious cover, indicates that the majority of the Little Patuxent subwatersheds are expected to have poor to fair water quality, aquatic habitat and aquatic species diversity."

Figure B-6, in the [Howard County Water Resources Element An Amendment to General Plan 2000](#), shows that the Little Patuxent watershed is about to cross a very critical impervious surface threshold where the river will go from being impaired (10%-25%) to no longer capable of supporting human uses and aquatic life (>25%).

Two factors exacerbate the impact of the impervious area added by the proposed use:

- First, the project would add a substantial amount of impervious cover immediately next to the Little Patuxent. Generally, the closer impervious surfaces are to a waterway, the greater the impact due to a higher percentage of the runoff pollution load delivered and other causes; and
- Second, locating a gas station so close to the Little Patuxent River increases the likelihood of damage to this resource should a spill occur or if the proposed runoff pollution control measures should fail.

Both factors have been long been recognized and accepted by environmental management professionals. In fact, the Howard County Department of Planning & Zoning cited this very

⁶ See: <http://ceds.org/waverlywoods/PreservationHowardCountyWaverlyTestimony.pdf>

⁷ See: <http://ceds.org/waverlywoods/HowardCountyHistoricalSocietyLetter.pdf>

⁸ See page 1: <http://www.co.ho.md.us/DPZ/DPZDocs/WRAS-Study.pdf>

principle in their 1999 staff report on an Exxon gas station proposed for a site on the opposite side of Marriottsville Road. Following is an excerpt from the staff report⁹:

*“The proposed **village center** would be a more suitable location than the proposed [Exxon] site, which is surrounded by a golf course, **the environmentally sensitive Little Patuxent River corridor**, a key historic site and an open space lot dominated by floodplains and wetlands. [emphasis added]”*

The Exxon site was being contrasted with a site in the Village Center next to the Weis Market.¹⁰ The Village Center is a half-mile from the Little Patuxent while the Exxon gas station site was 300 feet from the River. Of course, the presently proposed gas station is a mere 90 feet from the Little Patuxent. Obviously this makes the proposed location far less acceptable based upon the logic set forth in the 1999 Technical Staff Report.

In Jacksonville, MD a contractor nicked an underground fuel line at an Exxon station. Over a two-month period 25,000 gallons of fuel went into the ground and then polluted many wells. It would be much easier to contain such a spill if it occurred a half-mile from the Little Patuxent versus the 90-feet separating the proposed gas station from the River. Rick is working with an expert who has serious concerns about placing underground fuel tanks in fill.

Lee Walker-Oxenham will testify on behalf of the Howard County Sierra Club in opposition to the project due to these environmental impacts. Lee signed in on June 2nd and has minutes showing the Sierra Club authorized her to speak on their behalf. I will

Bioretention & Permeable Pavers

While the Conditional Use Plan shows that a combination of [permeable parking spaces](#) and [bioretention](#) facilities will be used (*see green areas on [plan](#)*) to remove pollutants from service station runoff before it reaches the Little Patuxent, there are several issues with this plan.

Much of the site appears to have been created with fill. Section 3.3.1 and Section 5.A.2, of the [Maryland Stormwater Design Manual](#) states that permeable pavements and bioretention facilities should not be placed on fill.

Table 2.6, in the [Maryland Stormwater Design Manual](#), identifies "vehicle service and maintenance facilities" as *stormwater hotspots*. A hotspot is a use where runoff pollutant levels are unusually high. Section 2.8, of the manual, prohibits the use of measures to infiltrate runoff from hotspots. This section also contains the following caution regarding the elevated threat of service stations to aquatic resource health:

⁹ The staff report is posted at: <http://ceds.org/waverlywoods/TSR%203-5-990001.pdf>

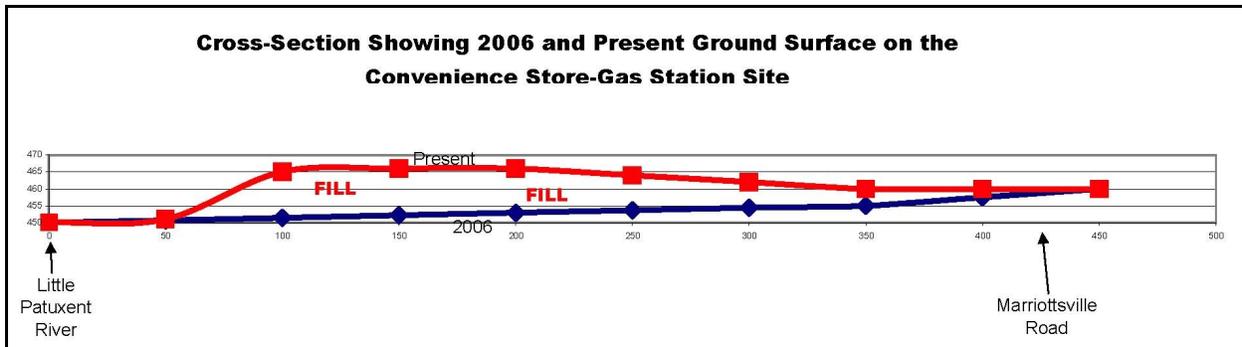
¹⁰ A map showing the three locations is posted at: <http://ceds.org/waverlywoods/GasStationSites.pdf>

*"While large highways [average daily traffic volume (ADT) greater than 30,000] and retail gasoline outlet facilities are not designated as stormwater hotspots, it is important to ensure that highway and **retail gasoline** outlet stormwater management plans adequately protect groundwater."*

While permeable pavers and bioretention are [Environmental Site Design](#) (ESD) measures, full aquatic resource protection benefits are only achieved if the measures are designed to infiltrate runoff into underlying soils. But doing this at a vehicle service-maintenance facilities or a gas station, such as that proposed next to the Little Patuxent, is prohibited. Therefore, it is questionable whether permeable pavers, bioretention or other ESD practices can even be used at the site. And even this is possible the inability to infiltrate runoff negates the full benefits of these measures. This is yet another demonstration of why it is unwise to locate a vehicle service-gas station next to a highly sensitive resource such as the Little Patuxent River.

At the June 2nd applicant witness Joe Rutter said part of the site was fill. However, he also implied that bioretention and permeable pavers could still be used on the site, but would need underdrains. He also implied that both measures work better with underdrains, which simply isn't true. With bioretention some pollutant removal would occur but far less than if built on native soil and without underdrains.

Following is a site profile using the contours shown on the [2006 Howard County topographic map](#), which predates fill on the site, and the applicant's [Conditional Use plan](#) showing the contours of the filled portion of the site.



TRAFFIC

Affected Roads

Marriottsville Road in front of the Site is currently being widened. It has had two northbound and two southbound travel lanes and approximately 43 feet of paving within a variable width wide right-of-way, but according to the Conditional Use plan eventually will have dedicated southbound left and right turn lanes at the Warwick Way - Barnsley Way intersection. The posted speed limit is 45 miles per hour. Barnsley Way is depicted as a mainly 60 foot wide right-of-way, although it is wider immediately west of the intersection, and also mainly has a pavement width

of 40 feet. Due to the current construction along Marriottsville Road, it is not possible to estimate sight distance for the Site, although sight distance along Barnsley Way would most likely not be an issue. Precise sight distance measurements may only be determined through a detailed sight distance analysis. According to data from the Department of Public Works, the traffic volume on Marriottsville Road south of MD 99 (Old Frederick Road) was 15,701 ADT (average daily trips) as of March 2005.

Issues

In Section IV.A.1., on page 6, of the November 12, 2010 [Technical Staff Report](#) (TSR), the following text appears:

"Marriottsville Road is a highly traveled Intermediate Arterial highway and there are recorded ingress and egress restrictions along the right-of-way. Direct access for a individual site onto an Arterial highway is not permitted when there is an alternate access available, so the northern access onto Marriottsville Road is not permitted, and should not be authorized through this Conditional Use request. The Barnsley Drive access is very close to the intersection, and with the likely intensive use of the proposed Site, it appears that there would be potential turning movement conflicts at this entrance with enough vehicle stacking on Barnsley Way at the traffic signal."

On page 18, of the D&O the Hearing Examiner wrote that the evidence in the record did not permit a determination of what impact would result from the Petitioner's proposed elimination of the Marriottsville Road access.

Following is a listing of possible issues posed to traffic engineer [Jon Seitz](#) of [Transportation Resource Group, Inc.](#):

1. In Section IV.A.5., on page 7, of the TSR staff noted "The proposed access directly on Marriottsville Road, a busy Intermediate Arterial highway, is a potential safety hazard."
2. Staff also expressed a concern that if the Marriottsville Road access is **NOT** eliminated then drivers may attempt to illegally exit the site to get directly onto Marriottsville Road. Staff noted there is no realistic way to prevent this.
3. Would the single means of access off of Barnsley Way be adequate if the Marriottsville Road access is eliminated?

Again, staff noted: "The Barnsley Drive access is very close to the intersection, and with the likely intensive use of the proposed Site, it appears that there would be potential turning movement conflicts at this entrance with enough vehicle stacking on Barnsley Way at the traffic signal."

4. Would the proposed site configuration allow large trucks (semitrailers) to safely turn?
5. Is it wise to design a convenience store where traffic cannot move around the rear of the building?
6. Staff also wrote: “For the same reasons noted above in the evaluation of the general standards concerning the proposed vehicle access, the petition does not comply with Section 131.N.25.g. The locations of 18 of the 27 parking spaces would require **pedestrians to cross the main vehicle circulation area** and/or the fuel dispensing area.”
7. Item 22, in the D&O states: “In his testimony about safe access, Petitioner's engineer Terrel Fisher testified that the Barnsley Way ingress/egress was sited about 300 feet from the Barnsley Way intersection with Marriottsville Road.” From the Conditional Use Plan this distance is 300 feet from the centerline of Marriottsville Road to the centerline of Barnsley Way at the proposed access. The minimum distance is 230 feet from the edge of Marriottsville pavement to the nearest edge of the Barnsley Road access.
8. The applicant claims the site is designed to discuss large trucks from refilling. The diesel pumps are intended for residential and small farm consumption, not for large tractor-trailer trucks. In his opinion, such vehicles would not want to pay the price for diesel gasoline at the station, nor would they be able to fuel up because their tanks have two fill caps, one on each side of the tank. Because the pumps cannot accommodate such trucks, drivers would be disinclined to use the proposed gasoline service station because the tanks would fill too slowly.

Is this correct?

9. The vast majority of gas stations in Howard County have at least two access points. Only three have a single access point. Is this a significant safety issue?
10. Will the project increase the amount of traffic exiting I-70 to get gas? The site is a half-mile north of I-70. Westbound I-70 traffic can exit onto Marriottsville Road, but not eastbound. However, eastbound drivers can exit onto Route 40 then drive 1.9-miles to reach the proposed gas station. Presently the Services sign on westbound I-70 does not show a place to get gas. I assume the operator of the future gas station will have their logo on the westbound I-70 services sign. Maryland SHA guidelines allow a logo for gas stations within one-mile of an interchange.¹¹ Is this likely to increase traffic volume on Marriottsville Road?

¹¹ See <http://www.marylandroads.com/OOTS/LOGOBROCHURE.pdf>

11. “With regard to the diesel service, the turning template that was provided with the application shows that a fuel truck can make the movements on site to reach the underground tanks, but could not make the turns necessary to reach the fuel dispensers without repeated backing up. Thus truck traffic is discouraged, but no gas station can totally restrict trucks since they need to be serviced by a fuel truck. Modern fuel dispensers typically contain a diesel hose along with the gasoline hose at each dispenser. Therefore, we expect that each dispenser will provide for diesel service.” August 31, 2010 from Robert Spahn to DPZ

LIGHTING

The [Howard Astronomical League](#) (HAL) uses [Alpha Ridge Park](#) as an outdoor observatory and plan to be an indoor facility which has substantial County support.

The D&O references concerns about gas station lighting causing glare at the observatory. The D&OO noted that applicant witness Joe Rutter stated that he was working with HAL to resolve the issue.

At the June 2nd hearing applicant lighting expert Chad Kulawiak, of Century Engineering, presenting a [plan](#) which showed proposed under-canopy LED lighting would not emit more than seven foot-candles. The lead organization on maintaining the visibility of celestial objects is the [International Dark-Sky Association](#) (IDA). IDA recommends no more than 20 foot-candles. So the applicant’s lighting plan satisfied HAL’s concerns. The HAL representative, Dr. Joel Goodman, then testified on June 2nd that they were satisfied with the lighting plan. Applicant attorney Robert Spahn asked if all the 30+ HAL members present would stand, but no one asked Mr. Goodman if HAL supports the gas station. They would’ve likely said they prefer it not be built, but could live with it if lighting fully conforms to the plan.

Rick Levitan believes that future gas station-convenience store tenants (which have yet to be selected) will find the seven foot-candle maximum lighting unacceptable. There’s some evidence indicating customers shy away from gas stations which appear dark. A lighting consultant Rick knows says 25- to 30-foot candles is the norm for gas stations with LED lighting. Rick also questions the safety of such a dark station. The security cameras used to prevent drive-offs and other thefts may not function well at such a low light level. The relatively dark station may also prove attractive to criminals.

Rick and I have been discussing the following strategy: place the applicant in the position of agreeing to a lighting plan which minimizes glare but that causes heartburn among public safety and crime experts.

Specifically, let’s recall HAL to propose very specific lighting recommendations that they will urge the Board to include if the Conditional Use Permit is granted. I got the following

conditions from [Dr. Chris Luginbuhl](#) who is the leading IDA expert on lighting. In other words, HAL will likely view the following as highly credible and worthy of support:

1. Exterior lighting shall include no more than ten area lights and three canopy lights; there shall not be any additional exterior lighting;
2. Interior lighting shall be restricted to recessed ceiling mounted fixtures;
3. Interior lighting shall not be directed to exterior areas;
4. All lighting fixtures, including those mounted to the lower surface of the canopy, must be fully shielded (i.e. must emit no light above the horizontal plane), and must be installed in a fashion to maintain this fully shielded characteristic;
5. All exterior parking/drive area light fixtures shall utilize LED light sources with a maximum correlated color temperature (CCT) of 1700 Kelvins (amber); all canopy mounted light fixtures shall utilize LED light sources with a maximum correlated color temperature (CCT) of 3100 Kelvins, and
6. Any signage shall have an opaque or unilluminated background with only text or logos illuminated and shall not include a full-color LED screen to display images, text or any other matter.

I sent an e-mail to the Howard County Police and a criminology professor at UMBC asking for their opinion about the lighting issue. I will be pursuing both later this week. Hopefully we'll identify an expert who will testify that a maximum of seven foot-candles is far too dark to operate a safe and profitable gas station-convenience store.

Finally, my laymen's read of the Outdoor Lighting section (134) of the Howard County Zoning Regulations causes me to question whether the Board has the authority to require such minimal lighting.

TRANSCONTINENTAL GAS PIPELINE

The Transcontinental gas pipeline runs just 350 feet west of the proposed gas station. The [Wikipedia List of pipeline accidents](#) notes a large number of fires, explosions and other incidents which have occurred along pipelines carrying gas and other materials within the United States.

In 2001, the Gas Research Institute produced a report entitled [*A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines*](#). This report called for up to a thousand-foot separation between large diameter gas pipelines and High Consequence Areas, which I presume includes gasoline service stations.

I communicated with Howard County Assistant Chief Daniel Merson about any policies the Howard County Fire Marshal's office may have regarding separation distances between gas pipelines and High Consequences uses such as service stations. In a May 31st e-mail Chief Merson said: "After a review of the applicable NFPA codes the Office of the Fire Marshal is not going to take any exception to NFPA 54. In this case normally DOT regulations apply for piping

in consumer areas/premises. If I can be of any further assistance please don't hesitate to contact me." I have not pursued this somewhat vague message further.

The [plat](#) for the 350-unit Courtyards development, off Barnsley Way too, does show a 30-foot residential setback along the gas pipeline.

PAST DECISIONS

I obtained copies of past Hearing Examiner and Board of Appeals decisions regarding gasoline service stations. I did this to gain a better understanding of the facts the Board of Appeals considers when deliberating a Conditional Use permit application. I created a searchable Adobe file containing all 13 decisions, which is posted at: ceds.org/waverlywoods/AllDecisions.pdf

The table on the next page lists the 13 cases where a decision has been issued since 2001. Of course one case is BA 10-023C the Waverly Woods project which is the focus of this document. Another is Rick Levitan's Waverly Village Center Shell station (BA 08-049C). Bill Erskine represented the petitioner in BA 06-010C.

Of these 13 cases, three involved PEC-zoned properties. In addition to Rick's Shell and the Waverly Woods case, the Montpelier Road Exxon (BA 03-61C) was also proposed for a PEC site.

While staff recommended denial in three of the cases, the Conditional Use Permit was granted in all but one which, again, is the Waverly Woods case. Opponents testified in four of the twelve cases, but in only one were the opponents represented by counsel. This case was BA 06-048C and the decision contains one of the more detailed discussions of applicable law and facts.

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Howard County Gas Service Station Conditional Use Permit Decisions

Case No.	Applicant	DECISION		Contested	Staff Recommendation	Site Zoning	Site Address
		Hearing Examiner	Board of Appeals				
BA 01-38C&V	BP Corporation		Granted	Yes, but without counsel	Approval	B-2	12400 Route 108
BA 01-41C	BP Corporation		Granted	No	Approval?	B-2	8720 Baltimore national Pike
BA 01-53C	Guilford LLC		Granted	No	Approval	M-2	10930 Guilford Road
BA 01-60C	Quarles Petroleum		Granted	No	Approval	M-1	7410 US 1
BA 03-61C	Exxon Mobil Corporation		Granted	No	Approval, with conditions	PEC	7500 East Montpelier Road
BA 06-048C	Weis Market, Inc.		Granted	Yes, with counsel	Denial	B-2	9250 Washington Boulevard
BA 06-009C	High's of Baltimore, Inc.	Granted		No	?	B-2	13605 Triadelphia Road
BA 06-010C	High's of Baltimore, Inc.	Granted		No	Denial	B-2	11840 Lime Kiln Road
BA 08-001C	Crossroads Rock, LLC	Granted		No	Approval?	M-2	7525 Montevideo Road
BA 08-045C	High's of Baltimore, Inc.	Granted		Yes, but without counsel	?	B-2	3045 Rogers Avenue
BA 08-049C	Convenience Retailing, LLC Waverly Village Center Shell	Granted		Yes, but without counsel	Approval, with conditions	PEC	10825 Birmingham Way
BA 09-012C	Cloverland Farms Dairy T/A Royal Farms	Granted		No	Approval?	B-2	3901 Ten Oaks Road
BA 10-023C	Waverly Woods Development Corporation	Denied	On Appeal	No	Denial	PEC	2200 Marriottsville Road