

MEMORANDUM

DATE: September 8, 2017
TO: Zoning Review Office
FROM: Office of Administrative Hearings
RE: Case No. 2017-0322-SPHX – Appeal Period Expired

The appeal period for the above-referenced case expired on September 7, 2017. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: ✓ Case File
Office of Administrative Hearings

**IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION**

(7179 Holabird Avenue)
12th Election District
7th Council District
Weis Markets, Inc.
Legal Owner

*

*

*

*

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Petitioner

Case No. 2017-0322-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Weis Markets, Inc., legal owner ("Petitioner"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to approve a fuel service station canopy sign with electronic changeable copy elements (pricing). A Petition for Special Exception was filed to use the herein described property for a fuel service station.

Appearing at the public hearing in support of the requests was Jack O'Hara, Alex Ororbia and professional engineer John Luciani. Caroline L. Hecker, Esq. and Justin Williams, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.491 acres in size and is split-zoned BL-AS and BL. The property is unimproved, and Petitioner proposes to construct a fuel service station on the lot. Petitioner opened a Weis Market grocery store directly across the street in August, 2016, and as it has at other locations it proposes to operate the gas station in conjunction with the grocery

ORDER RECEIVED FOR FILING

Date

By

8/18/17
Sen

store.

SPECIAL HEARING

All signage proposed (See Exhibit 8) is permitted by right under B.C.Z.R. §450. Counsel notes that Petitioner would be entitled to have a second freestanding sign on Delvale Avenue, though it has not proposed a sign at that location.

The petition for special hearing is required because the B.C.Z.R. does not address whether or not electronic changeable copy is permitted on a fuel service station canopy sign. The sign would display prices for the various grades of gasoline sold at the station. Such pricing information is required by state law, and consumers find such signage helpful in determining which station in the vicinity offers the lowest prices. I do not believe granting the request would lead to “visual clutter,” and will therefore grant the petition. Petitioner stated the electronic signage proposed here is identical to that approved in recent zoning cases involving Weis Markets. See Exhibit 11, Order in Case No. 2017-0241.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court reaffirmed a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. *Id.*

John Luciani, professional engineer, testified via proffer Petitioner satisfied the

ORDER RECEIVED FOR FILING

Date

8/8/17

By

Sen

requirements of B.C.Z.R. §502.1 and the cases interpreting that provision. No evidence was offered to rebut this *prima facie* case and the petition will therefore be granted.

THEREFORE, IT IS ORDERED this 8th day of **August 2017**, by this Administrative Law Judge, that the Petition for Special Hearing to approve a fuel service station canopy sign with electronic changeable copy elements (pricing), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use the herein described property for a fuel service station, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.
3. Petitioner must submit for approval by Baltimore County a floodplain study for the site.
4. The special exception area, in which is permitted the operation of the fuel service station, shall encompass only the BL-AS zoned portion of the property.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING

Date

8/8/17

By

sln



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 7179 Holabird Avenue which is presently zoned BL-AS/ BL
 Deed References: 38239/340 10 Digit Tax Account # 2 0 0 0 0 1 2 7 9 9
 Property Owner(s) Printed Name(s) Weis Markets, Inc.

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve
 a fuel service station canopy sign with electronic changeable copy elements (pricing)
 pursuant to Section 450 (Table of Sign Regulations).
2. ☒ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for
 a fuel service station pursuant to Section 405.2.B.1.
3. ☐ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print _____
 Signature _____
 Mailing Address _____ City _____ State _____
 Zip Code _____ Telephone # _____ Email Address _____

Attorney for Petitioner:

Caroline L. Hecker
 Name- Type or Print _____
 Signature Caroline Hecker
 Rosenberg, Martin, Greenberg, LLP
 25 S. Charles Street, 21st Floor, Baltimore, MD
 Mailing Address _____ City _____ State _____
 21201 / 410-727-6600 / checker@rosenbergmartin.com
 Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Weis Markets, Inc.
 Name: Harold G. Graber Title: SVP-Real Estate/Development
 Name #1 - Type or Print _____
 By: Harold G. Graber Title: _____
 Signature #1 _____
 1000 S. Second Street
 P.O. Box 471 Sunbury, PA
 Mailing Address City State
 17801 / 570-286-3299 /
 Zip Code Telephone # Email Address

Representative to be contacted:

Caroline L. Hecker
 Name - Type or Print _____
 Signature Caroline Hecker
 Rosenberg, Martin, Greenberg, LLP
 25 S. Charles Street, 21st Floor, Baltimore, MD
 Mailing Address _____ City _____ State _____
 21201 / 410-727-6600 / checker@rosenbergmartin.com
 Zip Code Telephone # Email Address

CASE NUMBER 2017-0322 SPHX Filing Date 6/5/17

Do Not Schedule Dates: _____ Reviewer AT



FIRST CAPITAL ENGINEERING

Parcel 193
Tax Account # 2000012799

Part A

Beginning at a point on the South side of Holabird Ave. which is 50 feet wide at the right-of-way, at a distance of 25 feet west of the centerline of Marshall road which is 50 feet wide at the right-of-way.

Part B

BEGINNING for the First thereof at a drill hole (set) at the intersection and of the south side of Holabird Avenue and the Westside of Marshall Road as laid out 50 feet wide thence and binding on the west side of Marshall Road (1) South $08^{\circ} 17' 41''$ West 151.18' feet to a rebar (set) at the Northeastern corner of Lot 1 as laid out on Plat A Part 1 of the plat showing Lot Subdivision Talbot Park which plat is recorded among the Land Records of Baltimore County in Plat Book No. JWB 14, Page 49 and binding on the same the following course and distance (2) North $80^{\circ} 59' 26''$ West 131.45' to a rebar (set) on the east side of Delvale Avenue as laid out 80' wide on HRW 58-197-2 which is recorded among the Land Records of Baltimore County in Liber 3573, Page 131; thence leaving said Lot 1 and binding on Delvale Avenue the following course and distance, (3) by an arc to the right having a radius of 1738.08' and arc length of 146.09' the chord and distance being North $00^{\circ} 05' 16''$ West 146.02' to a drill hole (set) on the South side of Holabird Avenue; thence leaving said Delvale Avenue and binding on the South side of Holabird Avenue the following course and distance (4) by an arc to the right having a radius of 1120.92' and arc length of 123.22' the chord and distance being South $84^{\circ} 13' 20''$ East 123.15' to a point; thence South $81^{\circ} 04' 22''$ East 29.70' to the place of beginning. Being the collective of the First, Second and Third parts as recorded in Liber 5973 , Folio 680 in and for the Baltimore County Recorder of Deeds

Containing 0.491 Acres more or less

Located in the 12th Election District and 12th Council District



48 South Richland Ave. ★ York, PA 17404 ★ 717-845-3227 ★ FAX: 717-852-7891

Gettysburg, PA 17325 ★ 717-337-3827 ★ info@fcap.com

2017-0322-SPHX



501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 5062256

Sold To:

ROSENBERG MARTIN GREENBERG LLP - CU00193689
25 S Charles St 21st Floor
BALTIMORE, MD 21201

Bill To:

ROSENBERG MARTIN GREENBERG LLP - CU00193689
25 S Charles St 21st Floor
BALTIMORE, MD 21201

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Jul 13, 2017

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2017-0322-SPHX
7179 Holabird Avenue
S/s Holabird Avenue, s/w corner of Holabird Avenue and Marshall Road
12th Election District - 7th Councilmanic District
Legal Owner(s) Weis Markets, Inc., Harold Graber, SVP

Special Hearing to determine whether or not the Administrative Law Judge should approve a fuel service station canopy sign with electronic changeable copy elements (pricing).

Special Exception: to use the property for a fuel service station.

Hearing: Friday, August 4, 2017 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

7/035 July 13 5062256

The Baltimore Sun Media Group

By *S. Wilkinson*
Legal Advertising

CERTIFICATE OF POSTING

RE: Case No. 2017-0322-SPHA

Petitioner: Caroline Hecker, attorney

Hearing Date: 8/4/17

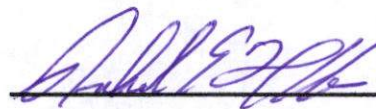
Baltimore County Department of
Permits, Approvals and Inspections
Room 111, County Office Building
111 W. Chesapeake Ave.
Towson, Md. 21204

This letter is to confirm, under penalties of perjury, that the necessary sign(s)
were posted conspicuously on the property located at _____

7179 Holabird Avenue

_____ on 7/15/17

Sincerely,

 7/15/17

Richard E. Hoffman

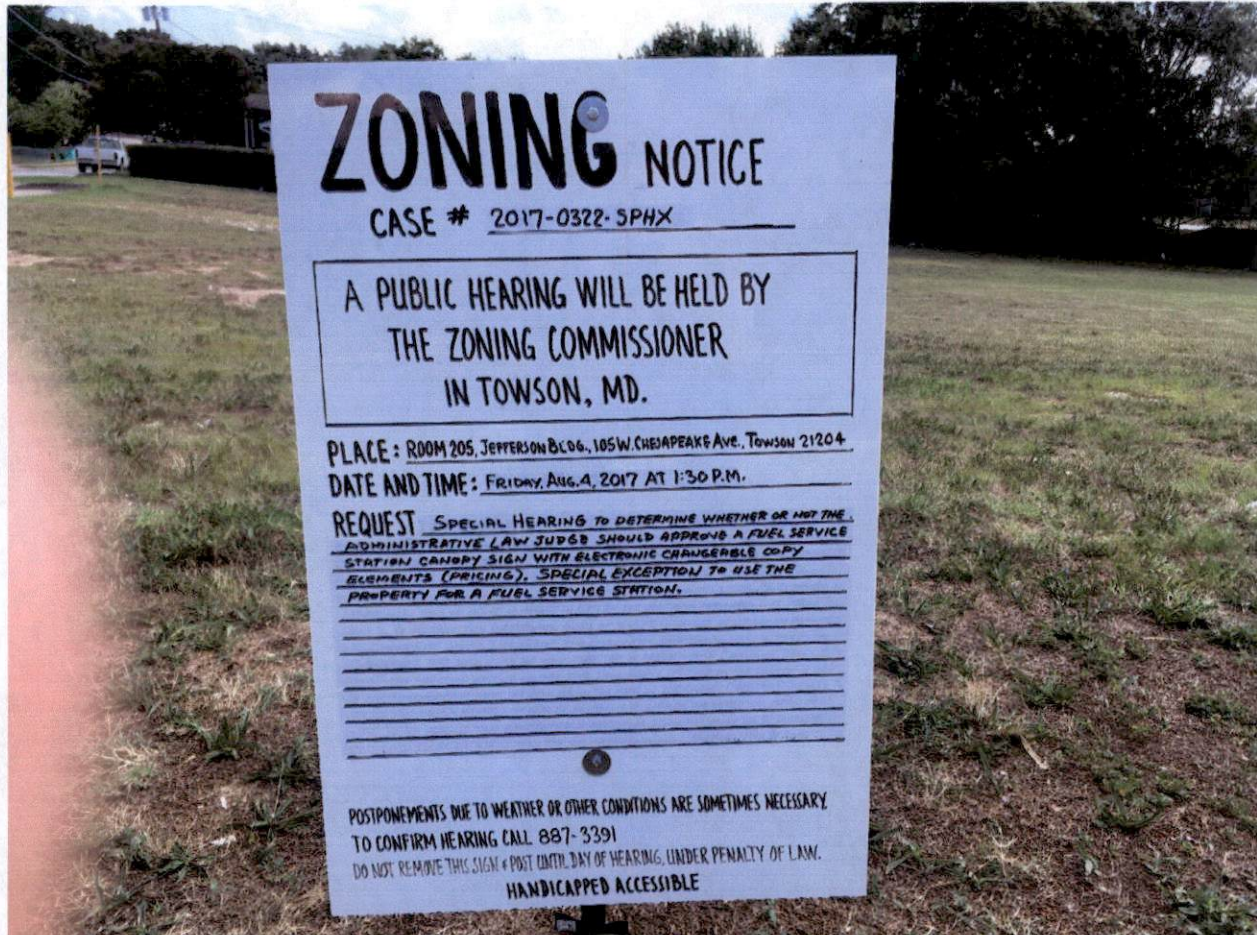
904 Dellwood Drive

Fallston, Md. 21047

(443) 243-7360

Certificate of Posting

Case No. 2017-0322-SPHA



7179 Holabird Avenue (1 of 2)

(Posted 7/15/17)

Richard E. Hoffman 7/15/17

Richard E. Hoffman

904 Dellwood Drive

Fallston, Md. 21047

443-243-7360

Certificate of Posting

Case No. 2017-0322-SPHA

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.**

PLACE: ROOM 205, JEFFERSON BLDG., 105 W. CHEJAPAKE AVE., TOWSON 21204

DATE AND TIME: FRIDAY, AUG. 4, 2017 AT 1:30 P.M.

REQUEST SPECIAL HEARING TO DETERMINE WHETHER OR NOT THE
ADMINISTRATIVE LAW JUDGE SHOULD APPROVE A FUEL SERVICE
STATION CANOPY SIGN WITH ELECTRONIC CHANGEABLE COPY
ELEMENTS (PRICING). SPECIAL EXCEPTION TO USE THE
PROPERTY FOR A FUEL SERVICE STATION.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY

7179 Holabird Avenue (2 of 2)

(Posted 7/15/17)

Richard E. Hoffman 7/15/17

Richard E. Hoffman

904 Dellwood Drive

Fallston, Md. 21047

443-243-7360



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

June 29, 2017

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2017-0322-SPHX

7179 Holabird Avenue

S/s Holabird Avenue, s/w corner of Holabird Avenue and Marshall Road

12th Election District – 7th Councilmanic District

Legal Owners: Weis Markets, Inc., Harold Graber, SVP

Special Hearing to determine whether or not the Administrative Law Judge should approve a fuel service station canopy sign with electronic changeable copy elements (pricing). Special Exception to use the property for a fuel service station.

Hearing: Friday, August 4, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in dark ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Caroline Hecker, 25 S. Charles Street, 21st Floor, Baltimore 21201
Harold Graber, 1000 S. Second Street, P.O. Box 471, Sunbury PA 17801

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JULY 15, 2017.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, July 13, 2017 Issue - Jeffersonian

Please forward billing to:

Margaret Giordano
Rosenberg, Martin Greenberg, LLP
25 S. Charles Street, 2st Fl.
Baltimore, MD 21201

410-727-6600

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2017-0322-SPHX

7179 Holabird Avenue

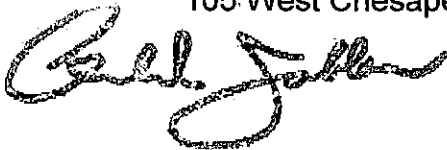
S/s Holabird Avenue, s/w corner of Holabird Avenue and Marshall Road

12th Election District – 7th Councilmanic District

Legal Owners: Weis Markets, Inc., Harold Graber, SVP

Special Hearing to determine whether or not the Administrative Law Judge should approve a fuel service station canopy sign with electronic changeable copy elements (pricing). Special Exception to use the property for a fuel service station.

Hearing: Friday, August 4, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS; PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

RE: PETITION FOR SPECIAL HEARING * BEFORE THE OFFICE
AND SPECIAL EXCEPTION *
7179 Holabird Avenue; S/S Holabird Avenue, * OF ADMINISTRATIVE
SW corner of Holabird Avenue & Marshall Rd * HEARINGS FOR
12th Election & 7th Councilmanic Districts *
Legal Owner(s): Weis Markets Inc *
Petitioner(s) * BALTIMORE COUNTY
* 2017-322-SPHX

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

RECEIVED

JUN 15 2017

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2017, a copy of the foregoing Entry of Appearance was mailed to Caroline L. Hecker, Esquire, 25 S. Charles Street, 21st Floor, Baltimore, Maryland 21201, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

**DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2017-0322-SPHX
Property Address: 7179 Holabird Ave.
Property Description: _____
Legal Owners (Petitioners): Weis Markets, Inc
Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Margaret Giordano
Company/Firm (if applicable): Rosberg Martin Greenberg LLP
Address: 25 S. Charles Street
21st Fl.
Balt., MD 21201
Telephone Number: (410) 727-6600

No 153084

6/5/17

BUSINESS	ACTUAL	TIME	DRW
6/05/2017	6/05/2017	10:14:47	3

Recept Tot \$1,000.00
 \$1,000.00 CK \$.00 CA
 Baltimore County, Maryland

Total: \$7,000

For:

7179 HILABIRD AVE

2019-0322-SPHX

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
VALIDATION**



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

July 27, 2017

Weis Markets, Inc.,
Harold G Graber
1000 S Second Street
P O Box 471
Sunbury PA 17801

RE: Case Number: 2017-0322 SPHX, Address: 7179 Holabird Avenue

Dear Mr. Graber:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on June 5, 2017. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr.", is written over a circular stamp that contains the text "BALTIMORE COUNTY" and "MARYLAND".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Caroline L Hecker, Esquire, 25 S Charles Street, 21st Floor, Baltimore MD 21201

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

MDOT
MARYLAND DEPARTMENT
OF TRANSPORTATION

Pete K. Rahn, Secretary
Gregory Slater, Administrator

STATE HIGHWAY
ADMINISTRATION

Date: 6/14/17

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2017-0322-SPHX

Special Exception Special Hearing
Weis Markets Inc. SVP Real Estate Development
Harold G. Graber
7179 Holabird Avenue

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,



Wendy Wolcott, PLA
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

Maryland Department of Transportation
State Highway Administration

320 West Warren Road, Hunt Valley, MD 21030
410.229.2300 | TTY 800.735.2258 | roads.maryland.gov
My telephone number/toll-free number is 866.998.0367

8-4-17
1:30 PM

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 6/29/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-322



INFORMATION:

Property Address: 7179 Holabird Avenue
Petitioner: Harold G. Graber; SVP Real Estate/Development
Zoning: BL-AS, BL
Requested Action: Special Hearing, Special Exception

The Department of Planning has reviewed the petition for a special hearing to permit a fuel service station canopy sign with electronic changeable copy components and also the petition for special exception to use the property for a fuel service station.

A site visit was conducted on June 20, 2017.

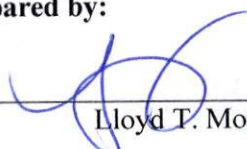
The Department of Planning recommends granting the petitioned special exception. The Department recommends granting the petitioned special hearing in part and withholding approval in part as follows:

- The Department has no objection to granting the petitioned zoning relief for the fuel service canopy sign "Elevation B".
- The Department does not support the approval of the fuel service canopy sign "Elevation A". The proposal includes a free standing sign with electronic changeable copy components advertising the current fuel price identical to that proposed on the canopy façade "Elevation A". The Department finds that the monumental sign and the "Elevation A" canopy sign will convey identical messages and are in close proximity to one another and both directly face residentially used property. The Department recommends that the fuel service canopy sign "Elevation A" is excessive and is not within the statements and policies of BCZR §450.

Date: 6/29/2017
Subject: ZAC #17-322
Page 2

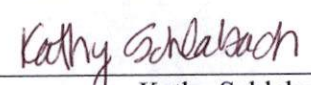
For further information concerning the matters stated herein, please contact Krystle Patchak at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



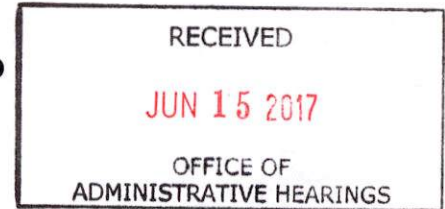
Kathy Schlabach

AVA/KS/LTM/ka
c: Krystle Patchak
Caroline L. Hecker
Office of the Administrative Hearings
People's Counsel for Baltimore County

8-4-17
1:30 PM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: June 15, 2017

SUBJECT: DEPS Comment for Zoning Item # 2017-0322-SPHX
Address 7179 Holibird Avenue
(SVP Real Estate Development
Property)

Zoning Advisory Committee Meeting of **June 19, 2017**.

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford Date: 6-15-2017

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM:  Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 19, 2017
Item No. 2017-0322

DATE: June 30, 2017

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

Landscape- If Special Exception and/or Zoning Relief is granted lighting and Landscape Plans are required per the requirements of the Landscape Manual. Conceptual Landscape Plan does not meet the requirements of the Landscape Manual and Lighting Plan is not legible, as submitted for hearing. Suggest addressing deficiencies with respect to Landscape Requirements.

There is an existing 72"X44" BCCMP on the property. It appears over 30 acres of drainage area draining through storm drain system. Floodplain study is required.

* * * * *

VKD:CEN
cc:file
ZAC-ITEM NO 17-0322-06192017.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 6/29/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-322

INFORMATION:

Property Address: 7179 Holabird Avenue
Petitioner: Harold G. Graber; SVP Real Estate/Development
Zoning: BL-AS, BL
Requested Action: Special Hearing, Special Exception

The Department of Planning has reviewed the petition for a special hearing to permit a fuel service station canopy sign with electronic changeable copy components and also the petition for special exception to use the property for a fuel service station.

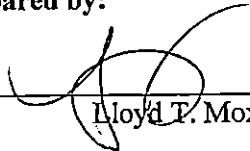
A site visit was conducted on June 20, 2017.

The Department of Planning recommends granting the petitioned special exception. The Department recommends granting the petitioned special hearing in part and withholding approval in part as follows:

- The Department has no objection to granting the petitioned zoning relief for the fuel service canopy sign "Elevation B".
- The Department does not support the approval of the fuel service canopy sign "Elevation A". The proposal includes a free standing sign with electronic changeable copy components advertising the current fuel price identical to that proposed on the canopy façade "Elevation A". The Department finds that the monumental sign and the "Elevation A" canopy sign will convey identical messages and are in close proximity to one another and both directly face residentially used property. The Department recommends that the fuel service canopy sign "Elevation A" is excessive and is not within the statements and policies of BCZR §450.

For further information concerning the matters stated herein, please contact Krystle Patchak at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Krystle Patchak

Caroline L. Hecker

Office of the Administrative Hearings

People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: June 15, 2017

SUBJECT: DEPS Comment for Zoning Item # 2017-0322-SPHX
Address 7179 Holibird Avenue
(SVP Real Estate Development
Property)

Zoning Advisory Committee Meeting of **June 19, 2017**.

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford Date: 6-15-2017

CASE NAME Weis Markets, Inc.
CASE NUMBER 2017-0322-SPHX
DATE 8/4/17

[illegible]

CHECKLISTComment
ReceivedDepartmentSupport/Oppose/
Conditions/
Comments/
No Comment6/30DEVELOPMENT PLANS REVIEW
(if not received, date e-mail sent _____)Comment7/15DEPS
(if not received, date e-mail sent _____)no Comment

FIRE DEPARTMENT

7/3PLANNING
(if not received, date e-mail sent _____)Comment6/14

STATE HIGHWAY ADMINISTRATION

no ob

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 7/13/17SIGN POSTING Date: 7/15/17by HoffmanPEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption				View GroundRent Registration				
Account Identifier:		District - 12 Account Number - 2000012799								
Owner Information										
Owner Name:		WEIS MARKETS INC			Use:		COMMERCIAL			
Mailing Address:		1000 S SECOND ST SUNBURY PA 17801-			Principal Residence:		NO			
					Deed Reference:		/38239/ 00340			
Location & Structure Information										
Premises Address:		7179 HOLABIRD AVE 0-0000			Legal Description:		SS HOLABIRD AV .506 AC COR MARSHALL AV			
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0103	0010	0193		0000				2016	Plat Ref:	
Special Tax Areas:				Town:		NONE				
				Ad Valorem:						
				Tax Class:						
Primary Structure Built		Above Grade Living Area		Finished Basement Area		Property Land Area		County Use		
						22,041 SF		06		
Stories	Basement	Type	Exterior	Full/Half Bath		Garage	Last Major Renovation			
Value Information										
		Base Value		Value		Phase-in Assessments				
				As of		As of		As of		
				01/01/2016		07/01/2016		07/01/2017		
Land:		220,400		220,400						
Improvements		0		0						
Total:		220,400		220,400		220,400		220,400		
Preferential Land:		0						0		
Transfer Information										
Seller: MARS STORES INC				Date: 11/09/2016		Price: \$220,400				
Type: ARMS LENGTH VACANT				Deed1: /38239/ 00340		Deed2:				
Seller:				Date: 02/13/1987		Price: \$0				
Type: NON-ARMS LENGTH OTHER				Deed1: /05973/ 00680		Deed2:				
Seller:				Date:		Price:				
Type:				Deed1:		Deed2:				
Exemption Information										
Partial Exempt Assessments:		Class		07/01/2016		07/01/2017				
County:		000		0.00						
State:		000		0.00						
Municipal:		000		0.00 0.00		0.00 0.00				
Tax Exempt:				Special Tax Recapture:						
Exempt Class:				NONE						
Homestead Application Information										
Homestead Application Status: No Application										
Homeowners' Tax Credit Application Information										

8/4
1:30
pm

Case No.: 2017-0322-SPHX - 7179 Holabird Ave.

Exhibit Sheet

Petitioner/Developer

DW
9-8-17

Protestant

SLN
8-8-17

No. 1	Aerial photo	
No. 2	7179 Holabird - Aerial	
No. 3	Sunpaper story re: Dundalk Seagram	
No. 4	Sunpaper story re: Weis Markets	
No. 5	Site plan	
No. 6	Opinion in <u>People's Counsel v. Sarina</u>	
No. 7	Conceptual Landscape Plan	
No. 8	Sign elevations	
No. 9	Luciani CV	
No. 10	Aerial photo - showing gas stations in vicinity	
No. 11	order in # 2017-241	
No. 12	Hearing outline	



EXHIBIT
1
tabbles



7179 Holabird Avenue

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and experts' fees, and court costs incurred as a result of, arising from or in connection with the use of or reliance upon this data.

Printed 2/16/2017

7179 Holabird Avenue – Aerial Image

EXHIBIT

2

tabbles



Meeting set for Dundalk Seagram's site redevelopment



By **Pamela Wood**
The Baltimore Sun

SHARE THIS



Townhouse plan for abandoned Seagram's distillery in Dundalk moves forward.

FEBRUARY 9, 2015, 3:39 PM

A community meeting is scheduled for Tuesday night to discuss plans to turn an abandoned Seagram's plant in Dundalk into a town home community.

Sollers Investors LLC, a group that includes developers John Vontran and Mark and Jeff Powers, is proposing to build 187 garage town homes on the site of the Seagram's distillery on Sollers Point Road.

Representatives will present the plan at a meeting at 6:30 p.m. Tuesday at the North Point Library at 1716 Merritt Blvd.

The development would be called Foundry Station and would incorporate the Seagram's smokestack and water tower into the design. Both date to the 1930s and are designated as county landmarks, which gives the county extra oversight of any changes to the exterior of the structures.

Foundry Station – previously known as Brewery Station – is going through Baltimore County's approval process as a planned-unit development, a process that allows flexibility in zoning rules in exchange for the developer providing a benefit to the community. The developer has agreed to pay the county about \$100,000 to build a turf sports field or another recreational amenity in Dundalk.

The 12-acre property currently is zoned to allow offices or up to 10.5 homes per acre.

At a previous public meeting last summer, residents raised concerns about stormwater management for the neighborhood and whether there would be enough parking and green space for residents.

The property hasn't been used as a whiskey distillery since the early 1990s, and nearby residents have complained about graffiti, weeds, broken fences, fires and other problems. Two men have died in falls at the property in recent years.

pwood@baltsun.com

twitter.com/pwoodreporter

Copyright © 2017, The Baltimore Sun, a Baltimore Sun Media Group publication | Place an Ad

IN CASE YOU MISSED IT

2016 SALARY DATABASE

Search The Sun's database to find state employee salaries from calendar year 2016.

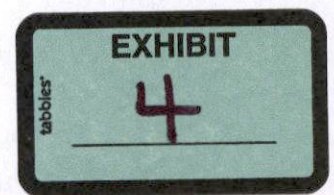
Weis Markets expands its presence in Maryland through two acquisitions



Weis Markets is expanding in Maryland by acquiring and converting five former Mars stores and 21 Maryland Food Lion stores. Some customers say they are happy overall with the changes at the Weis store in Essex that was Mars. (Lloyd Fox, Baltimore Sun video)



By **Lorraine Mirabella**
The Baltimore Sun



SHARE THIS



Weis Markets is one of several grocers changing the food retailing landscape in the Baltimore area.

SEPTEMBER 24, 2016

Just days after Baltimore-based Mars Super Markets went out of business in July, five of its stores reopened as Weis Markets.

The new name may be unfamiliar to some area shoppers but likely won't be for long. The Weis brand has proliferated around the state in a matter of weeks. Besides acquiring five stores from Mars, a family-owned

fixture in Baltimore since the 1940s, the company acquired 38 Food Lion locations in the Mid-Atlantic and is converting those stores, including locations in Columbia and Elkridge on Friday.

The rapid push into the Baltimore area and elsewhere in Maryland, Delaware and Virginia represents one of the Sunbury, Pa.-based grocer's biggest expansions.

"It's a big move for us," said Kurt Schertle, chief operating officer for Weis Markets, which had some stores in Maryland but none in Delaware or Virginia. "We had been wanting to expand our footprint in the Baltimore region. [Former Mars stores] seemed like a natural fit. This was the year they were ready to move on, so it just worked out for us."

As competition in grocery retailing heats up, Weis is among a handful of grocers eyeing the Baltimore area for expansion or new stores.

Wegmans, with stores in Columbia, Hunt Valley, Abingdon and Gambrills, opened a much-anticipated eighth Maryland location a week ago in Owings Mills, when store officials said more than 23,000 people showed up. Lidl, a German discount grocer much like Aldi, which grew rapidly in the Baltimore region, is poised to make its own push soon.

Lidl announced plans in August to invest \$100 million to build an 800,000-square-foot distribution center in Perryville to gear up for its first U.S. stores by 2018, the first of which could be in Maryland, including **one reportedly in Aberdeen**.

And mass merchants Target and Wal-Mart continue to expand food offerings — Wal-Mart now ranks as the third-largest seller of groceries in the Baltimore-Washington market, according to trade journal Food World.

Weis officials said they saw an opportunity with both acquisitions to move into prime locations in a strong — if crowded — market, even though the acquired stores are smaller than new supermarkets.

In Baltimore County alone, Weis increased its presence from four stores to 11 through the Mars and Food Lion acquisitions. Thanks to the Food Lion conversions, Weis now has four stores in Carroll County, three in Howard, and four in Anne Arundel. The chain had two already in Harford. The final Baltimore area conversion from Food Lion to Weis will be completed by Thursday.

Weis acquired the Food Lion supermarkets as Food Lion owner Delhaize Group and Giant Food parent company Koninklijke Ahold sought approval of their July merger from antitrust regulators. The Federal Trade Commission and attorneys general in Maryland and five other states required the parent companies to sell off 76 stores nationwide to satisfy those concerns, including 26 in Maryland. Weis purchased 21 of the Maryland Food Lions.

Mars closed all of its 13 stores this summer, laying off hundreds of employees amid declining sales and intense competition. Mars Chairman and CEO Chris D'Anna blamed declining sales and said the company fell short in

efforts to cut costs while trying to preserve jobs and benefits. Analysts said Mars also struggled to keep up with emerging grocery retail trends.

Weis, which has built a reputation on price and service, will offer more prepared, fresh and natural products than the previous operators, said Jeremy Diamond, a director of Diamond Marketing Group, a Baltimore-based food retail consulting firm.

"Weis is one of the few large supermarket chains that are still family-owned and private," Diamond said. "As the chain expands in Maryland, they're going to use that to their advantage."

Weis likely faces heavier competition in areas around the newly acquired former Mars stores, Diamond said.

"Most of the Mars stores were built so many years ago, when we didn't have Target or Wal-Mart in this area, and other grocers kind of moved in to the Mars neighborhoods," he said. Food Lion, newer to the region, "did a better job of selecting their locations."

Schertle said Weis is well aware of the region's stiff competition. While Mars had "a great history, great locations and great associates," it was "fighting with one hand tied behind its back," going up against competitors such as Giant Food and Safeway, which offer private-label products, loyalty programs, gas rewards programs and greater variety in fresh food departments.

Weis plans to bring those services to its newly converted stores along with more than 3,000 private-label Weis products and about 300 new produce items — for example, greater varieties of tomatoes. Meanwhile, it will keep some of Mars most popular items, such as its deli shrimp salad, and is rolling out the former chain's popular sugar cookies in all Weis stores.

Already it has opened full-service pharmacies in three former Mars, one in Essex and two in Dundalk. Weis also is adding sushi, which will be prepared by chefs in the stores.

"It doesn't take up a lot of space, but it's what consumers want," Schertle said.

Shoppers are noticing the changes.

At the Essex Weis, a former Mars, the store layout and signage looks the same as under the previous owner, and most workers and managers are former Mars employees. But in-store pharmacists now fill prescriptions, the floral department has been expanded and hundreds of Weis-brand products line the shelves.

Alice Mays, 60, a retired screen printer from Essex, had shopped at Mars for nearly two decades.

But "Mars was always higher-priced," and she shopped the sales, she said Wednesday during one of her three weekly stops at the Essex Weis. "Mars didn't have your off-brands."

Schertle said the company is striving to hold on to loyal Mars shoppers while attracting new customers who may never have shopped Mars or Food Lion.

Shopper Kenya Sykes, a 37-year-old mother of two from Essex, said she goes to different supermarkets for different items and shopped at Mars only occasionally. She also saw it as "pricey."

"There are so many grocery stores around here," said Skyes, a teacher at a before- and after-school facility who said she has started coming to the Essex Weis because of the private-label brands and offerings such as the sushi bar.

"I like Weis," she said. "I was happy they switched."

A habit built over 34 years keeps Marlin Van Ells returning to the former Mars that now bears the Weis name. For years, he said, he shopped only at Mars, first on Philadelphia Road, then in Essex, because of "prices, quality and I loved their meats."

Now, the retired tractor-trailer driver splits his grocery shopping among several area stores. But he still comes to the newly converted Essex Weis almost every day.

"I made a lot of friends with Mars employees," Van Ells said. "I come to see them."

lorraine.mirabella@baltsun.com

Copyright © 2017, The Baltimore Sun, a Baltimore Sun Media Group publication | Place an Ad

This article is related to: [Job Layoffs, Unemployment and Layoffs, Federal Trade Commission](#)

Support Quality Journalism
Subscribe for only 99¢

START NOW >

400 Md. 662
Court of Appeals of Maryland.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, et al.

v.

Dorothy SURINA, et al.

No. 111 Sept. Term, 2006.

|
Aug. 23, 2007.

Synopsis

Background: Neighbors filed a petition for a special hearing on proposed development that included a stormwater management (SWM) facility and a private residential access road. The county zoning commissioner approved the proposed development, and neighbors appealed. The county board of appeals affirmed, and neighbors filed a petition for judicial review. The Circuit Court for Baltimore County, Patrick Cavanaugh, J., reversed in part and affirmed in part, and developer and landowners appealed. The Court of Special Appeals reversed the Circuit Court in part and affirmed in part, and neighbors filed a petition for writ of certiorari.

Holdings: After granting the writ, the Court of Appeals, Harrell, J., held that:

[1] placement of SWM facility, primarily serving land zoned rural-residential, on land zoned rural-agricultural, did not violate county zoning regulations;

[2] placement of access road, primarily serving land zoned rural-residential, on land zoned rural-agricultural, did not violate county zoning regulations; and

[3] land zoned rural-agricultural was not de facto rezoned rural-residential when county approved development plan.

Court of Special Appeals affirmed.

West Headnotes (24)

[1] Administrative Law and Procedure

➤ Scope

When any appellate court reviews the final decision of an administrative agency, the court looks through the circuit court's and an intermediate appellate court's decisions, although applying the same standards of review, and evaluates the decision of the agency.

41 Cases that cite this headnote

[2] Administrative Law and Procedure

➤ Wisdom, judgment or opinion

Administrative Law and Procedure

➤ Substantial evidence

A reviewing court may not substitute its judgment for an administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, so long as the agency's determination is based on substantial evidence.

19 Cases that cite this headnote

[3] Zoning and Planning

➤ Substantial evidence in general

When determining whether a zoning body's decision is based on "substantial evidence," a reviewing court inquires whether the zoning body's determination was supported by such evidence as a reasonable mind might accept as adequate to support a conclusion.

18 Cases that cite this headnote

[4] Zoning and Planning

➤ Permits, certificates, and approvals

A reviewing court will uphold the administrative decision of a zoning body to



approve a development plan if that action was fairly debatable on the facts as found by it.

Cases that cite this headnote

[5] **Zoning and Planning**

✦ Decisions of boards or officers in general

A reviewing court is less deferential in its review of the legal conclusions of a zoning body than it is of the factual conclusions, and may reverse where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute.

11 Cases that cite this headnote

[6] **Zoning and Planning**

✦ Decisions of boards or officers in general

When a reviewing court determines the validity of the legal conclusions reached by a zoning body, a degree of deference should often be accorded the position of the administrative agency whose task it is to interpret the ordinances and regulations the agency itself promulgated.

12 Cases that cite this headnote

[7] **Zoning and Planning**

✦ Decisions of boards or officers in general

Even when the decision of a zoning body was based on the law, on review its expertise should be taken into consideration and its decision should be afforded appropriate deference in the reviewing court's analysis of whether it was premised upon an erroneous conclusion of law.

11 Cases that cite this headnote

[8] **Administrative Law and Procedure**

✦ Theory and grounds of administrative decision

An appellate court generally may not affirm an administrative agency on grounds on

which the agency itself did not rely in making its decision.

13 Cases that cite this headnote

[9] **Zoning and Planning**

✦ Uses in general

As a general rule, when a zoning ordinance enumerates specifically the permitted uses within a particular zone, the ordinance establishes that the only uses permitted in the zone are those designated as uses permitted as of right and uses permitted by special exception, and any use other than those permitted and being carried on as of right or by special exception is prohibited.

Cases that cite this headnote

[10] **Zoning and Planning**

✦ Zoning and planning distinguished

Zoning regulations and subdivision controls regulate different aspects of the land use regulatory continuum; while zoning laws define the uses that are permitted in a specific district, subdivision regulations inform how, when and under what circumstances a particular tract may be developed.

1 Cases that cite this headnote

[11] **Zoning and Planning**

✦ Streets, improvements and utilities

Included in subdivision controls are provisions which require the developer/property owner to construct infrastructure improvements of various types necessary to support uses permitted in the zone by the applicable zoning regulations.

Cases that cite this headnote

[12] **Zoning and Planning**

✦ Concurrent or Conflicting Regulations; Preemption

Despite the different aims of zoning regulations and subdivision controls, the two regulatory schemes are intended to

complement each other in terms of the safety, health, and general welfare of the community at large.

Cases that cite this headnote

[13] Zoning and Planning

🔑 Concurrent or Conflicting Regulations; Preemption

Zoning regulations and subdivision/development controls, along with the establishment of a master plan in a particular locality, serve common objectives in terms of the effective, efficient, and consistent use of land within similarly-situated districts.

Cases that cite this headnote

[14] Zoning and Planning

🔑 Concurrent or Conflicting Regulations; Preemption

Although master plans, zoning regulations and subdivision regulations have an independent purpose and may be subjected to a separate development and approval procedure, their functions to some extent coalesce, in that they are all designed to assure that land development occurs in a manner that is consistent with overall legislative policy and community welfare.

Cases that cite this headnote

[15] Zoning and Planning

🔑 Concurrent or Conflicting Regulations; Preemption

Although zoning laws and subdivision regulations are separate forms of regulation, and typically are administered by different governmental agencies or bodies, they operate in practical application to ensure that land in a particular locality is developed in a relatively uniform and consistent manner, especially when "Euclidian zones," which divide a municipality by fixed legislative rules into districts dedicated to particular uses that are considered incompatible, are concerned.

Cases that cite this headnote

[16] Zoning and Planning

🔑 Water-related uses and regulations; flooding and wetlands

Stormwater management (SWM) facilities were permitted uses in county's resource conservation zoning districts, and also were subject to the county's zoning regulations, though SWM facilities were not explicitly identified as permitted uses in such zoning districts, as SWM facilities could be required under county's subdivision controls as conditions of approval for subdivisions, and county zoning code expressly contemplated the construction of SWM facilities.

Cases that cite this headnote

[17] Zoning and Planning

🔑 Agricultural uses, woodlands and rural zoning

Zoning and Planning

🔑 Water-related uses and regulations; flooding and wetlands

Placement of proposed stormwater management (SWM) facility on land zoned rural-agricultural which was intended primarily to serve six new homes built on adjacent land zoned rural-residential did not violate county zoning regulations; though most of the runoff directed to the SWM facility would originate from the land zoned rural-residential, runoff originating from the land zoned rural-agricultural would also flow to the facility, single-family dwelling was also a permitted use in the rural-agricultural zone, SWM facilities were permitted uses in both zones, and there was evidence that if the SWM facility was relocated to the land zoned rural-residential the change would result in more uncontrolled or unmanaged runoff.

Cases that cite this headnote

[18] Zoning and Planning

🔑 Nature in general

Zoning ordinances are concerned with the use of property and not with ownership thereof nor with the purposes of the owners or occupants.

Cases that cite this headnote

[19] Zoning and Planning

➔ Agricultural uses, woodlands and rural zoning

Placement of access road for proposed development across both portions of land currently in common ownership but split-zoned into rural-agricultural and rural-residential did not violate county zoning regulations, though access road would primarily serve six new homes to be built on land zoned rural-residential, where both zones allowed single-family detached residential dwellings as primary uses, county zoning regulations allowed one new dwelling to be built on land zoned rural-agricultural, streets and ways were permitted in both zones in order to provide access to major roads for single-family detached dwellings, and access road was ancillary to and served permitted uses in both zoning districts.

1 Cases that cite this headnote

[20] Zoning and Planning

➔ Government and related entities

A governmental entity is immune from its own zoning laws, unless a contrary result is apparent from the words of the laws, when it owns or controls land and uses it in furtherance of some governmental purpose, because a government entity must have the power to select the site of buildings or other structures for the performance of its governmental duties.

Cases that cite this headnote

[21] Zoning and Planning

➔ Government and related entities

In order for immunity from zoning laws to attach to a facility a developer proposes to

transfer to the government, the governmental body proposed to receive title to the completed use, facility, or structure must have agreed prospectively, expressly or by operation of law, at a minimum, to accept ownership or control in advance or at the time of the determination of exemption.

Cases that cite this headnote

[22] Zoning and Planning

➔ Government and related entities

The purpose of requiring an acceptance by the local government of a facility built by a developer, in order for such facility to be immune from the zoning regulations, is to prevent a situation where a developer imposes upon the municipality the responsibility for maintenance and repair for an otherwise private facility merely by designating unilaterally the improvement for public maintenance.

Cases that cite this headnote

[23] Zoning and Planning

➔ Government and related entities

A governmental entity did not manifest an acceptance of stormwater management (SWM) facility that developer proposed to build such that SWM facility was exempt from county zoning regulations, where the representative of the governmental unit charged with maintaining public SWM facilities was present at county board of appeals hearing regarding the proposed development, such representative submitted evidence indicating technical discontent with the proposed development plan, and representative at no time expressed any sentiment that reasonably could be construed as a willingness to accept or a likelihood to accept a conveyance of the SWM facility.

Cases that cite this headnote

[24] Zoning and Planning

➤ Effect of determination in general;res
judicata and collateral estoppel

De facto rezoning of land from rural-agricultural to rural-residential did not occur when county board of appeal approved development plan locating stormwater management (SWM) facility and access road serving land zoned rural-residential on land zoned rural-agricultural, as there were no zoning impediments to placing SWM facility and access road on land zoned rural-agricultural, and county board of appeal had previously denied a request to rezone the land from rural-agricultural to rural-residential.

Cases that cite this headnote

Attorneys and Law Firms

****903** Peter Max Zimmerman, People's Counsel for Baltimore County (Carole S. Demilio, Deputy People's Counsel; J. Carroll Holzer, Holzer & Lee, P.A., Towson, MD), all on brief, for Petitioners.

Howard L. Alderman, Jr. (Randolph C. Knepper of Levin & Gann, P.A., Towson, MD), on brief, for Respondents.

ARGUED BEFORE BELL, C.J., RAKER, CATHELL, *HARRELL, BATTAGLIA, GREENE, and ALAN M. WILNER (Retired, specially assigned), JJ.

Opinion

HARRELL, Judge.

***669** We are asked in this litigation to determine whether a proposed stormwater management ("SWM") facility and private residential access road, the former designed primarily to serve new single-family residential construction on lots in Baltimore County's R.C. 5 (Rural-Residential) zone and the latter serving those lots and a lot in the R.C. 2 (Rural-Agricultural) zone, both may be placed on the R.C. 2 zoned portion of the split-zoned tract. The Baltimore County Zoning Commissioner and Board of Appeals approved the proposed development. The Circuit Court for Baltimore County, on judicial review of that action filed by neighbors of the proposed development, reversed, holding that placement of the SWM facility on the R.C. 2 portion of the development

violated existing zoning regulations. The Circuit Court, however, found no zoning problem with regard to the access road. The Court of Special Appeals, in an unreported opinion, reversed-in-part and affirmed-in-part the judgment of the Circuit Court, holding that there existed "no zoning impediments" whatsoever to the development plan. We shall affirm, but for reasons different than those relied on by the Court of Special Appeals.

BACKGROUND INFORMATION

The basic facts underlying the present case are as follows, divergent inferences advocated by the parties aside. The controversy arises from a development plan submitted to Baltimore County by Respondents, Dorothy Surina and Jeanne Gough (the land owners) and Gaylord Brooks Realty ***670** Company (the developer). The development project, identified as "Lynch Property-Sweet Air Road," is proposed for a 47 acre tract of land located near the intersection of Sweet Air Road and Manor Knoll Court, east of Jacksonville, a rural area in the northeastern portion of Baltimore County (the "Property"). Under the "Rural Protection and Resource Conservation" ("R.C.") area zoning in the County, Baltimore County Zoning Regulations ("BCZR") § § 1A00.1-1A09.8, the Property and immediately adjacent parcels of land¹ are subject to various development requirements aimed at agricultural, watershed, critical area, and rural resource preservation.² The Property is divided by Sweet Air Road, a public road which runs ****904** in an east-west direction. Approximately 32.3 acres of the Property is located south of Sweet Air Road. The remaining 14.7 acres is located to the north. The portion lying to the south of Sweet Air Road is zoned, in its entirety, in the R.C. 2 zone under the Zoning Regulations, *see* BCZR §§ 1A01.1-1A01.4, and is improved with an existing residential structure.³ The part of the Property located to the north of Sweet Air Road is split-zoned, meaning that there exists multiple zoning boundaries within that portion. *Alviani v. *671 Dixon*, 365 Md. 95, 100 n. 2, 775 A.2d 1234, 1236 n. 2 (2001). On the west side of the northern parcel are 10.8 acres of R.C. 5 zoned land.⁴ There are two smaller areas on the eastern section of the northern portion of the Property, collectively shaped like a wedge and approximately 3.9 acres in size, zoned R.C. 2.⁵ The development plan proposes eight single-family dwelling lots for the entire

Property. Specifically, the proposal provides for the development of six new homes predominantly within the R.C. 5 zone,⁶ one new dwelling on the northeasterly wedge-shaped R.C. 2 zoned parcel,⁷ and the retention of the existing dwelling located at 4501 Sweet Air Road.

1. Private Access Road

Part of the infrastructure proposed in support of the subdivision, to be located on the part of the Property north of Sweet Air Road, fuels the instant controversy. Vehicular access to the lots, according to the development plan, is to be provided by a private road leading from Sweet Air Road into the interior of the R.C. 5 zoned land. The access road enters the proposed subdivision in the R.C. 5 zone, crosses briefly into the R.C. 2 zone, and then back into the R.C. 5 zone, where it eventually terminates in a cul-de-sac. The road is intended to provide owners of the R.C. 2 lot and the otherwise land-locked R.C. 5 zoned lots with access to Sweet Air Road. The design and location of the interior access road follows generally the existing natural topography of the Property.

2. Stormwater Management Facility

Also at issue is the placement of a stormwater management ("SWM") facility on the R.C. 2 zoned section of the Property which, according to the record, is intended to accommodate stormwater runoff from the R.C. 5 lots and surrounding areas.⁸ The SWM facility is proposed to be located entirely within the R.C. 2 zoned land, adjacent to the private access road.⁹

Section 4-204 of the Environment Article of the Maryland Code (1982, 2007 Repl. Vol.) provides that all counties in Maryland shall adopt laws to implement a comprehensive stormwater management program.¹⁰ Pursuant to this mandate, Baltimore County adopted a regulatory scheme which provides generally that, unless the proposed development qualifies under one of the enumerated exceptions in Baltimore County Code § 33-4-104(b), no proposed land development in the County may commence unless the developer/landowner obtains from the local government approval of a stormwater management plan. The exceptions to this requirement are: "(1) Agricultural land management practices; (2) Additions or modifications to existing single-family, detached, or semidetached residential structures, if the additions or modifications [do not disturb more than 5,000 square

feet of land area]; (3) Developments that do not disturb more than 5,000 square feet of land area; and (4) Land development activities that the administration determines will be regulated under specific state laws which provide stormwater management no less stringent than the provisions of this title." See also Baltimore County Code §§ 32-6-107 (providing that no building permit may issue unless the applicant first meets the requirements of Article 33, Title 4 of the Baltimore County Code¹¹ as well as § 32-4-410(c)¹² of that same Code). None of the exceptions apply to the subject development plan.

Stormwater management facilities may be located either on a proposed development site or off-site. If a facility is considered "on-site," it is intended to control stormwater runoff originating from within the site upon which the facility is located. Baltimore County Code § 33-4-101(v). An "off-site" facility, on the other hand, is intended to collect stormwater runoff from more than one site. Baltimore County Code § 33-4-101(v). "Site" is broadly defined by the Baltimore County Code and refers to "any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, that are in one ownership, or are contiguous and in diverse ownership, where development is to be done as part of a unit, subdivision, or project...." Baltimore County Code § 33-4-101(dd) (emphasis added).

As part of a proposed development plan, a SWM facility may also be designated for public or private maintenance. Baltimore County Code § 33-4-110. If designated for public maintenance, "[t]he county shall take in-fee ownership of the stormwater management devices and practices...." Baltimore County Code § 33-4-110(1). If the facility is designated for private maintenance, however, the property owner (or its successor) is responsible for maintaining the facility in accordance with standards spelled out by the County "in a recorded deed of declaration for maintenance and access." Baltimore County Code § 33-4-110(2). To that end, the Baltimore County Code defines "public improvements" as those "improvements [which are] required by the county as a condition of development that are intended to be dedicated to the county in fee simple or by other interests in title." Baltimore County Code § 32-4-101(nn) (emphasis added). "Private improvements," on the other hand, are those improvements which are "required by the county as a condition of development that are not intended to be dedicated to the county." Baltimore County Code § 33-4-101(mm) (emphasis added). See also

Baltimore County Code § 32-4-302(c) (“The applicant shall prepare, execute, and deliver to the county those improvements ... required to convey to the county all rights-of-way *that are determined to be necessary and appropriate for the county to accept and maintain the public improvements.*”) (emphasis added). As indicated on the approved development proposal, the stormwater management facility in the present case is *675 intended to be conveyed by the Respondents in-fee to the County for public maintenance.¹³

The present case began at the Zoning Commissioner / Hearing Officer (Commissioner) level when Respondents filed with the County a concept plan for the Property, pursuant to Baltimore County Code § 32-4-213. The concept plan included a simple, clean, and straight-forward schematic representation of the proposed subdivision. The review process continued according to § 32-4-216¹⁴ with the scheduling **907 and completion of a Concept Plan Conference between the Department of Permits and Development Management, the Department of Environmental Protection and Resource Management, the Office of Planning, and the applicants. Subsequent to that meeting, a § 32-4-217 Community Input Meeting¹⁵ was conducted, at which time, the owners of neighboring properties were given the opportunity to review and offer comments on the proposed development. After consideration and incorporation of the suggestions proposed during the earlier phases of the development approval process, the developers submitted a Development Plan for review and comments by the County at a Development Plan Conference. *676 Baltimore County Code § § 32-4-221 to 32-4-226.¹⁶ Subsequent to the Development Plan Conference, a quasi-judicial public hearing was scheduled before the Commissioner. Baltimore County Code § 32-4-227.¹⁷

The Long Green Valley Community Association, and three individuals, Charlotte Pine, Steve Preston, and Gary Elser, at some point prior to this hearing, filed with the Commissioner a Petition for Special Hearing pursuant to BCZR § 500.7.¹⁸ It was at the § 32-4-227 public hearing that counsel for the *677 neighbors advised the Commissioner that the petition had been filed. Pursuant to Baltimore County Code, § 32-4-230(a), “[i]f the Development **908 Plan requires a special exception, variance, special hearing, or interpretation of

the Baltimore County Zoning Regulations, the applicant may combine the public hearing required under Title 3, Subtitle 3 of this article and under the Baltimore County Zoning Regulations with the public hearing held by the Hearing Officer on the Development Plan.” The applicants consented to a single public hearing, which was held on 2 December 2003. The Commissioner filed on 16 December 2003 an opinion and order approving Respondents' development plan, pending the outcome of a traffic study aimed at determining if there existed a safe sight distance at the intersection of the interior access road and Sweet Air Road. Subsequent to receipt of that study, Respondents filed a red-lined development plan incorporating necessary changes indicated by the traffic study. The amended development plan was approved on 3 June 2004 by the Commissioner.

Petitioners noted with the Board of Appeals (“CBA”) a timely administrative appeal. The CBA heard the matter on 7 September 2004. After the submission of legal memoranda from the parties and open deliberation on 26 October 2004 regarding the issues presented by the Petition for Special hearing, the CBA rendered its final decision on 10 November 2004, affirming the Commissioner's decision to approve the amended Development Plan. The Long Green Valley Community Association and the People's Counsel for Baltimore County filed on 6 December 2004 a Petition for Judicial Review in the Circuit Court for Baltimore County.

The Circuit Court reversed the decision of the CBA, concluding that the SWM facility contemplated by the development plan violated Baltimore County's resource conservation zoning regulations. Specifically, the Circuit Court held that, even though the facility was to be conveyed to and maintained by the County, the SWM system, by virtue of the fact that the need for stormwater management at all was precipitated by and served only the new development, was not a “public *678 facility.” In other words, the Circuit Court found that presumed government ownership and maintenance of the facility was insufficient indicia that the SWM facility would be a “public improvement,” where the facility was required by and served only the proposed subdivision.

The Circuit Court rejected the developer's argument that the SWM pond constituted, pursuant to BCZR § 101, an “uncontrolled excavation,” and, therefore, a permitted accessory use, in the R.C. 2 zone. The Circuit

Court concluded that "a permitted principal use [such as housing] in one zone cannot be served by [an] accessory use[,] [the SWM facility], if that accessory use is located in a separate zone having its own, specific regulations."

As to the access road, the Circuit Court found that the development plan approved by the Zoning Commissioner "show[ed] only a small piece of the roadway that extends through the R.C. 2 zone, as most of the road is located in the R.C. 5 zone. Clearly, the access road [] serv[ed] both the R.C. 2 and R.C. 5 zones separately, and this type of road [wa]s a use permitted by right in each zone according to BCZR § 1A01.2B.5 and § 1A04.2A.7." The Circuit Court reasoned further that "there is no requirement in the BCZR that requires a street or way in one particular zone to provide access to that zone only. Stated differently, each zone is supported by that part of the access road through which it travels, and it is therefore not in violation of the BCZR."

Respondents here noted a timely appeal with the Court of Special Appeals, raising the following issues:

****909** (1) Did the Circuit Court substitute improperly its judgment for the County Board of Appeals in ruling that a stormwater management facility, an improvement required as part of the development approval for a split-zoned residential subdivision, is prohibited in a portion of the R.C. 2 zoned area of the subject property?

(2) Does the spirit, intent and scope of the BCZR prohibit the location of the SWM facility in a portion of the R.C. 2 zoned area of the subject property?

***679** (3) Did the County Board of Appeals apply the correct law and is its written opinion supported by substantial evidence?

The Court of Special Appeals, in an unreported opinion, agreed with the Commissioner and the CBA "that the proposed SWM facility is a public facility that is exempt from [the] R.C. 2 zoning restrictions [established in the BCZR]." Relying on our holding in *Glascok v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990) ("[I]t is a basic long-standing principle of statutory construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound.") (citations omitted),

the intermediate appellate court concluded that the to-be-County-owned SWM facility would fall outside the purview of the BCZR by virtue of the fact that it would be a public facility serving an important governmental function. The appellate court placed significant emphasis on the fact that the facility, pursuant to the approved development plan, was to be conveyed in-fee to the County and that it was to be maintained by the County for the purposes of stormwater runoff serving and protecting also neighboring tracts of land, thereby serving broadly the public's health, safety, and welfare. The panel therefore remanded the matter to the Circuit Court with instructions to affirm the CBA's approval of the amended development plan. The intermediate appellate court found it unnecessary to address the other two issues before it.

The People's Counsel of Baltimore County, along with Long Green Valley Community Association, filed with this Court on 8 November 2006 a timely Petition for Writ of Certiorari. We issued the writ, 396 Md. 12, 912 A.2d 648 (2006), in order to consider the following questions:¹⁹

****910 *680** 1. Whether the Court of Special Appeals confused subdivision restrictions with zoning use law in a way reminiscent of *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005).

2. Whether a storm water management facility, required as a condition of private development approval, and serving that development, is a "public facility" or "public use" exempt from county zoning law under the reasoning in *Glascok v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990), that county governmental uses and land development activities are exempt from local and municipal zoning regulations. In other words, whether the Court of Special Appeals confused conditions for private land development with dedications of land for public use, disregarding distinctions illustrated in *City of Annapolis v. Waterman*, 357 Md. 484, 745 A.2d 1000 (2000).

3. Whether the more-restricted R.C. 2 Agricultural Zone area may be used for a SWM facility and private access road in support of lots developed in the adjoining Rural-Residential Zone Area, where the Agricultural Zone would not permit

the lot density those pieces of infrastructure were designed to support.

***681** 4. Whether the Court of Special Appeals allowed the equivalent of a disguised *de facto* rezoning of the R.C. 2 zoned property.

STANDARD OF REVIEW

[1] When this or any appellate court reviews the final decision of an administrative agency such as the CBA, the court looks through the circuit court's and intermediate appellate court's decisions, although applying the same standards of review, and evaluates the decision of the agency. *Mastandrea v. North*, 361 Md. 107, 133, 760 A.2d 677, 691 (2000) (citing *White v. North*, 121 Md.App. 196, 219, 708 A.2d 1093, 1105 (1998), *rev'd on other grounds*, 356 Md. 31, 736 A.2d 1072 (1999)). We therefore shall focus our attention in the main on the decision of the CBA.

[2] [3] [4] In doing so, this Court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, *see, e.g., Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68-69, 729 A.2d 376, 381 (1999), so long as the agency's determination is based on "substantial evidence." *See White*, 356 Md. at 44, 736 A.2d at 1079-80; *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979). In that latter regard, we inquire whether the zoning body's determination was supported by "such evidence as a reasonable mind might accept as adequate to support a conclusion...." *Annapolis Waterfront Co.*, 284 Md. at 398, 396 A.2d at 1089; *see also Annapolis Waterfront Co.*, 284 Md. at 398-99, 396 A.2d at 1089 ("The heart of the fact-finding process often is the drawing of inferences made from the evidence.... The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.") (citations omitted); ***682** *Snowden v. Mayor and City Council of Baltimore*, 224 Md. 443, 447-48, 168 A.2d 390, 392 (1961) (quoting 4 KENNETH CULP DAVIS & RICHARD J. PIERCE, ADMINISTRATIVE LAW § 29.11, at 186 (1958)). Thus, we will uphold the administrative decision of the zoning body, here the CBA, to approve the ****911** development plan if that action was "fairly debatable" on the facts as

found by it. *White*, 356 Md. at 44, 736 A.2d at 1079-80; *Sembly v. County Bd. of Appeals of Baltimore County*, 269 Md. 177, 182, 304 A.2d 814, 818 (1973); *Bd. of County Comm'rs for Cecil County v. Holbrook*, 314 Md. 210, 216-17, 550 A.2d 664, 668 (1988); *Prince George's County v. Meininger*, 264 Md. 148, 152, 285 A.2d 649, 651 (1972); *Zengerle v. Bd. of County Comm'rs for Frederick County*, 262 Md. 1, 17, 276 A.2d 646, 654 (1971); *Gerachis v. Montgomery County Bd. of Appeals*, 261 Md. 153, 156, 274 A.2d 379, 381 (1971).

[5] [6] [7] We are less deferential in our review, however, of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute. *Belvoir Farms Homeowners Assoc., Inc. v. North*, 355 Md. 259, 267-68, 734 A.2d 227, 232 (1999) (citing *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749, 753 (1998)); *see also Mombee TLC, Inc. v. Mayor and City Council of Baltimore*, 165 Md.App. 42, 884 A.2d 748 (2005) (finding that an appellate court's role "is precisely the same as that of the circuit court," and that "like that court, we are 'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law'" (citations omitted)). When determining the validity of those legal conclusions reached by the zoning body, however, "a degree of deference should often be accorded the position of the administrative agency" whose task it is to interpret the ordinances and regulations the agency itself promulgated. *Marzullo v. Kahl*, 366 Md. 158, 172, 783 A.2d 169, 177 (2001). Thus, ***683** "[e]ven though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was 'premiered upon an erroneous conclusion of law.'" *Marzullo*, 366 Md. at 172, 783 A.2d at 178 (quoting *Banks*, 354 Md. at 68, 729 A.2d at 380).

DISCUSSION

I. Rural Conservation Zones.²⁰

Before examining the merits of the parties' arguments, it is appropriate that we first inquire into the permitted uses of R.C. 2 and R.C. 5 zoned land, particularly as it may relate to the placement of access roads and stormwater management facilities in support of residential development. When considering these uses, it is important to keep in mind the overarching principles of the Rural Conservation zones, which are to:

(A) Discourage present land use patterns of development and to create a framework for planned or orderly development;

(B) Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;

****912** (C) Protect both natural and man-made resources from compromising effects of specific forms and densities of development; [and]

(D) Protect areas desirable for more intensive future development by regulating undesirable forms of development ***684** within these areas until such time as intensive development commences.

BCZR § 1A00.2.

A. The R.C. 2 Rural-Agricultural Zone

The R.C. 2 agricultural zone's primary purpose is to "foster conditions favorable to continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." BCZR § 1A01.1.B.²¹ This stated purpose is based on the premise:

a. That Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;

b. That agricultural industry is an integral part of the Baltimore County economy and that a continued conversion of agricultural land will continue to undermine this basic industry;

c. That scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land;

d. That continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area;

e. That heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County;

* * * * *

g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including residential ***685** subdivisions which are not located in areas of productive agricultural land.

BCZR § 1A01.1.A.

The primary control device through which the intended purposes of rural-agricultural preservation are carried out are the use regulations contained in BCZR §§ 1A01.2-1A01.4. Although agricultural operations obviously are the preferred use permitted as of right in a R.C. 2 zone, BCZR § 1A01.2.A, other uses are permitted as of right, BCZR § 1A01.2.B, or by special exception. BCZR § 1A01.2.C. Uses permitted as of right, which are pertinent to the present case, include "streets and ways," BCZR § 1A01.2.B.5, and single-family detached dwellings, BCZR § 1A01.2.B.1.²² Stormwater management ****913** facilities are not mentioned explicitly in the enumeration.

The construction of single-family detached dwellings is subject to height and density regulations found at BCZR § 1A01.3.B. The BCZR provides that no tract within an R.C. 2 zone may be subdivided if it contains a gross area of less than two acres. BCZR § 1A01.3.B.1. Tracts having a gross area of between two and 100 acres may not be subdivided into more than two lots total. *Id.* For tracts above 100 acres in size, they may be subdivided at a density of no more than one lot per 50 acres. *Id.* In terms of minimum lot size, no lots having a gross area of less than one acre may be created in a R.C. 2 zone. BCZR § 1A01.3.B.2. "No more than one principal dwelling is permitted on any lot in an R.C. 2 Zone." BCZR § 1A01.3.B.4.

***686 B. The R.C. 5 Rural-Residential Zone**

The R.C. 5 rural-residential zone was established by Baltimore County on the premise that, among other things, rural-residential development “constitutes a wasteful use of land and is fiscally expensive to serve with respect to the provision of basic services.” BCZR § 1A04.1.A.1.b.²³ In that vein, the R.C. 5 zone was created in order to:

1. Provide for rural-residential development in suitable areas in which basic services are not anticipated.
2. Eliminate scattered and generally disorderly patterns of future rural-residential development.
3. Assure that encroachments onto productive or critical natural resource areas will be minimized.
4. Provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

BCZR § 1A04.1.B.1-.4. Permitted uses of right in the R.C. 5 zone pertinent to the present case are single-family detached dwellings, BCZR § 1A04.2.A.2, and streets and ways, BCZR § 1A04.2.A.7. Stormwater management facilities are not mentioned as such in the list of permitted uses within the R.C. 5 zone.²⁴

A primary difference between the R.C. 2 and R.C. 5 zones, presumably because of the divergent foci between them in terms of residential and agricultural development, are the density levels permitted in each. Minimum lot size and density levels permitted within the R.C. 5 zone are more generous than those allowed in the R.C. 2 zone. The regulations provide that no lot may be created within the R.C. 5 zone with a total gross area of less than 1.5 acres, BCZR § 1A04.2.B.a, and the maximum allowable residential density within the zone is 0.5 dwellings per acre. *Id.*

***687 II. What is to be Made of the Fact That a SWM Facility, Which is a Utilization of the Property Required by the County as a Pre-Condition to the Approval of a Proposed Development, is Not Addressed As Such As a Permitted Use in the Zoning Regulations?**²⁵, ²⁶

****914 [8]** Respondents posit that construction and operation of a SWM facility “is not a use within the contemplation of the zoning regulations” because the management of stormwater is ***688** not addressed as such in the enumeration of permitted uses in the BCZR in the R.C. 5 or R.C. 2 zones. Rather than constituting a “use” in and of itself, Md.Code (1982, 2007 Repl.Vol.), *Environment Article*, § 4-204; *Baltimore County Code* § 33-4-104(b), Respondents contend that, because development regulations and zoning laws are separate, but interrelated bodies of law, the SWM facility, at least under the circumstances of the present case, falls outside regulation by the BCZR, notwithstanding Petitioners' assertion to the contrary.

[9] It must be conceded, as general rule, that, when a zoning ordinance enumerates specifically the permitted uses within a particular zone, the ordinance “establish[es] that the only uses permitted in the [] zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited.” *Kowalski v. Lamar*, 25 Md.App. 493, 499, 334 A.2d 536, 540 (1975) (citations omitted); *see also* ARDEN H. RATHKOPF & DAREN A. RATHKOPF, 1 *THE LAW OF ZONING & PLANNING* § 1:7 (4th ed. 2005) (“Reported court decisions often involve simply whether an owner's proposed use within a particular zoning district is a use allowed by right, an accessory use, a specially permitted use, or a use entirely prohibited within that district.”).

[10] [11] It is well-settled that zoning regulations and subdivision controls regulate different aspects of the land use regulatory continuum. *Coffey v. Maryland-Nat'l Capital Park & Planning Comm'n*, 293 Md. 24, 30, 441 A.2d 1041, 1044 (1982) (holding that zoning and subdivision planning “represent separate municipal functions and neither is a mere rubber-stamp for the other”) (quoting ****915** *Popular Refreshments, Inc. v. Fuller's Milk Bar*, 85 N.J.Super. 528, 205 A.2d 445 (App.Div.1964), *cert. denied*, 44 N.J. 409, 209 A.2d 143 (1965)); *Remes v. Montgomery County*, 387 Md. 52, 64 n. 8, 874 A.2d 470, 477 n. 8 (2005); *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 129, 699 A.2d 434, 436 (1997) ***689** (citing generally *Board of County Comm'rs v. Gaster*, 285 Md. 233, 401 A.2d 666 (1979)). *See also* ARDEN H. RATHKOPF & DAREN A. RATHKOPF, 5 *THE LAW OF ZONING*

& PLANNING § 90:24 (4th ed. 2005) (“[W]here the rules and regulations enacted or approved by the legislative body as a guideline for the planning board contain requirements different from those imposed by the zoning ordinance with respect to lot size, frontage, width, setback or other non-use features, or standards relating to design of the subdivision such as road length, size of cul-de-sacs, location of points of ingress and egress and the like, such rules and regulations have been held to control. For example, where the subdivision regulations provide that a subdivision must be compatible with the county master plan and the proposed plat shows a greater density than called for in the master plan, the subdivision may be rejected although the zoning ordinance permits the density proposed.”). While zoning laws define the uses that are permitted in a particular zoning district, *i.e.*, the R.C. 5 and R.C. 2 zones, subdivision regulations inform how, when, and under what circumstances a particular tract may be developed. *Remes*, 387 Md. at 74, 874 A.2d at 482 (“[Z]oning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided”). Included in these subdivision controls are provisions which require the developer/property owner to construct infrastructure improvements of various types necessary to support “uses” permitted in the zone by the applicable zoning regulations.

[12] [13] [14] [15] Despite their different aims, however, the two regulatory schemes are intended to complement each other in terms of the safety, health, and general welfare of the community at large. Zoning regulations and subdivision/development controls, along with the establishment of a master plan in a particular locality, serve additional common objectives in terms of the effective, efficient, and consistent use of land within similarly-situated districts. *Coffey*, 293 Md. at 30, 441 A.2d at 1044. As we stated in *Wesley Chapel Bluemount Association*,

*690 [g]overnmental control over land development is effected principally in three ways—through the adoption of (1) master plans delineating the desired uses for all land within the planning area, both for development and for roads, parks, schools, and other public purposes, (2) zoning regulations designed to implement the master plans by placing legal restrictions

on the use of the land by non-governmental persons and entities, and (3) subdivision and other development regulations designed to ensure that private development of the land is consistent with the applicable master plan and zoning regulations. Although each of these devices has an independent purpose and may be subjected to a separate development and approval procedure, their functions, to some extent, coalesce, in that they are all designed to assure that land development occurs in a manner that is consistent with overall legislative policy and community welfare.

347 Md. at 129, 699 A.2d at 436 (citing generally *Bd. of County Comm'rs v. Gaster*, 285 Md. 233, 401 A.2d 666 (1979)). Thus, although zoning laws and subdivision regulations are separate forms of regulation, and typically are administered by different governmental agencies or bodies, they operate in practical application to ensure that land in a particular locality is

developed in a relatively uniform and consistent manner, especially when Euclidian zones,²⁷ such as the R.C. zones, are concerned.

*691 Nowhere in any of the relevant cases explaining the differences between zoning and subdivision regulation is there an indication that improvements required by a subdivision regulation may be placed anywhere the developer wishes, regardless of an improvement's location relative to internal zoning boundaries and their requirements.²⁸ To the contrary, all proposed

*692 subdivision developments must comply with the applicable zoning ordinances in effect at the time the subdivision is proposed. **917 Baltimore County Code § 32-4-104 (“Proposed development shall be in compliance with the present zoning classification on the property to be developed.”); Baltimore County Code § 32-4-114(a) (“Except as otherwise provided in this title, all development shall comply with this title and all other applicable laws or regulations of the county.”); *Wesley*

*693 *Chapel Bluemount Ass'n*, 347 Md. at 129, 699 A.2d at 436 (“[Z]oning decisions take into account the provisions of the applicable master plan and subdivision

and development approvals take into account compliance with applicable zoning regulations.”).

[16] Respondents' interpretation, however, that a SWM facility is not contemplated by, and therefore not subject to the BCZR generally and the R.C. 2 and R.C. 5 regulations specifically, when required in conjunction with single-family residential permitted use, defies logic and common sense because, at the same time, it is required by the subdivision controls as a condition of approval of that subdivision. The fault in Petitioners' reasoning is particularly apparent when the BCZR, read in broader context, contemplates expressly the construction of SWM facilities despite the absence as an enumerated permitted “use” as such in any of Baltimore County's resource conservation zones. In the R.C. 6 (Rural Conservation and Residential) zone, for example, no specific reference is made to stormwater management in terms of “uses” permitted, as of right or otherwise. BCZR § 1A07.3. Yet, the BCZR provisions governing use of land in the R.C. 6 classification provide that “[s]tormwater management facilities must be integrated with the *topography of the site* and consistent with the visual appearance of the surrounding natural features.” BCZR § 1A07.8.C.1. The BCZR follow an identical pattern in its provisions relating to the ****918** R.C. 7 (Resource Preservation) zone. While stormwater management facilities are not mentioned as “uses” permitted in the R.C. 7 zone, BCZR § 1A08.3, another provision otherwise makes specific reference to stormwater management. SWM facilities located in R.C. 7 zones “must be integrated with the topography of the site and consistent with the visual appearance of the surrounding natural features.” BCZR § 1A08.6.C.1. In like fashion, the provisions pertaining to R.C. 8 (Environmental Enhancement) zones do not mention SWM facilities as “uses” ***694** permitted in the zone, yet they provide that SWM facilities “shall be integrated into the site design to utilize nonstructural practices unless it is demonstrated that this is not possible.” BCZR 1 A09.7.C.1. Thus, regardless of whether an SWM facility properly may be characterized as a “use” in its traditional sense, it is clear that SWM facilities are nevertheless clearly contemplated by, and embraced by, the BCZR's basic zoning scheme in conjunction with allowed, explicitly mentioned uses in the rural conservation zone scheme generally. Thus, SWM facilities, required by subdivision regulations in conjunction with permitted uses in the R.C. 2 and R.C. 5 zones, are not exempt from regulation

under the BCZR merely because SWM facilities are not mentioned in the permitted use enumerations.

Moreover, though we do not decide here whether a stormwater management facility is an “uncontrolled excavation” within the meaning of that term as permitted in the R.C. 5 and R.C. 2 zones as an ancillary use, primarily because Respondents did not file a cross-petition for certiorari raising that issue which they pursued in the Circuit Court, we observe that the construction of stormwater management ponds typically requires “the digging of ... earthen material from a land surface ... [f]or grading or other purposes incidental to improvement of the land; and [w]hen incidental to the development of land or to grading for a public improvement[]” BCZR § 101, such as here to serve to control run-off from a proposed residential subdivision. Thus, it seems not inconsistent with the development of expressly permitted uses, like single-family detached homes allowed in the R.C. 5 and R.C. 2 zones, to allow ancillary required infrastructure such as SWM facilities.

By the same token, there is no Maryland authority for Respondents' proposition that infrastructure improvements in the development approval process are immune from appropriate zoning requirements, where the zoning ordinance may be wholly silent on the subject, because the improvements are required as conditions of the subdivision regulations. The more reasonable construction is that when an infrastructure ***695** improvement ancillary to an otherwise permitted residential subdivision is required as a condition to county approval of the development plan, some flexibility is implied in the definition of the “uses” which are subject to the zoning regulations of the county, particularly when certain other provisions of the same zoning regulations, despite the absence from the enumeration of the permitted “uses” in the particular zone of the particular “use,” contemplate specifically that utilization of the land. SWM management facilities are contemplated by the zoning scheme despite the lack of their express inclusion as “uses” in the permitted use enumerations in the BCZR.

III. Under the Circumstances of the Present Case, the Decisions of the Commissioner and CBA That There are No Zoning Impediments to Placing the SWM Facility and a Portion of the Interior Access Road in the R.C. 2 Zone are Correct.

"Whenever a single tract is divided by a zone boundary so that portions of such a ****919** tract lie within R.C. Zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels." BCZR § 1A00.5. With this in mind, Petitioners argue that, because "each zone is designed and structured with uniformity and to be self-contained with respect to principal and accessory uses," it is impermissible to locate in the R.C. 2 agricultural zone infrastructure, *i.e.*, the SWM facility and access road, designed to support lots located on the R.C. 5 rural residential land, especially where the zoning laws applicable to the agricultural zone would not permit the lot density the road and SWM facility were designed to support. Respondents, on the other hand, argue that no such zoning conflict exists between the commonly-owned, split-zoned Property.

A. The Proposed Placement of the SWM Facility on the R.C. 2 Land Would Not Violate the BCZR.

[17] The record indicates that there was substantial disagreement between the parties at the CBA hearing regarding ***696** the consequences of placement of the SWM facility. Daniel O'Leary, a principal civil engineer called by Petitioners as an expert in stormwater management, testified as to various aspects of the placement of the SWM facility. Mr. O'Leary explained, *inter alia*, that, from a design standpoint, there would be more uncontrolled or un-managed flow from the development if the drainage pond were moved upgradient.²⁹ As such, he testified that, if the SWM facility were placed entirely within the R.C. 5 zone, "there may be some areas along the R.C. 5/R.C. 2 border that may no longer drain to it because they [would not] physically drain there," although he acknowledged that moving the facility onto the R.C. 5 land would not be fatal to the general development scheme. Regarding the environmental impacts of increased runoff from both the development and the access road ancillary to the proposed construction, counsel for Respondents inquired whether "there would be more uncontrolled runoff if [the SWM facility] were constructed in the R.C. 5 versus R.C. 2 location." Mr. O'Leary replied, "Yes."

When asked whether the SWM facility would be smaller in size if designed to serve either the R.C. 2 lot by itself

or, more abstractly, a single-lot development, O'Leary testified as follows:

Question: If ... you had none of this development in the R.C. 5, and you simply had one house where it's currently proposed on lot number seven, would you need a stormwater management facility?

Answer: I don't think so. You would still need to address stormwater management.

Q: But you would not need a facility such as the size and magnitude that's proposed on this [Respondent]'s [development plan]?

***697** A: I said [it would] be very unusual to have a stormwater management device for a single lot. So, yes. You have to address it, so not knowing exactly what the impact is from just that lot would be, it [is] hard for me to say. But it [is] unlikely a pond, for instance, would be required for a single lot development.

* * *

****920** Q: In follow up then, it [is] the density of the housing on the R.C. 5 along with the road system that requires the facility that [is] proposed on the [Respondent]'s [development plan].

A: Yes.

In a follow up question, Respondents' counsel asked O'Leary whether the SWM facility, as proposed on the R.C. 2 zoned land, would be effective controlling the runoff from the R.C. 5 property. O'Leary replied in the affirmative, indicating that at least three of the R.C. 5 lots and the roadway, which, in his opinion, was the most important factor because it would create the most runoff draining into the stormwater management pond, flowed to the facility.³⁰ Moreover, O'Leary testified that, because the Property sits on a low ridge, the R.C. 2 lot on the east portion of the Property actually would drain to the east and not into the SWM facility. While the bulk of the runoff collecting in the SWM facility would originate from the R.C. 5 lots, however, runoff originating from the stretch of the interior access road in the R.C. 2 zone would flow into the SWM pond.³¹

***698** In reaching its decision to affirm the Commissioner's approval of the development plan, the CBA placed significant emphasis on the testimony of

O'Leary regarding the efficacy of placing the stormwater management at the low point on the Property in an effort to minimize runoff, "indicating th[at], if the stormwater management facility were moved from the R.C. 2 zone to the R.C. 5 zone, runoff would actually be increased." We conclude that a reading of the SWM development regulations, as well as the BCZR, supports the CBA's decision.

The County's entire purpose in requiring adequate stormwater management is "to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff." Baltimore County Code § 33-4-102; BALTIMORE COUNTY DEPT OF ENVTL. PROT. & RES. MGMT., STORM WATER MANAGEMENT ENGINEERING REGULATIONS, Article 5 § 14-151(A) (2001). This coincides, to some degree, with one of the stated purposes of the BCZR resource conservation zones to "[p]rotect both natural and man-made resources from the compromising effects of specific forms and densities of development." BCZR § 1A00.2.B.

Stephen Preston, a resident in the community located to the west of the Property, testified, before the CBA, as to his concerns regarding stormwater runoff. Mr. Preston testified that "[t]he Lynch Property itself is a low ridge, basically, so that it runs off on every side onto adjacent property. It runs off to the east into Gunpowder State Park, and it runs off to the west through the adjoining properties []." Mr. Preston referred specifically to a map of the area surrounding Gunpowder State Park, and testified that the map "show[ed] the fact that [the Property sat on] a low ridge with drainage off of the east, north, and west occurring on [his (Mr. Preston's)] *921 property immediately below where that runoff occurs." Mr. Preston testified further that his property, and the property of Mr. Elser, his neighbor to the south, sat lower than the Lynch Property, such that stormwater drained off the Property and *699 onto their land. As the Commissioner concluded correctly, the entire purpose of having a SWM facility is to maintain stormwater runoff onto neighboring parcels at the level predating construction, and as if the Property were undeveloped. BALTIMORE COUNTY DEPT OF ENVTL. PROT. & RES. MGMT., STORM WATER MANAGEMENT ENGINEERING REGULATIONS, Article 5, § 14-151(C) (2001) ("Proper

management of stormwater management runoff will: (1) Minimize damage to public and private property; (2) Reduce the effects of development on land and stream channel erosion; (3) Assist in the attainment and maintenance of water quality standards; (4) Reduce local flooding; and (5) *Maintain after development, as nearly as possible, the predevelopment runoff characteristics.*") (emphasis added).

The record reflects that the SWM facility design was based on the topography, the location of impervious surfaces on the Property, and achieving a pre-development rate of stormwater runoff. The CBA determined that "if the SWM facility were located in the R.C. 5 zone, that change would result in more uncontrolled or unmanaged runoff." Although "most of the runoff directed to [the SWM facility] will originate in the R.C. 5 zone," the runoff originating from the R.C. 2 portion of the road will flow additionally into the SWM facility. In other words, the SWM facility is ancillary to the single-family dwellings in both the R.C. 5 and R.C. 2 lots, which are uses permitted as of right in both zones. Based on the evidence in this record, if the Commissioner and CBA, charged with interpreting the resource conservation provisions of BCZR, chose to place emphasis on the environment impacts associated with placement of the SWM facility, a conclusion based on those environmental impacts to approve the development plan was not unreasonable or irrational.³²

*700 The CBA's conclusion also is reasonable considering that BCZR provisions relating to the overall resource conservation scheme contemplate SWM facilities and that they should be sited according to topographical considerations. As stated *supra*, the BCZR provisions governing use of land in the R.C. 6 classification provide that "[s]tormwater management facilities must be integrated with the *topography of the site* and consistent with the visual appearance of the surrounding natural features." BCZR § 1A07.8.C.1 (emphasis added); BCZR § 1A08.6.C.1.(providing that SWM facilities located in R.C. 7 (Resource Preservation) zone "must be integrated with the topography of the site and consistent with the visual appearance of the surrounding natural features."); *see also* BCZR 1A09.7.C.1 (stating that, in the R.C. 8 (Environmental Enhancement) zone, SWM facilities "shall be integrated into the *site design* to utilize nonstructural practices unless it is demonstrated that *922 this is not possible.").³³ The Baltimore County

Code provisions governing SWM management provide that a "site" may be comprised of one lot or even multiple lots if those lots are commonly owned and where those lots, when completed, will form a larger subdivision. Baltimore County Code § 33-4-101(dd) (defining a "site" as "any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, that are in one ownership, or are contiguous and in diverse ownership, where development is to be done as part of a unit, subdivision, or project") (emphasis added).

***701 B. Placement of the Access Road Did Not Violate the Resource Conservation Provisions of the BCZR Where There is Evidence in the Record that the Road was Designed to Provide Access to Both the R.C. 2 and R.C. 5 lots.**

[18] [19] Turning our focus to the access road, although we agree with Petitioners that "zoning ordinance[s] [are] concerned with the use of property and not with ownership thereof nor with the purposes of the owners or occupants," *Anderson v. Associated Professors of Loyola College*, 39 Md.App. 345, 349, 385 A.2d 1203, 1204-05 (1978); *Mayor & City Council of Baltimore v. Poe*, 224 Md. 428, 433, 168 A.2d 193, 195 (1961); *Boulevard Scrap Co. v. Mayor and City Council of Baltimore*, 213 Md. 6, 10, 130 A.2d 743, 745 (1957), we conclude that the R.C. 2 and R.C. 5 zoning regulations do not conflict where the road is designed to service identical permitted uses in both zones.

In the present situation, the proposed development, currently in common ownership, is split-zoned, but each zone allows single-family, detached residential dwellings as primary uses permitted as of right. Streets and ways are permitted as of right in both zones in order to provide access to major roads for the purposes of ingress and egress. The foundation of the controversy manufactured for this case is that other zoning regulations applicable to each zone differ in terms of permissible lot density.

In *Leimbach Construction Co. v. Mayor and City Council of Baltimore*, 257 Md. 635, 264 A.2d 109 (1970), there were two adjacent parcels of land, under common ownership, one zoned for residential use and the other for commercial use. *Leimbach Construction Co.*, 257 Md. at 637, 264 A.2d at 109. Because the pre-existing access to the commercial lot was made impossible by the earlier collapse of a bridge leading to the property, the landowner applied for a permit to install a driveway across the otherwise vacant residential lot. *Leimbach Construction Co.*, 257 Md. at 637,

264 A.2d at 109-10. Because there were no structures on the residential lot to be served by the proposed road, it was manifest that the access *702 road located within the residentially-zoned lot was intended to serve only the commercially-zoned lot. *Leimbach Construction Co.*, 257 Md. at 637-38, 264 A.2d at 110. In concluding that the road impermissibly "would be a 'business' use of land in a residential use district," *Leimbach Construction Co.*, 257 Md. at 640, 264 A.2d at 111, our predecessors reasoned, somewhat naively, that "[a]ccess can be accomplished on foot or on horseback; material can be fetched by *923 pack-train. A bridge would be far more convenient, of course, and, in the long run, much less expensive. But this is none of our concern...." *Id.*

As the CBA correctly pointed out in this case, "[i]f the roadway had been constructed only across the R.C. 2 land and its sole use was to access the lots in the R.C. 5 zone, then Petitioner's argument may have some merit." In *Leimbach*, the road had no apparent or immediate utility in terms of proposed uses on the residential lot on which it was located. In the present case, however, the proposed access road encroaches upon only a small portion of the R.C. 2 lot, and is ancillary to the proposed single-family, detached dwellings on both the R.C. 2 and R.C. 5 zoned lots. The access road is a use permitted as of right in both the R.C. 2 and R.C. 5 zones according to BCZR §§ 1A01.2.B.5 and 1A04.2.A.7, respectively, and serves as a mode of ingress and egress for the homes located in both zones. While certainly *Leimbach* may be said to support the proposition that "each zone is designed and structured with uniformity and to be self-contained with respect to principal and accessory uses," we find nothing in the BCZR, the subdivision regulations, or our precedents which indicates that, when a split-zoned property, in which both portions are under common ownership when developed, is to contain infrastructure improvements ancillary to permitted uses consistently allowed in both zones, the relative infrastructure must be located entirely within the more densely-developed zone.³⁴

*703 We are not persuaded by Petitioner's direction of our attention to *Delbrook Homes, Inc. v. Mayers*, 248 Md. 80, 234 A.2d 880 (1967), *Board of County Commissioners of Anne Arundel County v. Snyder*, 186 Md. 342, 46 A.2d 689 (1946), or *Alviani v. Dixon*, 365 Md. 95, 99, 775 A.2d 1234, 1236 (2001), as support for the sweeping proposition

that accessory uses may not be located in zones in which the principal use they serve is prohibited.

In *Delbrook Homes*, Chartwell, a private community located in Anne Arundel County, sought to operate a beach area for its residents in a nearby water-oriented community known as Lakeland. 248 Md. at 82, 234 A.2d at 882. Neighbors residing in Lakeland challenged the use of the beach area by Chartwell residents and their guests, claiming that it created traffic problems, excess noise, and other various encroachments, including individuals parking **924 and otherwise trespassing on their property. *Delbrook Homes*, 248 Md. at 83-84, 234 A.2d at 882-83. Our task was to determine “whether such a *704 private community beach must be located within the perimeter of, or contiguous to the community which it serves.”

Delbrook Homes, 248 Md. at 82, 234 A.2d at 881. We concluded that land owned in a separate water-oriented community could not be used as a “private community beach,” under the Anne Arundel County zoning ordinances, where the beach is located outside the boundaries of the community it was intended to serve. Our decision hinged on the fact that

[t]he term “private community beach” in the context of the zoning ordinance means a beach for the use and benefit of the surrounding and neighboring property owners, not one for the exclusive use of a community in another area. Although the uses imposed on the property by either group might well be identical, the fact remains that the residents of Chartwell cannot be expected to assume attitudes of responsibility toward the surrounding neighborhood and community control over the beach facilities as would those who reside in close proximity to the beach, that is, the residents of the Lakeland area.

Delbrook Homes, 248 Md. at 83, 234 A.2d at 882 (emphasis added). In other words, the violative land use was for the exclusive use of the Chartwell residents, to the exclusion of Lakeland residents. As indicated *supra*,

we deal in the present case with a situation where the proposed use is ancillary to and serves permitted uses on both parcels of land.

Snyder is similarly distinguishable. Maurice Snyder applied for a permit to construct on Solomon's Island Road in Edgewater, Maryland, a showroom, office, lounge, and warehouse for the sale and display of factory-built motor boats. *Snyder*, 186 Md. at 343, 46 A.2d at 690. The proposed development site was located in a residential zoning district. *Snyder*, 186 Md. at 344-45, 46 A.2d at 690-91. Although we concluded there that “[t]he whole purpose of the [zoning] regulations is to exclude mercantile, manufacturing and trade activities from the area, and to permit therein only residential and farming activities,” *Snyder*, 186 Md. at 345, 46 A.2d at 691, the case involved in no way a situation where the owner *705 was building infrastructure in order to support two differently zoned parcels of commonly-owned land. Rather, *Snyder* involved a traditional, straightforward case in which the owner was attempting to establish a purely commercial use in a residential zone.

In *Alviani*, the property at issue was a 1.2 acre parcel located in Anne Arundel County, and split-zoned under the applicable ordinances as C 1-B (community retail) and RLD (residential low density). *Alviani*, 365 Md. at 98, 99, 775 A.2d at 1236. The landowner sought to build an automotive service facility, a use permitted by special exception/variance in the C1-B zone, but prohibited altogether in the RLD zone. *Alviani*, 365 Md. at 99, 775 A.2d at 1236. As a result, the property owner sought to have the RLD portion re-zoned as either C 1-B or C4 (highway commercial), where the facility would be permitted as of right. *Id.* Aside from the fact that the holding in *Alviani* involved principally the appropriateness of granting the requested variances, rather than an issue implicating the special problem of split-zoning, the factual circumstances are entirely dissimilar from the present case. We deal in the present case with a utilization of land ancillary to permitted uses on two parcels within different residential districts with different density limitations. The proposed use in *Alviani* involved placement of a principal use spanning two zoning districts, in one of which the principal use was prohibited.

**925 C. The Testimony of Paul Solomon

Moreover, Petitioners' argument regarding placement of both the SWM facility and interior access road is based

principally upon the testimony of Paul Solomon, a former employee of the Baltimore County Office of Planning and Zoning. Mr. Solomon, according to his credentials, was involved intimately with the creation of the R.C. zones. Mr. Solomon testified before the CBA as an expert witness that, because the primary goal of the R.C. 2 zone was to preserve the land within that zoning district in order to maximize agricultural output, placement in the R.C. 2 zoning district of *706 infrastructure improvements supporting land located in the R.C. 5 zone was inconsistent with that goal. When pressed on cross-examination, however, Mr. Solomon conceded that there was no specific reference in the BCZR to that effect. Rather, according to him, the conflict between the zoning regulations and the placement of the SWM facility in the R.C. 2 zone was "implicit" in that infrastructure may be placed in compliance with the zoning laws only when it is ancillary to a use permitted within that particular zone. The CBA, in rendering its decision affirming the Commissioner, was unpersuaded by, and rejected the testimony of, Mr. Solomon due to his inability to offer legal support for his contention. Because the Commissioner and CBA chose to discount Mr. Solomon's testimony in interpreting the zoning regulations, we defer to their expertise and ability to assess more directly how the witnesses testified.

IV. We decline to Reach the Issue of Whether the SWM Facility, Under the Circumstances of this Case, is a Governmental Use Exempt From the BCZR Pursuant to *Glascok v. Baltimore County*.

The parties' quarrel moves next to whether, pursuant to *Glascok v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990), and its progeny, the SWM facility is a "public improvement" that qualifies as a "public use" exempt from regulation by the BCZR. The debated proposition is that the SWM facility, which is claimed to be an improvement to the Property required by the Baltimore County Code, will be constructed, and conveyed in-fee to the County for the purposes of public maintenance, and thus broadly serves the public by "reduc [ing] as nearly as possible the adverse effects of stormwater runoff and [] safeguard[ing] life, limb, property and public welfare." Maryland Code (1982, 2007 Repl. Vol.), Environment Article, § 4-201. Petitioners argue that the SWM facility, regardless of whether it constitutes a "public" or "private" improvement, nevertheless is not a "public facility" exempt from the BCZR because it is a local facility which serves only the run-off from the

proposed subdivision, rather *707 than a regional facility broadly serving a greater public. The Commissioner, CBA and Court of Special Appeals accepted Respondents' argument, concluding that the SWM facility is a "public improvement" which serves the broad purpose of maintaining "the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff." Baltimore County Code § 33-4-102. Because we conclude that there are no zoning impediments to the SWM facility, we need not address whether the Commissioner, CBA, and Court of Special Appeals were correct in concluding that the rule annunciated in *Glascok*, under the present circumstances, relieves the SWM facility from the requirements of the BCZR. We are compelled, however, to nevertheless discuss briefly the *Glascok* doctrine and the problems associated with **926 applying it to the facts of the present litigation.

A. The Rule of *Glascok*: A Local Government, When it Owns, Leases, or Otherwise Controls Property in that Locality and Puts the Property to Public Use, is Not Subject to its Own Zoning Laws, Absent an Explicit Legislative Provision Manifesting an Intent that the Local Government be Subject to those Laws.

The concept that a local subdivision of State government generally is not subject to its own zoning laws, unless there is an explicit legislative provision which provides otherwise, may be traced in Maryland to *Commissioners of Cambridge v. Henry*, 263 Md. 370, 283 A.2d 415 (1971). In that case, the City of Cambridge sought to build, within city limits, a waterfront public park adjacent to a city-owned public marina. *Henry*, 263 Md. at 371, 283 A.2d at 416. After the permit application was reviewed, approved, and granted by the proper local authorities, several neighboring residents filed, in the Circuit Court for Dorchester County, a complaint aimed at enjoining the proposed construction. *Henry*, 263 Md. at 371-72, 283 A.2d at 416. The waterfront park, according to the neighbors, would violate applicable local zoning ordinances *708 prohibiting commercial uses in the particular zoning district. *Henry*, 263 Md. at 372, 283 A.2d at 416. Our resolution of the case hinged on the fact that the applicable zoning ordinance provided specifically that, before any statutory right to redress was available through the judicial process, certain issues presented in the case, namely that construction of the park would impose "immediate substantial and irreparable injury" on the neighborhood, needed, in the first instance, to be

addressed by the local Board of Appeals. *Henry*, 263 Md. at 373-74, 283 A.2d at 417. Because the claimant failed to follow those statutory procedures, *i.e.*, bringing the complaint first before the Board of Appeals, we concluded that dismissal of the judicial action was appropriate. *Id.* In considered dicta, however, we explained for guidance that, when the appeal came before the Board, the Board would have to consider whether the City should be bound in the first place by its own zoning regulations. *Henry*, 263 Md. at 374, 283 A.2d at 417 (“[G]enerally a governmental body that has enacted a zoning law is not itself bound by that law.”) (citing *Nehrbas v. Incorporated Village of Lloyd Harbor*, 2 N.Y.2d 190, 159 N.Y.S.2d 145, 140 N.E.2d 241, 242 (1957)). The reasoning behind this principle was that,

[i]n the very nature of things, a municipality must have the power to select the site of buildings or other structures for the performance of its governmental duties. Accordingly, it necessarily follows, a village is not subject to zoning restrictions in the performance of its governmental, as distinguished from its corporate or proprietary, activities.

Id. (quoting *Nehrbas*, 159 N.Y.S.2d 145, 140 N.E.2d at 242).

Six years after *Henry*, we were called upon, in *Mayor and City Council of Baltimore v. State*, 281 Md. 217, 378 A.2d 1326 (1977), to determine whether Baltimore City could enforce against the State the City's zoning, building, and fire codes in order to prevent the construction by the State of a correctional facility on property, within city limits, leased by the State. According to the municipal zoning laws at the time, the owner of any land within the particular zoning district was required, before it could proceed with any plans to convert an existing *709 structure into a correctional facility, to obtain a specific zoning approval, by ordinance, from the Mayor and Council. **927 *City of Baltimore v. State*, 281 Md. at 223, 378 A.2d at 1329. In holding that the State was not required to obtain such an approval before commencing with its proposed conversion activities, we stated that “it is a basic and long-standing principle of statutory construction that the State is not deemed to be bound by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound.”

Id. Relying on our earlier conclusions in *State v. Milburn*, 9 Gill 105, 118 (1850), which in turn quoted Justice Story, we reasoned that

“General Acts of the Legislature are meant to regulate and direct the acts and rights of citizens, and in most cases, the reasoning applicable to them applies with very different and often contrary force, to the government itself. It appears to me, therefore, to be a safe rule, founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and undisputable upon the text of the Act.”

City of Baltimore v. State, 281 Md. at 223-24, 378 A.2d at 1329. Because Maryland Code (1957, 1970 Repl.Vol.), Article 66B, §§ 2.01 to 2.13, the enabling act which granted to the City the power to enact zoning laws, did not manifest an intent that the State be bound by those laws, we concluded that Baltimore City lacked the authority to enforce against the State its zoning ordinances when the land was to be used for the benefit of the general public. *City of Baltimore v. State*, 281 Md. at 223, 224, 378 A.2d at 1329, 1330. In *Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. v. Harker*, we extended this rule to include in the exemption the “State's agencies and instrumentalities.” 316 Md. 683, 693, 561 A.2d 219, 224 (1989) (“That the exemption from county zoning regulations accorded to the State under our holding in *City of Baltimore v. State* ... extends to the State's agencies and instrumentalities is entirely manifest.”).

*710 Turning to *Glascok v. Baltimore County*, the basis of Respondents' claim that the SWM facility would not be, in any event, subject to the BCZR, we were confronted with a situation where the County, as lessee of land owned by a local volunteer fire company, sought to construct in a Baltimore County resource conservation zone a 620 foot wireless communication tower. 321 Md. 118, 120, 581 A.2d 822, 823 (1990). The communication tower, a use permitted only by special exception in the zone, was intended to be utilized by the County as part of a countrywide governmental communication system

serving principally as an emergency response system for the police and fire departments. *Id.* When the County failed to seek the requisite special exception, an adjacent property owner challenged on that basis the County's right to construct the tower. *Id.*

We held that, as a "territorial division[] of the State, created and organized for public political purposes connected with the administration of state government, and specially charged with the administration and superintendence of the local affairs of the community," the County enjoyed exemption from its zoning regulations, absent evidence of a contrary intent expressed there, when the proposed use was in furtherance of its governmental, as opposed to corporate or proprietary, functions. *Glascok*, 321 Md. at 122, 581 A.2d at 824 (citations omitted); see also *Pan Am. Health Org. v. Montgomery County*, 338 Md. 214, 226, 657 A.2d 1163, 1169 (1995) ("[T]he common law provides that [the State] is not bound by local zoning ordinances unless the General Assembly clearly indicates a contrary intent. Local **928 governments, as instrumentalities of the State, enjoy this same common-law immunity.") (citations omitted). Thus, we extended the common-law rule from *City of Baltimore v. State*, that a State enjoys governmental immunity from its own, and its municipalities', zoning laws, to include in the exemption the counties as political subdivisions of the State. Based on our belief that "nothing could be more important than the potential savings of life of a police officer or a fire fighter," *Glascok*, 321 Md. at 121, 581 A.2d at 823, and in light of the fact that nothing in the BCZR *711 or Maryland Code (1987 Repl. Vol.), Article 25A, § 5(X), the grant to Baltimore County of its power to enact zoning laws, evidenced an intent that the County be bound to its own regulations, we concluded that there was no obligation that the County pursue a special exception. *Id.*³⁵

B. The Assertion of Immunity Under *Glascok* in This Case is Problematic.

The Circuit Court pointed out that the determination of whether an improvement to the development site required by the subdivision regulations constitutes a "public use" immune from the BCZR under the *Glascok* doctrine is governed not only by whether the facility is owned and operated by the government, but also whether its use is "important in carrying out a government function." See *Glascok*, 321 Md. at 120, 581 A.2d at 823 (indicating

the importance of adequate emergency communication equipment to public safety). The intermediate appellate court agreed with the relevant principles of *712 law identified by the Circuit Court, but disagreed with their application to the facts of this case.

There are two primary problems with applying *Glascok* to the present case. First is the problem with ownership of the SWM facility at the time the exemption determination was sought and made. We are unable to locate a Maryland case in which a private developer/landowner asserted successfully such an exemption from zoning laws. In the cases in which a the *Glascok*-type exemption was asserted successfully, the proponent, the "developer" if you will, was a governmental entity seeking to develop land which it owned or otherwise controlled at the time it proposed the establishment of the provocative use, facility, or structure. Compare *Henry*, 263 Md. at 371, 283 A.2d at 416 (proposed construction by the City of a waterfront public park on land adjacent to a **929 city-owned public marina); *City of Baltimore*, 281 Md. at 223, 378 A.2d at 1329 (proposed construction by the State of a correctional facility on property leased by the State); *Glascok*, 321 Md. at 120, 581 A.2d at 823 (proposed construction by Baltimore County of a fire and police emergency communication tower on land leased by the County from the local volunteer fire department) with *Harker*, 316 Md. at 688, 561 A.2d at 222 ("[N]o exemption exist[s] 'from local zoning for privately owned land used by private organizations for functions governmental in nature' [when a non-profit corporation is providing child shelter services subject to governmental regulation]"); *Pan Amer. Health Org. v. Montgomery County*, 338 Md. 214, 223, 657 A.2d 1163, 1167 (1995) (" [T]he word 'government' [in the common law principle espoused in *City of Baltimore* and *Glascok*] refers only to the State of Maryland and its instrumentalities, not to all levels of government. [The] [Pan American Health Organization, a regional office of the World Health Organization,] is not part of and does not derive its existence from the State of Maryland."); *Cassidy v. Baltimore County Board of Appeals*, 218 Md. 418, 431-32, 146 A.2d 896, 903 (1958) (distinguishing between "private undertakings" and undertakings "clothed with a public interest," and concluding that a special exception was warranted under *713 the circumstances, thereby obviating the need to determine whether a privately owned public utility ("BGE") was given preferential treatment by the local government); *Creative Country*

Day School of Sandy Spring, Inc. v. Montgomery County Board of Appeals, 242 Md. 552, 219 A.2d 789 (1966) (distinguishing between public, private non-parochial, and private parochial secondary schools, and determining that it was not unreasonable for the County to require the private non-parochial school to obtain a special exception before building a school in a residential use district while excusing the public and parochial schools from that same requirement).

In the present case, however, private parties are asserting governmental exemption from the zoning laws, proposing to construct improvements on land presently owned and operated by them on the presumption that the proposed infrastructure improvement, upon completion, will be approved by the local government in terms of compliance with local design and operational standards and fee simple title will be accepted by the local government for the purpose of continuing maintenance at some future time.

[20] [21] The underlying purpose of the rule that a governmental entity is immune from its own zoning laws, unless a contrary result is apparent from the words of the laws, when it owns or controls land and uses it in furtherance of some governmental purpose, is premised, at least in part, on the rationale that,

[i]n the very nature of things, a municipality must have the power to select the site of buildings or other structures for the performance of its governmental duties. Accordingly, it necessarily follows, a village is not subject to zoning restrictions in the performance of its governmental, as distinguished from its corporate or proprietary, activities.

Henry, 263 Md. at 374, 283 A.2d at 417 (citing *Nehrbas*, 159 N.Y.S.2d 145, 140 N.E.2d at 242). With this principle in mind, in order for the immunity to attach to the proposed SWM facility, the governmental body proposed to receive title to the completed use, facility, or structure must have agreed prospectively *714 (expressly or by operation of law), at a minimum, to accept ownership or control in "advance" or at the time of the determination of exemption.

**930 [22] The purpose of requiring proof of the prospective acceptance by the governmental entity

qualifying for the exemption of the proposed use, facility, or structure should be obvious. First, approval of the location and intended purpose of the proposed use, facility, or structure on the land use proposal is manifested by acceptance. Further, demonstration of the prospective agreement or requirement that the proposed use, facility, or structure will be owned or controlled by the governmental entity is necessary to foreclose unilateral representations by a private applicant. As we stated in *Waterman*, 357 Md. at 504, 745 A.2d at 1010, the purpose of requiring an acceptance by the local government is to prevent a situation where a developer imposes upon the municipality the responsibility for maintenance and repair for an otherwise private facility merely by designating unilaterally the improvement for public maintenance. See also *Waterman*, 357 Md. at 504 n. 8, 745 A.2d at 1010 n. 8 ("In many instances, it is ultimately to a developer's sales advantage to offer to dedicate to the local government water and sewer facilities, streets, recreational areas or other sites because, if the offer is accepted, the local government, not the future residents of the subdivision, generally will be responsible for maintenance of the facilities. In 'closed subdivisions,' which limit public access, homeowners associations generally are responsible for maintaining such facilities.").³⁶

*715 [23] We could not locate in the record the answer to whether the County requested conveyance of the proposed SWM facility for public maintenance, and therefore required in-fee "dedication," or whether it was Respondents who initiated the proposal that the SWM facility be conveyed to the County.^{37, 38} In any event, it does not **931 matter at whose behest *716 the SWM facility is to be conveyed, because there has been no affirmative indication that the governmental unit charged with maintaining such a SWM facility likely would accept the offer to convey in-fee for the purposes of continuing public maintenance.

To the contrary, a representative of the Department of Environmental Protection and Resource Management (DEPRM), the governmental unit charged with maintaining public SWM facilities, was present at the CBA hearing at which the development plan was considered. At that time, the DEPRM submitted evidence, based on Baltimore County Code §§ 14-331 to 14-350 (Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains), §§ 14-401 to 14-422 (Forest Conservation Regulations), and BCZR

1A01.1.A, indicating some technical discontent with the proposed development plan. At no time did the DEPRM express any sentiment that reasonably could be construed as a willingness to accept or a likelihood of acceptance of the conveyance in-fee to the County of the proposed SWM facility for the purposes of maintenance. In this situation, mere approval by the CBA of the development plan delineating a location and intended purpose of a SWM facility proposed by the private developer does not manifest, by itself, acceptance by the *717 appropriate governmental unit so as to satisfy the government ownership/control requirement for application of *Glascok*.

V. Placement of the SWM Facility and Access Road in the R.C. 2 Zoned Lot Did Not Constitute a *De Facto* Rezoning of the R.C. 2 Land to the R.C. 5 zone.

Prior to submission of the development plan which ignited the present litigation, Respondents sought to change the zoning of the R.C. 2 portion of the Property to R.C. 5. The justification for this proposed reclassification was that, when the County Council established originally in 1976 the Baltimore County resource conservation **932 zones for the purposes of agricultural resource preservation in the County, the wedge-shaped 3.9 acre tract in the northern parcel was zoned mistakenly as R.C. 2, instead of the intended R.C. 5. In other words, Respondents claimed that the zoning lines were drawn in error, and that the entire northern portion should have been placed in the R.C. 5 zone. The case was heard in public session before the Board of Appeals over two days. Citing the well-settled principle that there is a "strong presumption of correctness of original zoning in comprehensive rezoning and [that] to sustain a piecemeal change in circumstance such as present

here, there must be strong evidence of mistake in the original zoning or comprehensive rezoning, or evidence of substantial change in the character of the neighborhood must be produced," *Mayor and Council of Rockville v. Henley*, 268 Md. 469, 472, 302 A.2d 45, 46 (1973); *Heller v. Prince George's County*, 264 Md. 410, 412, 286 A.2d 772, 773 (1972), the Board rendered on 6 May 2002 its opinion that there was insufficient evidence to support Respondents' argument that a "mistake" occurred. It therefore rejected Respondents' request to re-zone the entirety of the Property located north of Sweet Air Road as R.C. 5.

[24] Because we conclude that there are no zoning impediments as a matter of law to the placement on the R.C. 2 zoned land of the SWM facility and access road, and because we defer to the expertise of the Commissioner and CBA in interpreting, on this record, the County's resource conservation *718 zoning regulations, we conclude that no *de facto* rezoning occurred by approval of the development plan. There arises from the CBA's earlier denial of the "mistake" rezoning application prosecuted by Respondents on evidentiary insufficiency grounds no mandatory inference that reflects adversely upon the subsequent development plan approval. The two cases are not related except as to partial identity of the subject property.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED; COSTS TO BE PAID BY PETITIONERS.

All Citations

400 Md. 662, 929 A.2d 899

Footnotes

* Cathell, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

1 The Gunpowder State Park borders the Property immediately to the north and east. The record indicates further that, to the west, there is a R.C. 5 zoned residential community consisting of twenty to thirty single-family dwellings.

2 The County's generally stated purposes in establishing the resource conservation zones are as follows: (1) to discourage the current patterns of development in rural areas; (2) to "[p]rovide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;" (3) to "[p]rotect both natural and man-made resources from compromising effects of specific forms and densities of development;" (4) to "[p]rotect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences[;]" and (5) to "[h]elp achieve the goals of the Chesapeake Bay Critical Area Protection Law by enacting land use policies to control development within the Critical Area by conserving the land and water resource base

for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat." BCZR § 1A00.2.

3 The mailing address of the existing dwelling is 4501 Sweet Air Road.

4 As we will describe *infra*, R.C. 5 land is categorized as rural-residential. The general regulations governing development in this zone are found at BCZR §§ 1A04.1-1A04.4.

5 R.C. 2 is categorized as a rural-agricultural zone. The regulations governing the permissible uses of R.C. 2 zoned land are located at BCZR §§ 1A01.1-1A01.4.

6 Five of the six lots comprised exclusively of R.C. 5 zoned land are each approximately 1.5 acres in size. The sixth lot, although predominantly in the R.C. 5 zone, is 4 acres, but contains a small portion of R.C. 2 zoned land. The R.C. 2 portion of the sixth lot is not computed towards density for the overall tract or needed to satisfy minimum lot size or any other requirements applicable to the R.C. 5 zone for the sixth lot.

7 The plan proposes in the R.C. 2 zone the construction of one single-family home on a 1.27 acre lot.

8 Before the Zoning Commissioner and Board of Appeals, there was some disagreement as to the utility of placing the SWM facility where it was proposed by the developer. As we will discuss *infra*, although there was evidence presented that the runoff created by the R.C. 2 lot would not drain naturally into the SWM facility as sited, there was additional testimony proffered indicating that movement of the facility across the zoning boundary into the R.C. 5 zone would result in increased runoff onto the R.C. 2 lot and neighboring parcels. The reason given for this was that the proposed location of the SWM facility was positioned at the lowest-lying spot in the development area. Moving the facility into the R.C. 5 lot would therefore require moving the facility upgrade.

9 As the intermediate appellate court noted,

[t]he Lynch Property sits on a low ridge, so that storm drainage is currently off the property toward adjacent neighbors. Development plans show that the proposed SWM facility "shall be public" and located entirely in the R.C. 2 zone at a site that is lower than the R.C. 5 zoned land in the parcel. The proposed SWM site is situated where the R.C. 5 property will drain into it, rather than onto the neighboring property. Plans state that the SWM reservation area will "be dedicated and granted at no cost to Baltimore County."

10 The term "stormwater management" may refer to a system of either quantitative or qualitative controls. "Quantitative control" refers to a stormwater system or abatement practice that manages "the increased volume and rate of surface stormwater runoff caused by man-made changes to the land." Baltimore County Code § 33-4-101(ff)(1). Qualitative controls refer to a system that regulates water quality by eliminating pollutants, contaminants, or other particulate matter contained in the stormwater runoff which originates from particular development site(s). Baltimore County Code § 33-4-101(ff)(2).

11 Article 33, tit. 4, § 33-4-101 to 33-4-116 covers, in depth, the requirements and design standards for construction of stormwater management facilities in the County.

12 Section 32-4-410(c)(2) provides that "[p]roposed drainage facilities shall be adequate to accommodate the amount of runoff that would be generated by: (i) The proposed development; and (ii) The entire upstream area, if the area were fully developed in accordance with the Baltimore County Zoning Regulations in effect at the time of the design or construction."

13 Specifically, the development plan indicates that the SWM facility is intended by the developers to be constructed at Respondents' expense and granted in-fee to the County upon completion and approval by the Baltimore County Department of Environmental Protection and Resource Management that the facility was constructed in accordance with the County's SWM design requirements.

14 Baltimore County Code § 32-4-216(a), in pertinent part, provides that "[w]ithin 10 working days following the filing of a concept plan, the Department of Permits and Development Management shall hold a concept plan conference with the applicant and representatives from the Department of Environmental Protection and Resource Management, the Office of Planning, the Department of Permits and Development Management, and other appropriate agencies, to receive the comments of the agencies."

15 According to the Code, a Community Input Meeting should be conducted within 10 working days after the concept plan conference. At this meeting the developer and the surrounding community may discuss and resolve "community concerns and developer constraints" in terms of zoning issues. Baltimore County Code § 32-3-217(a), (b).

16 The Development Plan essentially is a final proposed plan which incorporates the suggestions and resolutions to issues which arose during the earlier concept phases of the process. The applicant may not file a Development Plan without first holding a community input meeting regarding the proposed development. Baltimore County Code § 32-4-221(a).

17 Baltimore County Code § 32-4-227 provides that "final action on a Development Plan may not be taken until after a public quasi-judicial hearing before a Hearing Officer."

18 BCZR § 500.7, in pertinent part, provides:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. *The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.*

(emphasis added). The issues framed for the Special Hearing were as follows:

1) Is a road that supports R.C. 5 residential development permitted within an R.C. 2 zone; 2) Is a storm water management facility that solely supports R.C. 5 development permitted within an R.C. 2 zone; 3) Can the R.C. 2 zone on the north and south sides of Sweet Air Road support both proposed Lots 6 and 7; 4) Can the density of an R.C. 2 zone parcel on the north and south sides of Sweet Air Road support Lots 6 and 7 along with the storm water management facility, and Lot 8 on the south side of Sweet Air Road; 5) Whether the creation of non-density parcels as part of residential lots shown on a development plan require a separate special hearing request, and specifically, a portion of proposed Lot 7 in the R.C. 2 zone; and, 6) such other and further issues as may be developed by the testimony presented at the hearing.

19 We reworded the questions for brevity and clarity. The questions framed in the petition for writ of certiorari were as follows:

(1) Whether a storm water management facility required as a condition of private development approval, and serving that development, is a "public facility" or "public use" exempt from county zoning law?
 (2) Whether the Court of Special Appeals misapplied, and improperly extended the rule of *Glascok v. Baltimore County*, 321 Md. 118, 581 A.2d 822 (1990), that county governmental uses and activities are exempt from zoning?
 (3) Whether the Court of Special Appeals confused conditions for private land development with dedications of land for public use, disregarded distinctions illustrated in *City of Annapolis v. Waterman*, [357 Md. 484, 745 A.2d 1000 (2000)], and confused subdivision restrictions with zoning use law in a way reminiscent of *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005)]?
 (4) Whether the highly restricted Agricultural Zone area may be used for an S.M. facility, private driveway, and lot area for lots developed in the adjoining Rural-Residential Zone Area, where the Agricultural Zone itself would not permit that lot density?
 (5) Whether the Court of Special Appeals allowed the equivalent of a disguised rezoning or unauthorized density transfer (a.k.a. *De facto* rezoning of the property)?

20 We focus, for the purposes of this opinion, primarily on the purposes and underlying reasons for establishment of the R.C. 2 and R.C. 5 zones. For a more extensive historical discussion of the Resource Conservation Zones in Baltimore County, see *Security Mgmt. Corp. v. Baltimore County*, 104 Md.App. 234, 655 A.2d 1326 (holding that placement of property in Baltimore County's RC-4 resource conservation zone did not constitute a deprivation of the landowner's constitutional rights to either equal protection or substantive due process), *cert. denied*, 339 Md. 643, 664 A.2d 886 (1995).

21 The R.C. 2 zone was established for the purpose of preserving agricultural land, as opposed to the R.C. 3 mixed-use agricultural classification, which was established in order to "foster conditions favorable to agricultural and residential use of the land while still maintaining the rural character of the area." BCZR § 1A02.1.A.

22 "Uncontrolled excavations," which are

[t]he digging of soil, sand, gravel, rock, minerals, clay or other earthen material from a land surface for any of the following purposes: When incidental to the operation of a permitted business or manufacturing use located on the same property, but excluding any digging of material for sale, exchange, processing or manufacture; *For grading or other purposes incidental to improvement of the land; and When incidental to the development of land or to grading for public improvements[.]*

BCZR § 101 (emphasis added), likewise are permitted as of right when ancillary to otherwise permitted uses in the zone. BCZR § 1A01.2.B.9.a.

23 For a complete list of the findings underlying the creation of R.C. 5 zones, see generally BCZR § 1A04.1.A.

24 Like the R.C. 2 zone, uncontrolled excavations accessory to permitted uses are allowed.

25 This question applies only to the stormwater management facility in the development plan. Access roads clearly are "uses" permitted as of right in both the R.C. 2, BCZR § 1A01.2.B.5, and R.C. 5 zones, BCZR § 1A04.2.A.7.

26 An appellate court generally may not affirm an administrative agency (here the CBA) on grounds on which the agency itself did not rely in making its decision. *Anderson v. Dep't of Pub. Safety & Correctional Servs.*, 330 Md. 187, 213 n. 2, 623 A.2d 198, 211 n. 2 (1993) ("[I]n judicial review of agency action the court may not uphold the agency order

unless it is sustainable on the agency's findings and for the reasons stated by the agency.") (quoting *United Steelworkers of America Local 2610 v. Bethlehem Steel*, 298 Md. 665, 679, 472 A.2d 62, 69 (1984)); see *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 260, 923 A.2d 100, 111 (2007) ("[T]he reviewing court, restricted to the record made before the administrative agency, may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency. Stated differently, an appellate court will review an adjudicatory agency decision solely on the grounds relied upon by the agency.") (citing *County Council of Prince George's County v. Brandywine Enterprises, Inc.*, 350 Md. 339, 349, 711 A.2d 1346, 1350-51 (1998); *Cicala v. Disability Review Bd. for Prince George's County*, 288 Md. 254, 260, 418 A.2d 205, 209 (1980)); *Ins. Comm'r v. Equitable Life Assurance Soc'y of the United States*, 339 Md. 596, 634, 664 A.2d 862, 881 (1995) ("[J]udicial review of administrative decisions is limited to the issues or grounds dealt with by the administrative agency.") (citations omitted).

The CBA, when addressing "whether an R.C. 2 zoned property can be used to support the development of R.C. 5 property, including density, stormwater management (SWM), and a road or driveway," found "compelling testimony that the [SWM] facility in this case will not solely support the development in R.C. 5 but will also be used to support the development in the R.C. 2 zone." More importantly, as an alternate basis to conclude that there was no zoning impediment to the development plan, "[t]he Board also cited compelling testimony that stormwater management facilities are like landscaping and not identified as a principal use in any zone."

- 27 "Euclidean zoning is a fairly static and rigid form of zoning named after the basic zoning ordinance upheld in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926)." *Mayor & Council of Rockville v. Rylyns*, 372 Md. 514, 534, 814 A.2d 469, 480 (2002). As we stated in *Rylyns*:

"The term 'Euclidean' zoning describes the early zoning concept of separating incompatible land uses through the establishment of fixed legislative rules...." 1 ZIEGLER, RATHKOPF'S THE LAW OF ZONING AND PLANNING (4th Ed. Rev. 1994), § 1.01(c), at 120 ("Rathkopf's"). Generally, by means of Euclidean zoning, a municipality divides an area geographically into particular use districts, specifying certain uses for each district. "Each district or zone is dedicated to a particular purpose, either residential, commercial, or industrial," and the "zones appear on the municipality's official zoning map." 5 Rathkopf's, § 63.01, at 63-1-2. In this way, the municipality "provides the basic framework for implementation of land use controls at the local level." 1 Rathkopf's, § 1.01(c), at 122.

372 Md. at 534, 814 A.2d at 480 (quoting *Rouse-Fairwood Dev. Ltd. P'ship v. Supervisor of Assessments for Prince George's County*, 138 Md.App. 589, 623, 773 A.2d 535, 555 (2001)). "Euclidian zoning is designed to achieve stability in land use planning and zoning and to be a comparatively inflexible, self-executing mechanism which, once in place, allows for little modification beyond self-contained procedures for predetermined exceptions or variances." *Rylyns*, 372 Md. at 534, 814 A.2d at 481.

- 28 In *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005), for example, we were called upon to determine whether two contiguous subdivided lots merged for zoning purposes as it related to Montgomery County's issuance of a permit for the construction of a single-family dwelling on one of the "combined" lots which, if the lots were individually owned, would have violated a number of the County's spatial zoning requirements relative to setbacks, vehicular access, and accessory uses. 387 Md. at 59, 68, 874 A.2d at 473-74, 479. The two contiguous lots were under common ownership at the time Montgomery County's Division of Permitting Services ("DPS") issued an earlier permit for the construction of the existing single-family dwelling on one of the lots. *Remes*, 387 Md. at 58, 874 A.2d at 473. The lots were assessed by the County as one lot for tax purposes. *Id.* The newer permit was issued to the respondent, a developer, who was not, at the time of issuance, the owner of record of the lot where the second dwelling was proposed. *Remes*, 387 Md. at 59, 874 A.2d at 473.

When the common owner, one month after issuance of the new permit, attempted to convey to the respondent the lot, the petitioner, a neighboring land owner, filed in the Circuit Court for Montgomery County a Complaint for Declaratory and Injunctive Relief, seeking to rescind the sale and enjoin any future sale of the lot. *Remes*, 387 Md. at 59, 60, 874 A.2d at 474. The petitioner's challenge was based on his belief that the two lots had merged for zoning purposes, *Remes*, 387 Md. at 60, 874 A.2d at 474, an issue that this Court raised, but did not decide in *Friends of the Ridge v. Baltimore Gas & Electric Company*, 352 Md. 645, 658 n. 11, 724 A.2d 34, 41 n. 11 (1999):

An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels might, under this doctrine, although we do not now decide it, also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. Such an owner would also risk being forced to bring that parcel into conformity by removing the structure from the setback.

We ultimately concluded that, because the two lots "were under common ownership, and at the time of that common ownership, they were used in service to one another," they merged for zoning purposes. *Remes*, 387 Md. at 87, 874 A.2d at 490. Our decision was based, at least in part, on the concept that

zoning merger is not a resubdivision. When zoning merger occurs, the lots remain divided. Thus, zoning merger, in effect, is an adjustment of zoning requirements. It has no effect on subdivision. Title examiners regularly consider aspects of zoning when examining titles in order to be able to indicate to purchasers the uses that can be made of a property. Those uses have no effect on subdivision regulation. One must comply with *both* zoning and subdivision requirements. In the present case, the applicant cannot meet zoning requirements because of the doctrine of zoning merger and thus, while Lot 11 may be sold, it cannot be used, absent zoning variances or other zoning relief, if any. *Remes*, 387 Md. at 67, 874 A.2d at 478. Thus, we concluded that the lot could not be sold to another party, notwithstanding the previous subdivision, if construction on that lot would otherwise violate the zoning setbacks applicable to the lots if the common ownership were severed.

A broad reading of our decision in *Remes* might support the conclusion that zoning laws and subdivision regulations are rigidly separate and distinct. No language in that case, however, supports the conclusion that an improvement not explicitly addressed in the zoning laws, but otherwise required by the subdivision regulations, is exempt from the zoning requirements.

Wesley Chapel Bluemount Association v. Baltimore County, the principal case relied on by Respondents, was a case of statutory interpretation involving whether the review process of a subdivision development plan proposed in a resource conservation zone constituted a "zoning matter" requiring, pursuant to Maryland Code (1957, 1995 Repl.Vol.), *State Government Article*, § 10-503, open deliberations by the Baltimore County Board of Appeals. 347 Md. 125, 136, 699 A.2d 434, 439-40 (1997). Beyond the abstractly stated principle that zoning law and subdivision regulations are independent, but related, concepts, *Wesley Chapel Bluemount* does not support Respondents' argument as framed.

29 Reports and plats depicting the topography of the land apparently indicate that the area in the vicinity of the R.C. 5 / R.C. 2 zoning boundary is a low point such that the bulk of stormwater runoff originating from the proposed development would flow into the SWM facility as sited by Respondents.

30 Specifically, O'Leary testified that a small amount of run-off originating from the interior access road, which began on the R.C. 5 land and traversed the R.C. 2 portion, would drain into the SWM facility.

31 Although the Baltimore County Code provides that SWM facilities must be able to accommodate runoff from "[t]he entire upstream area, if the area were fully developed in accordance with the Baltimore County Zoning Regulations in effect at the time of the design or construction," Baltimore County Code § 33-4-410(c)(ii), there is no evidence on the record before us that there are streams or areas upgrade from the Property that will produce additional or accelerated runoff.

32 We note that it appears that the location of the SWM facility on the R.C. 2 land, as proposed, is neutral in terms of the total density and yield of the proposed development. Before the CBA, it was undisputed that the R.C. 5 land could support a theoretical maximum of seven dwellings. The development plan proposed only six dwellings in the R.C. 5 zone. Naturally, the developer is not entitled automatically to the maximum number of lots that a property would yield mathematically; however, nothing on this record indicates that the developer's placement, in the R.C. 2 zone, of the SWM facility maximized the achievable density in the R.C. 5 zone.

33 We do not construe the absence of similar provisions in the BCZR for the R.C. 2 or R.C. 5 zones as indicative of a legislative intent that stormwater management facilities are prohibited in those zones. Rather, a comprehensive overview of the resource conservation zoning scheme, subdivision requirements, and the stormwater management regulations compel the conclusion that such infrastructure improvements, where required by proposing the development of otherwise permitted primary uses in those zones, are allowed.

34 In this regard, the CBA appears to have parsed the problem in different ways under different circumstances, but not so inconsistently with regard to its determination here. The record reflects that, in *In re Beth Tfiloh Congregation of Baltimore City, Inc.*, 01-468-SPH, CBA-01-136 (24 July 2002), Beth Tfiloh Congregation, owned an existing synagogue in a D.R. 1 (Density Residential) zone. When the Congregation sought to construct in the D.R. 1 zone a private school, dining hall, and gymnasium, the property owner sought also to construct in the adjacent R.C. 4 (Watershed Protection) zone camp bunkhouses and athletic fields in order to serve as accessory uses to the private school and synagogue located in the D.R. 1 zone.

The Congregation attempted to justify the location of the recreational facilities by arguing that they were accessory to the school, a use which was permitted explicitly in the D.R. 1 zone. Although the CBA acknowledged that "the bunkhouses and athletic fields and facilities [did] qualify as 'accessory uses' to the principal uses in the D.R. 1 property,"

because the R.C. 4 zone, the location in which the accessory uses were to be placed, did not permit the principal school use, the CBA nevertheless determined that the accessory uses were prohibited in the R.C. 4 zone.

In contrast, the proposed access road in the present case is ancillary to a single-family dwelling, a principal use permitted as of right in the R.C. 2 rural-agricultural district. Thus, we find that *Beth Tfiloh* is distinguishable, and conclude accordingly that the CBA did not commit legal error by refusing to consider it in the present case.

35 This holding is not inconsistent with *Mayor & Aldermen of Annapolis v. Anne Arundel County*, 271 Md. 265, 316 A.2d 807 (1974). In that case, the Anne Arundel County government owned land located within the City of Annapolis' historic district. When the County filed an application to demolish the historically-designated building, the City and its Historic District Commission filed a complaint for injunctive relief in order to prevent the County from carrying out its plans. *Mayor & Aldermen of Annapolis*, 271 Md. at 273, 316 A.2d at 812. The County argued that it was subject neither to the Annapolis historic district zoning regulations nor the jurisdiction of the City's Historic District Commission. In the course of ruling in favor of the City, we placed emphasis on the distinction between traditional and historic district zoning. Despite the general rule, regarding traditional zoning, that the County would not be subject to the laws of the political subdivision, we observed that, in terms of historic district zoning, the General Assembly manifested explicitly an intent, by virtue of Chapter 274 of the Acts of 1963, that any political subdivision which owned land within a municipal historic district be subject to the jurisdiction of that municipality's historic district commission. *Mayor & Aldermen of Annapolis*, 271 Md. at 291, 316 A.2d at 820. Also persuasive was the fact that the City of Annapolis and Anne Arundel County had subjected themselves to their own respective zoning laws. *Mayor & Aldermen of Annapolis*, 271 Md. at 290, 316 A.2d at 820; see also Annapolis City Code § 22-5; Anne Arundel County Code § 13-334A.

36 Although *Waterman* involved the distinction between a "dedication" and a "condition to approval of a private use," as opposed to perhaps a conveyance in fee simple, the reasoning behind requiring evidence of prospective governmental acceptance of a dedication is equally applicable to a situation where a particular improvement is intended to be conveyed in fee simple for the same purposes as it would be used otherwise in a dedication or a reservation. Moreover, the same implications arise in that, if evidence of acceptance were not required before a conveyance takes place, any developer may unilaterally place on the local government responsibility for maintenance regardless of the nature of the improvement.

37 Respondents assert that they were required by the County to convey the SWM facility as a public improvement at no cost to the County. Specifically, Respondents point to Baltimore County Code §§ 33-4-110(1), 32-4-302(c)(2)(i) ("The rights-of-way [determined to be necessary and appropriate for the county to accept and maintain the public improvements] shall be conveyed in ... [fee Simple]", and 302(c)(3) ("The nature of the conveyance shall be established by the county."), "[o]nce the SWM facility has been completed and accepted, Baltimore County 'shall' take in-fee ownership for public maintenance."

Respondents' argument that all SWM facilities, regardless of the circumstances, are required to be conveyed in-fee to the county for maintenance is contradicted by our reading of Baltimore County Code § 33-4-110(1). Section 33-4-110 reads, in its entirety:

Upon completion and acceptance of the stormwater management devices, practices, or both:

- (1) The county shall take in-fee ownership of the stormwater management devices and practices *designated for public maintenance*; and
- (2) *For privately maintained stormwater management devices, practices, or both:*
 - (i) The property owner shall be responsible for maintenance; and
 - (ii) The property owner's specific maintenance responsibilities shall be detailed in a recorded deed of declaration for maintenance and access.

(emphasis added). Section 33-4-110(1), read in context, indicates clearly that a SWM facility may be maintained either publicly or privately, and that only those SWM management devices and practices *actually designated by the County for public maintenance* are conveyed in-fee and therefore constitute "public improvements." Compare Baltimore County Code § 33-4-101(mm) (defining "private improvements" as those improvements which are "required by the county as a condition of development that are not intended to be dedicated to the county.") with Baltimore County Code § 32-4-101(nn) (defining "public improvements" as those which are "required by the county as a condition of development that are intended to be dedicated to the county in fee simple or by other interests in title.").

Moreover, while the Court of Special Appeals lumped together streets, drains, sewers, waterlines, sidewalks, gutters, landscaping, streetlights and traffic-control devices, and stormwater management facilities as "public improvements," the Baltimore County Code does not pigeon-hole specific types of improvements as either public or private. Baltimore County Code § 32-4-101(w) (" 'Improvements' means improvements as determined necessary and appropriate by the county," and includes, *inter alia*, "stormwater management facilities"). In other words, the code neither delineates

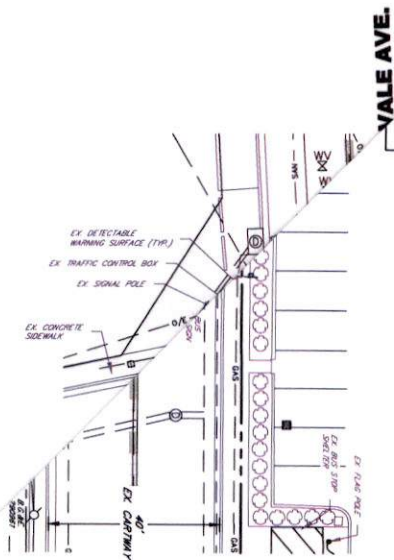
- specifically that SWM facilities necessarily are all public improvements nor describes specifically when "designation," thereby requiring conveyance in-fee by the developer/landowner to the County for public maintenance, must occur.
- 38 It is worth noting that the Court of Special Appeals drew an analogy to Maryland Code (1957, 2003 Repl. Vol), Article 66B, § 14, which denominates in Washington County SWM facilities as "public facilities," and also to the County Codes of Frederick and Anne Arundel counties, which define like facilities as public improvements. We find this analogy inapt, if for no other reason, than that the Baltimore County Code, which governs subdivision approval in the jurisdiction where the land is located, makes specific reference to the possibility of both private and public improvements. See Baltimore County Code § 33-4-110; Baltimore County Code § 32-4-101(mm), (nn).

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

A diagram of a four-line musical staff. It features a treble clef at the top left. Below the clef, there is a dashed line. Further down, there is a solid line with a series of small dots along its length. At the bottom of the staff, there is a wavy line. The number '4' is written below the wavy line.

1. LAWN AREAS SHALL BE MOWED TO A HEIGHT OF 2 TO 3 INCHES AND NOT ALLOWED TO REACH A HEIGHT OF 4 INCHES BEFORE MOWING.
2. ALL CURBS AND WALKS SHALL BE EDGED AS NEEDED.
3. ALL LAWN AREAS ADJACENT TO BUILDING FACES OR STRUCTURES SHALL BE TRIMMED.
4. A SLOW RELEASE NITROGEN BALANCED FERTILIZER WITH A 2-1-1 RATIO SHALL BE APPLIED AT A RATE OF 2 POUNDS OF NITROGEN PER 1000 SQUARE FEET IN SEPTEMBER, OCTOBER, AND FEBRUARY.
5. LIME SHALL BE APPLIED AT THE RATE DETERMINED BY A SOILS REPORT.
6. IT IS RECOMMENDED THAT LAWN AREAS BE TREATED IN MID-MARCH TO EARLY APRIL WITH PRE-EMERGENT HERBICIDE (BETASAN) OR EQUAL APPLIED AT THE MANUFACTURER'S RECOMMENDED RATE.
7. A POST-EMERGENT HERBICIDE (TRIMEC) OR EQUAL IS RECOMMENDED TO BE SPRAYED ON LAWN AREAS IN THE LATE SPRING AND/OR THE EARLY FALL. FOLLOW MANUFACTURER'S RATES AND RECOMMENDATIONS.
8. INSECTICIDES AND FUNGICIDES ARE RECOMMENDED FOR INSECT AND DISEASE CONTROL.
9. RESEED BARE AREAS OF LAWN AS NECESSARY. YEARLY AERATION IS RECOMMENDED.
10. ALL TRASH, LITTER, AND DEBRIS SHALL BE REMOVED FROM LAWN AREAS, PARKING LOTS, AND SHRUB BEDS AS NEEDED.
11. MULCH ALL SHRUB AND GROUNDCOVER BEDS YEARLY WITH 1/4" INCHES OF SHREDDED HARDWOOD BARK.
12. PERMIT SHRUBS AND TREES TO GROW AND ENLARGE TO FULL DESIGN SIZE. CONSULT PROJECT LANDSCAPE ARCHITECT FOR DETAILS.
13. PRUNE TREES IN ACCORDANCE WITH LANDSCAPE GUIDELINES FOR BALTIMORE-WASHINGTON



KEY	ELEMENT	RATE	LINEAR FEET (LF)	PLANTING UNIT (PU)
A	ADJACENT TO PUBLIC ROAD (CLASS B)	1 PU / 15 LF	146.06 LF	9.74 = 10 PU
B	ADJACENT TO PUBLIC ROAD (CLASS B)	1 PU / 15 LF	152.82 LF	10.19 = 11 PU
C	ADJACENT TO PUBLIC ROAD (CLASS B)	1 PU / 15 LF	151.18 LF	10.07 = 11 PU
D	ADJACENT TO RESIDENTIAL (CLASS C)	1 PU / 10 LF	137.45 LF	13.55 = 14 PU
TOTAL				50.1 PU, PROVIDED 46 PU REQUIRED



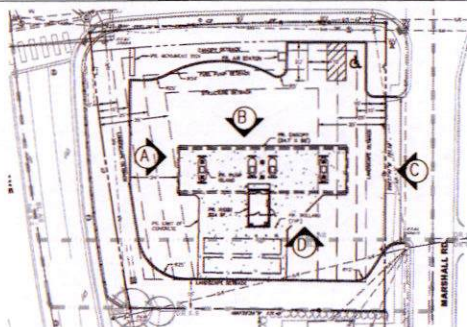
HOLABIRD AVENUE
BALTIMORE COUNTY, MARYLAND

ACTUAL LANDSCAPE PLAN

No.	DATE	REVISION	BY

Gettysburg, PA 17325
Phone (717) 337-3827
www.FCAP.com

☆ CIVIL ENGINEERS ☆ MUNICIPAL ENGINEERS ☆ ENVIRONMENTAL SCIENTISTS ☆
☆ LANDSCAPE ARCHITECTS ☆ PLANNERS ☆ SURVEYORS ☆



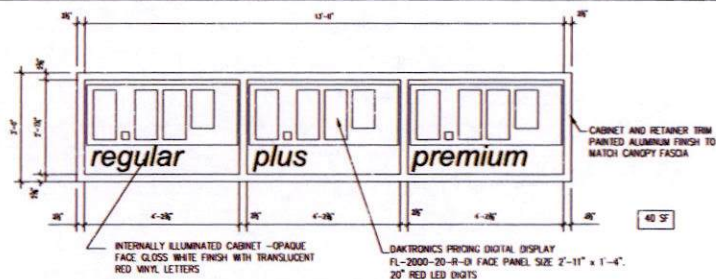
PARTIAL SITE PLAN

NOT TO SCALE



KIOSK VINYL DECAL

3/4" = 1'-0"



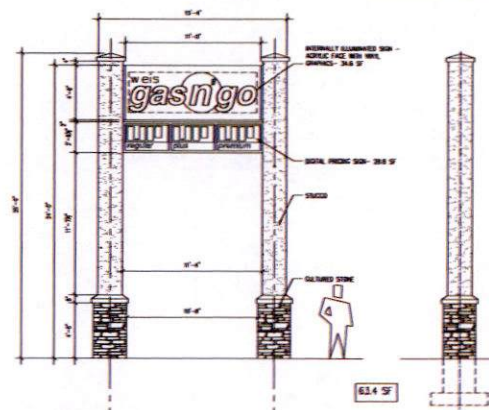
CANOPY GAS PRICE CABINET SIGN ELEVATION

3/4" = 1'-0"



CANOPY ILLUMINATED SIGN

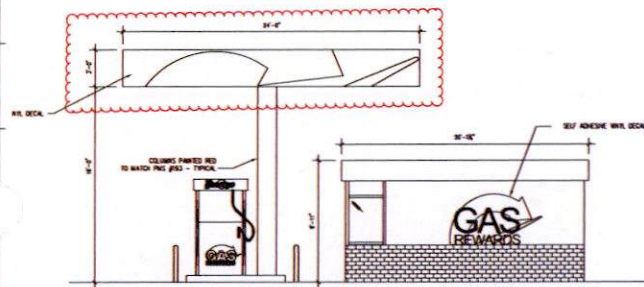
3/4" = 1'-0"



MONUMENT SIGN

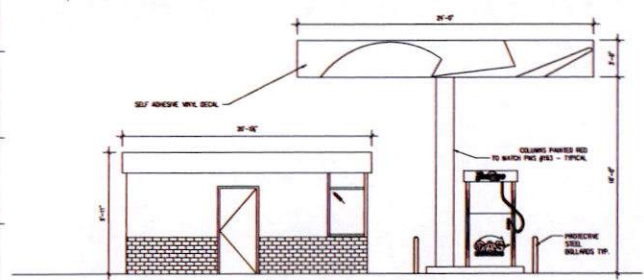
3/4" = 1'-0"

weis
Weis Markets, Inc.
1000 SOUTH SECOND ST.
P.O. BOX 471
LANCASTER, PA 17601



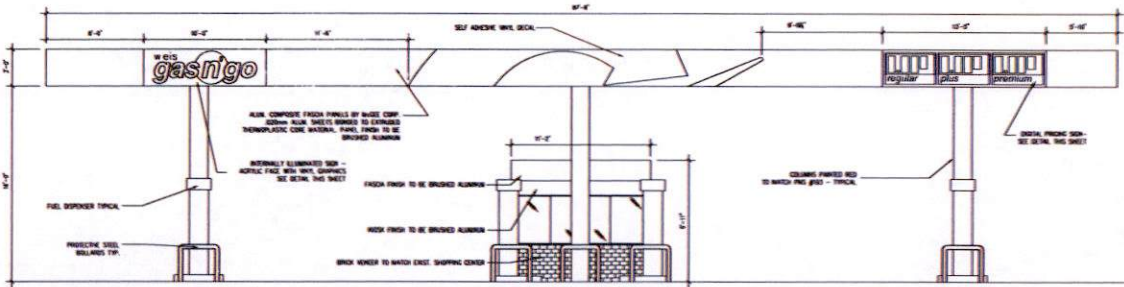
ELEVATION - A

1/4" = 1'-0"



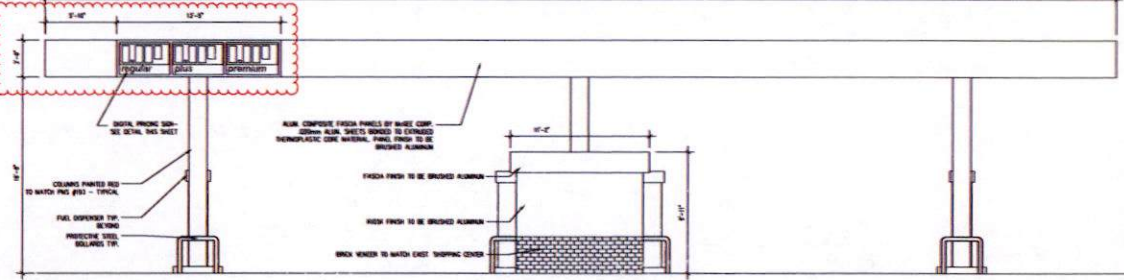
ELEVATION - C

1/4" = 1'-0"



ELEVATION - B

1/4" = 1'-0"



ELEVATION - D

1/4" = 1'-0"

ISSUED / REVISED		Description	
No.	Date	By	Check
1	7/28/17		
1. Weis Markets, Inc. reserves the right to change the design of the signage without notice. 2. The signage shall be installed in accordance with the design shown on this drawing. 3. The signage shall be installed in accordance with the design shown on this drawing. 4. The signage shall be installed in accordance with the design shown on this drawing. 5. The signage shall be installed in accordance with the design shown on this drawing. 6. The signage shall be installed in accordance with the design shown on this drawing. 7. The signage shall be installed in accordance with the design shown on this drawing. 8. The signage shall be installed in accordance with the design shown on this drawing. 9. The signage shall be installed in accordance with the design shown on this drawing. 10. The signage shall be installed in accordance with the design shown on this drawing.			
©2017 Weis Markets, Inc. ALL RIGHTS RESERVED NO REPRODUCTION OR TRANSMISSION IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM WEIS MARKETS, INC.			
PROJECT TITLE: GASn'GO SIGNAGE EXHIBIT DATE: FEBRUARY 06, 2017 SCALE: 1/4" = 1'-0" 084 G-1			



FIRST CAPITAL ENGINEERING, INC.

John J. Luciani, P.E., P.L.S., S.E.O

Principal

Professional Experience

35 years

Education

Bachelor of Science Civil Engineering, Drexel University, 1982

Master in Business Administration
Finance, University of Scranton, 1987

Registration

Pennsylvania Professional Engineer (PE036714E)
Pennsylvania Professional Licensed Surveyor (SU 075169)

Maryland Professional Engineer (20075)
Maryland Professional Land Surveyor (0021664)
New York Licensed Professional Engineer (093439-1)

New Jersey Licensed Professional Engineer (24GE05060700)

West Virginia Professional Engineer (018368)
Licensed Sewage Enforcement Officer (2763)
Virginia Professional Engineer (0402056848)
Delaware Professional Engineer (21160)

Memberships & Involvement

- American Society of Civil Engineers
- American Public Works Association
- Association of State Dam Safety Officials
- Boy Scouts of America & Friends of Scouting (Board of Finance & Camping Committees)
- Drexel University Advisory Council, College of Engineering Executive Development
- Institute of Transportation Engineers
- Lackawanna-Luzerne County PennDOT MPO Coordinating Committee, Former Board member
- American Association of State Highway and Transportation Officials
- Pennsylvania Society of Land Surveyors
- Pennsylvania Society of Professional Engineers (Chapter Engineer of the Year- Former President/ Board Member)
- St. Patrick's Parish Council (Former President)
- York County Economic Alliance
- York Road Runners Club (Former President)

Mr. John Luciani, PE, PLS, SEO, has served as the President of the professional consulting firm, First Capital Engineering, Inc. (FCE), since October 1995. The firm provides civil engineering, land surveying, planning, landscape architecture and construction inspection services. Previously, he was the City of Scranton, Pennsylvania's Chief Engineer and worked for PennDOT's District 4-0. Mr. Luciani was named Engineer of the Year by the York County Conservation District and the Society of Professional Engineers, as well as was featured in an article in the May 2010 edition of *PE Magazine*.

Mr. Luciani's vast range of knowledge and expertise is in the areas of project management (including project budgeting and scheduling), construction and municipal engineering, private sector consulting, sewage treatment and client coordination. For the past 23 years, Mr. Luciani has led the FCE team of professionals through land development projects for convenience stores, retail, industrial and commercial. Mr. Luciani has taught three PA State Association of Township Supervisors (PSATS) Pennsylvania Municipal Government Academy classes in 2014 and 2015, covering the topics of road and bridge maintenance, traffic signs and signals, road safety, stormwater management, posting and bonding, and the liquid fuels program. At the 2010 PSATS Conference, he presented "Sustainable Energy & Your Township," speaking about ways townships can save money and resources through the use of sustainable energy practices and explained the basic principles of the U.S. Green Building Council's LEED program.

Springettsbury Township Municipal Engineer, York County, PA

- Serves as Township Engineer (since 1997)
- Solves emergency situations requiring engineering solutions
- Reviews plans and provides detailed responses to ensure compliance with the PA Municipalities Code and the Township's Zoning, Stormwater, Subdivision & Land Development Ordinances
- Meets with developers to address and resolve engineering issues
- Coordinates Township projects with PennDOT, DEP and Conservation District
- Meets with Public Utility Commission and Public Officials such as state representatives and congressmen in order to coordinate Township resident's needs
- Maintains compliance with DEP for MS-4 program
- Serves as the Emergency Management Coordinator in the event of a catastrophe

Sheetz, Inc., Locations throughout the Mid-Atlantic Region

- Led the FCE team through 33 Sheetz, Inc. project locations throughout Pennsylvania Provided land development, landscape architecture, and civil engineering services for new construction and store renovations
- Coordinated with municipal, state, and federal agencies to ensure that all necessary permits were obtained
- Designed stormwater conveyance systems along with erosion and sedimentation control measures.
- Provided aesthetically pleasing, easily accessible stores and parking lots

East York Traffic Calming, Springettsbury Township, York, PA

- Analyzed safety concerns on Eastern Boulevard, including speeding, lack of bicycle access, and lack of pedestrian crosswalks
- Designed solutions to mitigate traffic problems, including brick paver islands, traffic circles, and pedestrian crosswalks

This project won the Annual Road and Bridge Safety Improvement Contest from PSATS

EXHIBIT

9

tabbles



July 19, 2019

**VIA HAND DELIVERY
AND ELECTRONIC MAIL**

John E. Beverungen
Administrative Law Judge
Baltimore County Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204
jbeverungen@baltimorecountymd.gov



Re: Request for Extension of Special Exception Approval
Case No. 2017-0322-SPHX
7179 Holabird Avenue

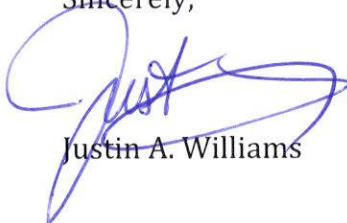
Dear Judge Beverungen:

This firm represents Weis Markets, Inc. (Weis") in connection with the above-referenced matter. By decision dated August 8, 2017, you granted special hearing and special exception approvals for Weis to develop the property known as 7174 Holabird Avenue (the "Property") as a fuel service station (the "Project") to be utilized in connection with their existing supermarket located on the adjacent property at 7200 Holabird Avenue. A copy of the Opinion and Order (the "Order") is enclosed for your reference.

In accordance with the approvals granted in the Order, Weis has diligently pursued its plans for the construction of the Project, but encountered unforeseen delays in the obtaining approvals for stormwater management facilities and connections to public water and sewer utilities at the Property. Weis is now in the final checklist stage of the permitting process and anticipates commencing construction as soon as building permits are in hand; however, because of unpredictable summer weather, there is a possibility that construction will not have commenced prior to the expiration of the authorization of the special exception on August 8, 2019. Therefore, in an abundance of caution, pursuant to Section 502.3 of the Baltimore County Zoning Regulations, I respectfully request that you grant a one-year extension of the period of time authorized for utilization of the special exception approval. I note that the extension can be granted without harm to the public welfare. The conditions that led to a finding that the requirements of BCZR § 502.1 that were satisfied have not changed since the public hearing in this matter, and as indicated in the Order, there were no protestants or interested citizens in attendance in the public hearing.

Thank you in advance for your consideration. I have enclosed a proposed Extension Order for your use. Please do not hesitate to contact me if I can provide you with any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin", with a large, stylized flourish extending from the end of the signature.

Justin A. Williams

JAW
Enclosures

cc: Weis Markets, Inc. (via electronic mail w/enclosures)
First Capital Engineering, Inc. (via electronic mail w/enclosures)
Caroline L. Hecker, Esq. (via electronic mail w/enclosures)

IN RE: PETITIONS FOR SPECIAL HEARING *

AND SPECIAL EXCEPTION

(7179 Holabird Avenue)

12th Election District

7th Council District

Weis Markets, Inc.

Legal Owner

Petitioner

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2017-0322-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Weis Markets, Inc., legal owner ("Petitioner"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to approve a fuel service station canopy sign with electronic changeable copy elements (pricing). A Petition for Special Exception was filed to use the herein described property for a fuel service station.

Appearing at the public hearing in support of the requests was Jack O'Hara, Alex Ororbia and professional engineer John Luciani. Caroline L. Hecker, Esq. and Justin Williams, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.491 acres in size and is split-zoned BL-AS and BL. The property is unimproved, and Petitioner proposes to construct a fuel service station on the lot. Petitioner opened a Weis Market grocery store directly across the street in August, 2016, and as it has at other locations it proposes to operate the gas station in conjunction with the grocery

store.

SPECIAL HEARING

All signage proposed (See Exhibit 8) is permitted by right under B.C.Z.R. §450. Counsel notes that Petitioner would be entitled to have a second freestanding sign on Delvale Avenue, though it has not proposed a sign at that location.

The petition for special hearing is required because the B.C.Z.R. does not address whether or not electronic changeable copy is permitted on a fuel service station canopy sign. The sign would display prices for the various grades of gasoline sold at the station. Such pricing information is required by state law, and consumers find such signage helpful in determining which station in the vicinity offers the lowest prices. I do not believe granting the request would lead to “visual clutter,” and will therefore grant the petition. Petitioner stated the electronic signage proposed here is identical to that approved in recent zoning cases involving Weis Markets. See Exhibit 11, Order in Case No. 2017-0241.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court reaffirmed a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. *Id.*

John Luciani, professional engineer, testified via proffer Petitioner satisfied the

requirements of B.C.Z.R. §502.1 and the cases interpreting that provision. No evidence was offered to rebut this *prima facie* case and the petition will therefore be granted.

THEREFORE, IT IS ORDERED this 8th day of August 2017, by this Administrative Law Judge, that the Petition for Special Hearing to approve a fuel service station canopy sign with electronic changeable copy elements (pricing), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use the herein described property for a fuel service station, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.
3. Petitioner must submit for approval by Baltimore County a floodplain study for the site.
4. The special exception area, in which is permitted the operation of the fuel service station, shall encompass only the BL-AS zoned portion of the property.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
(7179 Holabird Avenue)	*	BALTIMORE COUNTY
12 th Election District		
7 th Council District	*	OFFICE OF
Weis Markets, Inc.		
<i>Legal Owner</i>	*	ADMINISTRATIVE HEARINGS
Petitioner	*	Case No. 2017-0322-SPHX

* * * * *

EXTENSION ORDER

It is hereby ORDERED this ____ day of _____ 2019, by this Administrative Law Judge, that the Special Exception for a fuel service station, granted August 8, 2017, be and the same is hereby extended, in accordance with Section 502.3 of the Baltimore County Zoning Regulations, for a period of one year, beginning August 8, 2019, and ending August 8, 2020.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

IN RE: PETITION FOR SPECIAL HEARING
AND SPECIAL EXCEPTION

(7179 Holabird Avenue)
12th Election District
7th Council District
Weis Markets, Inc.
Legal Owner

Petitioner

BEFORE THE

BALTIMORE COUNTY

OFFICE OF

ADMINISTRATIVE HEARINGS

Case No. 2017-0322-SPHX

* * * * *

EXTENSION ORDER

It is hereby ORDERED this 22 day of July 2019, by this Administrative Law Judge, that the Special Exception for a fuel service station, granted August 8, 2017, be and the same is hereby extended, in accordance with Section 502.3 of the Baltimore County Zoning Regulations, for a period of one year, beginning August 8, 2019, and ending August 8, 2020.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

ORDER RECEIVED FOR FILING

Date 7-22-19

By bw



Rosenberg
Martin
Greenberg^{LLP}

Justin A. Williams
Direct Dial: (410) 727-8647
jwilliams@rosenbergmartin.com

July 19, 2019

VIA HAND DELIVERY
AND ELECTRONIC MAIL

John E. Beverungen
Administrative Law Judge
Baltimore County Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204
jbeverungen@baltimorecountymd.gov

Re: Request for Extension of Special Exception Approval
Case No. 2017-0322-SPHX
7179 Holabird Avenue

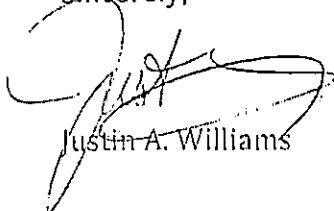
Dear Judge Beverungen:

This firm represents Weis Markets, Inc. (Weis") in connection with the above-referenced matter. By decision dated August 8, 2017, you granted special hearing and special exception approvals for Weis to develop the property known as 7174 Holabird Avenue (the "Property") as a fuel service station (the "Project") to be utilized in connection with their existing supermarket located on the adjacent property at 7200 Holabird Avenue. A copy of the Opinion and Order (the "Order") is enclosed for your reference.

In accordance with the approvals granted in the Order, Weis has diligently pursued its plans for the construction of the Project, but encountered unforeseen delays in the obtaining approvals for stormwater management facilities and connections to public water and sewer utilities at the Property. Weis is now in the final checklist stage of the permitting process and anticipates commencing construction as soon as building permits are in hand; however, because of unpredictable summer weather, there is a possibility that construction will not have commenced prior to the expiration of the authorization of the special exception on August 8, 2019. Therefore, in an abundance of caution, pursuant to Section 502.3 of the Baltimore County Zoning Regulations, I respectfully request that you grant a one-year extension of the period of time authorized for utilization of the special exception approval. I note that the extension can be granted without harm to the public welfare. The conditions that led to a finding that the requirements of BCZR § 502.1 that were satisfied have not changed since the public hearing in this matter, and as indicated in the Order, there were no protestants or interested citizens in attendance in the public hearing.

Thank you in advance for your consideration. I have enclosed a proposed Extension Order for your use. Please do not hesitate to contact me if I can provide you with any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin A. Williams", is written over a printed name. The signature is stylized with a large, sweeping initial "J" and "W".

Justin A. Williams

JAW
Enclosures

cc: Weis Markets, Inc. (via electronic mail w/enclosures)
First Capital Engineering, Inc. (via electronic mail w/enclosures)
Caroline L. Hecker, Esq. (via electronic mail w/enclosures)

Gas Stations in Vicinity

1/2 Mile Zoning Map

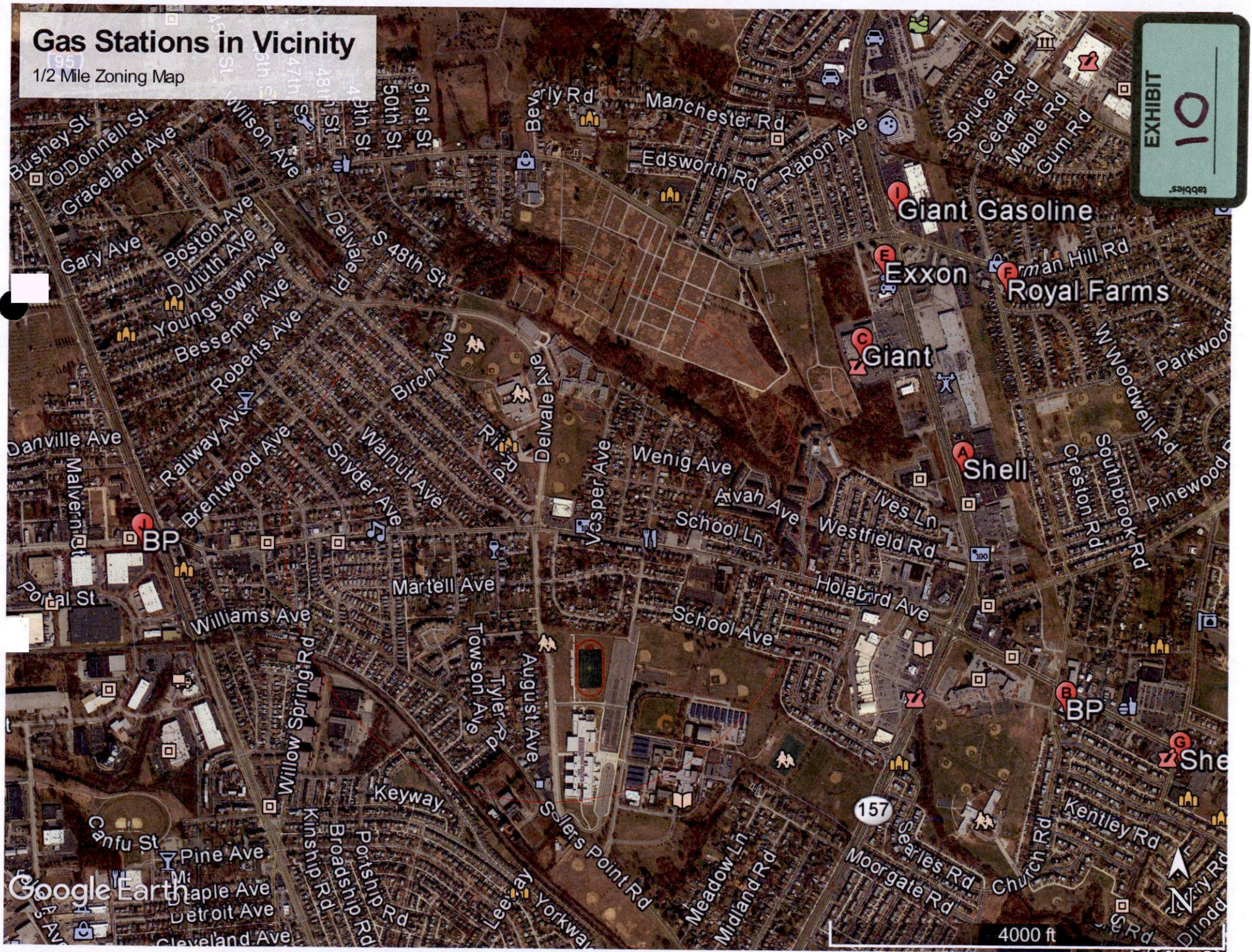


EXHIBIT
10

tabbles

IN RE: **PETITIONS FOR SPECIAL HEARING *
AND VARIANCE**

(7923, 7925 & 7927 Belair Road) *

14th Election District

5th Council District *

FP SUB LLC

Legal Owner *

Weis Markets, Inc., *Lessee*

Petitioners *

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2017-0241-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of FP SUB LLC, legal owner and Weis Markets, lessee ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to permit a fuel service station canopy sign with electronic changeable copy components pursuant to B.C.Z.R. §450. In addition, a Petition for Variance seeks to permit a fuel service station in a planned shopping center to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft. A site plan was marked and accepted into evidence as Petitioners' Exhibit 5.

Professional engineer Michael Gesell and Jack O'Hara & Alex Ororbia, Sr. (from Weis Markets) appeared in support of the requests. Caroline L. Hecker, Esq. and Justin Williams, Esq. represented the Petitioners. Two neighbors attended the hearing to express certain concerns with the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR), noting landscape and lighting plans would be required.

The subject property is approximately 18.37 acres in size and is primarily zoned BR with small slivers of BL and DR 5.5. A large shopping center (166,322 sq. ft.) known as Fullerton Plaza was



constructed at the site in the 1970s. The former “anchor” tenant (K-Mart) closed its doors about 1 ½ years ago, and Weis Markets proposes to open a large (approximately 60,000 sq. ft.) grocery store in that space. As it has in many other locations, Weis proposes to open a fuel service station as an ancillary use to the grocery store. A fuel service station is permitted by right in the BR zone, since the DOP confirmed in a memorandum dated July 6, 2015 (See Exhibit 3) the Fullerton Plaza qualifies as a “planned shopping center.” B.C.Z.R. §405.2.A.1.

SPECIAL HEARING

The petition for special hearing concerns the request to display gasoline price information on the service station canopy. Similar requests have been made and approved in other zoning cases, and I do not believe the signage would have any adverse impact upon the community. As Petitioners note, state law requires retailers to display fuel price information, and also exempts such signage from the requirements of local zoning laws concerning the size and number of such signs permitted. As such, the special hearing request will be granted.

VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The large site is irregularly shaped and was found to be “unique” in several prior zoning cases. See Case Nos. 1981-0130-A, 1982-0089-A and 2011-0343-A. As such a similar finding is appropriate in this case. Petitioners would experience practical difficulty if the

regulations were strictly interpreted because they would be unable to construct the fuel service station, which is permitted by right under the Regulations.

Though the variance request seeks a 0 ft. setback from a residential zone boundary, this is due to the wording of the applicable regulation (B.C.Z.R. §405.2) which states “no part of the **lot** [may be] within 100 feet of a residentially zoned property.” To be conservative Petitioners considered the “lot” to be the entire shopping center parcel, which has for many years directly abutted a residential zone. The reality is the service station itself will be over 40 ft. from the residential zone while the fuel pumps will be located at least 98 ft. from the residential zone boundary. Finally, certain conditions will be included in the order below to help ensure that granting the request will not have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 3rd day of **May, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a fuel service station canopy sign with electronic changeable copy components pursuant to B.C.Z.R. §450, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a fuel service station in a planned shopping center to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Prior to issuance of permits Petitioners must submit for approval by the Baltimore County landscape architect landscape and lighting plans for the site.
3. The fuel service station may not have hours of operation which extend beyond those of the Weis grocery store. In other words, the fuel service station must be closed at such times as the grocery store is also closed.
4. Petitioners shall erect a fence no less than 6 feet in height along the boundary to screen the site from nearby dwellings.
5. The fuel service station must turn off all exterior lighting when it is closed for business.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

Signed

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County



BALTIMORE COUNTY ZONING HEARING OUTLINE

WEIS MARKETS

7179 HOLABIRD AVENUE

AUGUST 4, 2017

2017-0322-SPHX

I. INTRODUCTION

1. Caroline Hecker and Justin Williams – Rosenberg Martin Greenberg, LLP
2. Jack O'Hara – Weis Markets, Vice President of Legal Affairs & Real Estate
3. Alex Orobia, Sr. – Weis Markets, Senior Manager, Architecture
4. John Luciani – First Capital Engineering
5. This is a petition for: (1) special exception approval to construct a Gas N' Go fuel service station, and (2) special hearing approval of the pricing signage that is proposed to be located on two faces of the fuel service station canopy.

II. EXISTING CONDITIONS

1. Zoning Classification: Primarily B.L.-A.S.; small portion zoned B.L.
2. The Property is located at the southeast corner of the intersection of Delvale and Holabird Avenues in the Dundalk area of Baltimore County. It has a total site area of 0.491 acres (21,409 SF), and is unimproved.

i. Exhibit 1 – Zoning Map/ Photo

3. The Property is located along a portion of Holabird Avenue that has a mix of residential and commercial uses. It is adjacent to dense-residential zoning (DR 10.5 and DR 5.5) and located across from a Weis Supermarket and catty-corner from an automotive repair shop. Due to the neighborhood's location near Tradepoint Atlantic's redevelopment of Sparrows Point, the Dundalk area has been experiencing a renaissance as of late. Notably, a 185-unit townhouse development proposed for the former Seagram's Distillery at 7200 Sollers Point Road that is making its way through the County approval process

i. Exhibit 2 – Google Earth Aerial



ii. **Exhibit 3 – Baltimore Sun Article – “Meeting set for Dundalk Seagram's site redevelopment”**

4. In May 2016, Weis Markets announced its plans to acquire five Mars grocery stores in Baltimore County, including two in Dundalk, and locations in Essex, Arbutus, and Carney. The converted Weis Market at 7200 Holabird Avenue opened in August 2016 and has extra features formerly not available in Mars Stores: an expanded produce department, an in-store sushi counter, as well as full-service pharmacy.

i. **Exhibit 4 – Baltimore Sun – “Weis Markets expands its presence in Maryland through two acquisitions”**

III. PROPOSED CONDITIONS

1. In connection with its completion of the conversion of the Mars grocery store at 7200 Holabird Avenue, Weis Markets now proposes to construct a small fuel station across the street from its store at 7179 Holabird Avenue.
- i. This is a trend in the industry as supermarkets are adding additional components which were not traditionally included in grocery stores, e.g., pharmacies, florists, etc.
 - ii. Other grocery stores in the area are already doing this, and Weis wishes to remain competitive. Weis will offer a rewards program for its customers under which customers will receive a discount on the price of gasoline based on the amount that they spend at the grocery store.
 - iii. Weis has done this at approximately 33 other locations and it has been very successful.
2. As indicated on the site plan, the fuel station pumps will be located entirely within the portion of the Property zoned B.L.-A.S., and require no variances.

i. **Exhibit 5 – Site Plan**

3. The underground fuel storage tanks are located within the B.L.-zoned portion of the Property. Per the Zoning Review Bureau, this is permitted pursuant to the Court of Appeals’ ruling in *People’s Counsel for Baltimore County v. Surina*, 400 Md. 662 (2007), which held that the placement of a SWM facility, primarily serving land zoned rural-residential, on land zoned rural-agricultural, did not violate county zoning regulations.

i. **Exhibit 6 – *People’s Counsel for Baltimore County v. Surina***

4. No new curb cuts are proposed; customers will enter the fuel station from Marshall Road.

5. Four pumps with a total of six fueling positions will be installed, along with a small kiosk.
6. The parking spaces provided meet the requirements of Section 405.4 of the Zoning Regulations, which require one space per employee on the largest shift (1 per shift), and one space per self-service air unit (1 unit).
 - i. Total required parking spaces: 2
 - ii. Total provided parking spaces: 3
7. A dumpster is not proposed on-site. Trash that is collected on-site will be taken to the existing dumpster at the grocery store nightly.
8. Major additions to the Property's landscaping are proposed, including significant screening to buffer the fuel service station from the residentially-zoned area to the south.
 - i. Approximately 15 evergreen trees and 3 major deciduous trees are proposed to screen the southern portion of the site from the residential area.
 - ii. **Exhibit 7 – Landscape Plan**
9. While the site is eligible for two freestanding signs because of the Property's frontage along two streets, only one freestanding sign is proposed to be constructed along Holabird Avenue. Limited wall-mounted enterprise signage is proposed for the fuel service station.
 - i. Fuel price information, as required by Section 10-315 of the Business Regulation Article of the State Code, is proposed to be posted on signs on the service station canopy.
 - ii. In response to the Planning Department's ZAC comment, the pricing information proposed for Canopy Elevation A was moved to Canopy Elevation D. This sign will face northbound motorists on Delvale Avenue and eliminate the need to provide signage along the Delvale Avenue frontage.
 - iii. **Exhibit 8 – Redlined Signage Exhibit**
10. The fuel service station will operate with the similar hours as the supermarket, which currently is open from 7:00 AM – 10:00 PM daily.
11. Weis employs approximately 1300 people across the County, and approximately 78 employees at the grocery store at 7200 Holabird Ave. The acquisition and redevelopment of the store represent a \$1.3 million investment in Dundalk by Weis.

Another \$850,000 in site development and facility costs are being invested to develop the Gas N' Go station.

IV. REQUESTED ZONING RELIEF

1. Special Hearing approval of the proposal to place fuel price information (via electronic changeable copy sign) on the service station canopy.
2. Special Exception approval to permit the use of the Property as a fuel service station pursuant to Section 405.2.B.1.

V. SPECIAL EXCEPTION – LEGAL STANDARDS

1. The Site Plan was prepared under the supervision of John Luciani, a licensed professional engineer and an expert in the application of the Baltimore County Zoning Regulations (“BCZR” or “Zoning Regulations”).
 - i. **Exhibit 9 – Luciani, C.V.**
2. Mr. Luciani would testify that the Property meets the standard for granting the special exception under Section 502.1 of the BCZR and the test in *Schults v. Pritts*, 291 Md. 1 (1981).
3. Legal standards:

Per Section 502.1 of the Zoning Regulations, before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- i. Be detrimental to the health, safety or general welfare of the locality involved;
 1. The establishment of a fuel service station at this location will enhance public health, safety, and welfare by activating a vacant property with a new business.
 2. The site’s landscaping and lighting have been designed to minimize impacts on nearby residents.
- ii. Tend to create congestion in roads, streets or alleys therein;
 1. The fuel service station should not be expected to create traffic congestion. Fuel service stations typically do not produce new traffic, but rather, motorists tend to use fuel stations on pass-by trips on the way to another destination.
- iii. Create a potential hazard from fire, panic or other danger;

1. The site has adequate access for police and fire protection and will comply with all life safety codes.
- iv. Tend to overcrowd land and cause undue concentration of population;
 1. The site complies with all setback regulations and provide a nearby amenity to the growing residential population.
- v. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
 1. The development of the site will not have an impact on nearby schools or parks, and is not within a deficient basic services map area for water, sewer or traffic.
- vi. Interfere with adequate light and air;
 1. The construction of the fuel service station with a 19-foot canopy on this ± 0.5 -acre site will not interfere with the accessibility of light or air to the premises or to other properties in the vicinity.
- vii. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
 1. The use of the Property as a fuel service station is consistent with the intent and purpose of the Zoning Regulations. The Property is within the A.S. District, which is "appropriate for uses dominated by the parking and servicing of automobiles or characterized by frequent parking turnover, such as fuel service stations and car wash operations."
- viii. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
 1. The development of the site will comply with the landscaping manual and stormwater management regulations.
- ix. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.
 1. Not applicable.
4. In addition to the findings required under BCZR Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the

proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

- i. There are no abandoned or active fuel service stations within a one-half mile radius.
- ii. **Exhibit 10 – Vicinity Map**

VI. SPECIAL HEARING

1. As indicated on the signage exhibit, along the faces of the service station canopy that face north and south, which would be visible to motorists on Delvale Avenue, electronic changeable copy signage is proposed to display fuel price information. Because the electronic changeable copy signage is not explicitly indicated as being permitted to be displayed on the face of a fuel service station canopy in the Sign Regulations, special hearing approval is requested to confirm that the electronic changeable copy signage may be displayed as proposed.

- i. **See Exhibit 8 – Redlined Signage Exhibit**

2. A similar request was granted by in Case No. 2017-241-SPHA at a Weis Gas N'Go fuel service station located in the Fullerton Plaza.

- i. **Exhibit 11 – Case No. 2017-241-SPHA**

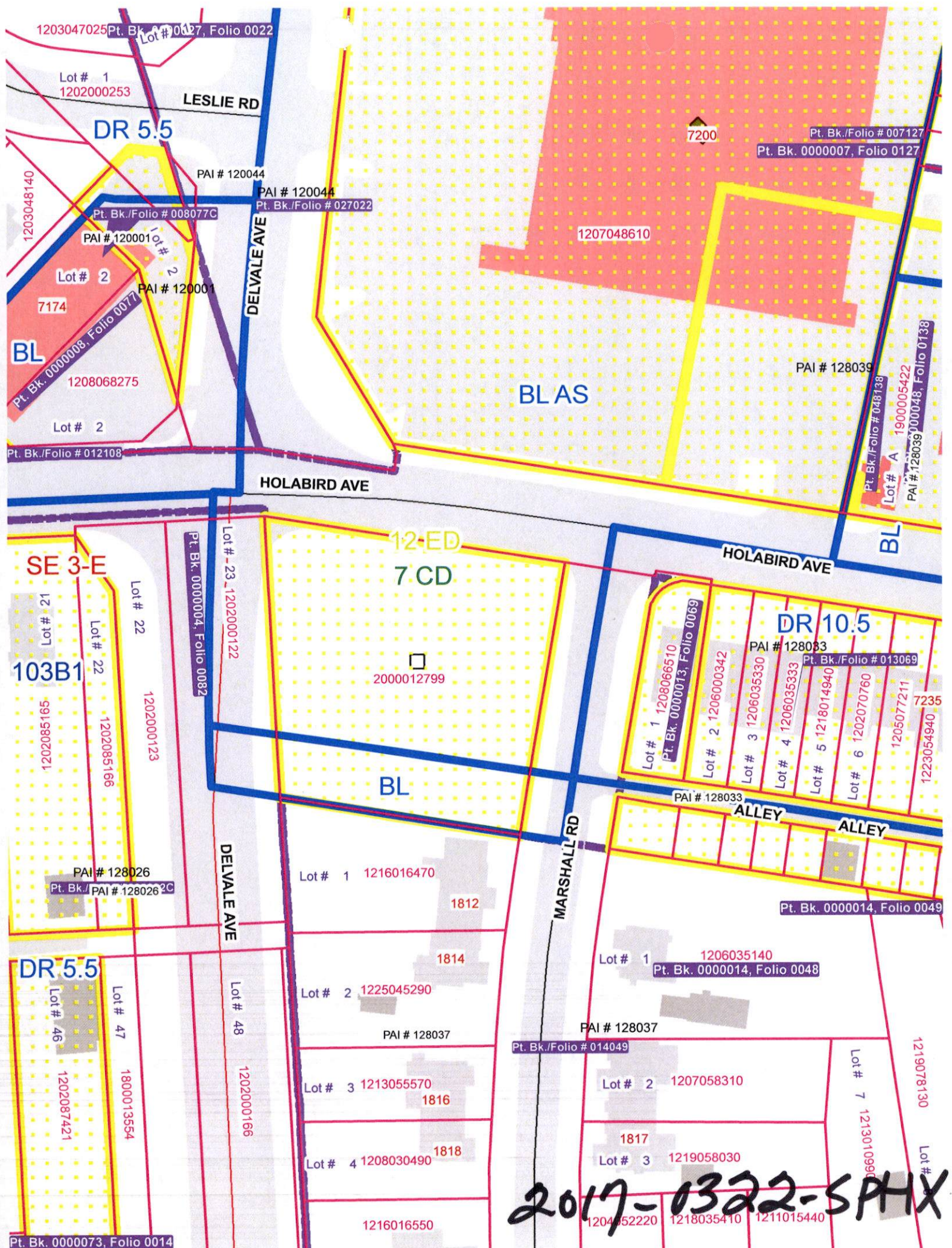
3. BCZR Section 450.5.B.8.a permits a sign to be erected upon the face of a service station canopy, provided that it does not project above, below, or beyond either end of the face.
4. Section 10-315 of the Business Regulation Article of the State code requires gas stations to advertise the retail price of motor fuel and specifically exempts the sign advertising the retail price “from the provisions of a local law, ordinance, or regulation for the purpose of determining: (1) the total number of signs permitted; and (2) the area of signs permitted.”
5. Because the fuel price information is required to be displayed by State law and is exempt from sign regulations governing total number of signs, it should be permitted to be displayed on the canopy in addition to the enterprise signage which is permitted to be erected upon the face of the service station canopy.
6. Because the fuel price signage will be displayed on the face of the service station canopy, only one freestanding sign to display the price is proposed along Holabird Avenue. Accordingly, the granting of the special hearing request will help prevent sign clutter. Because of the landscape screening proposed along the southern boundary of the Property, the signage should not have a negative impact.

VII. CONCLUSION

1. For these reasons, we respectfully request that the special exception and special hearing requests be granted. If the application is approved, Weis plans to commence construction in Spring 2018.

- i. **Exhibit 12 – Hearing Outline**

4840-5206-8940, v. 3



XHP-2: 3230-7105

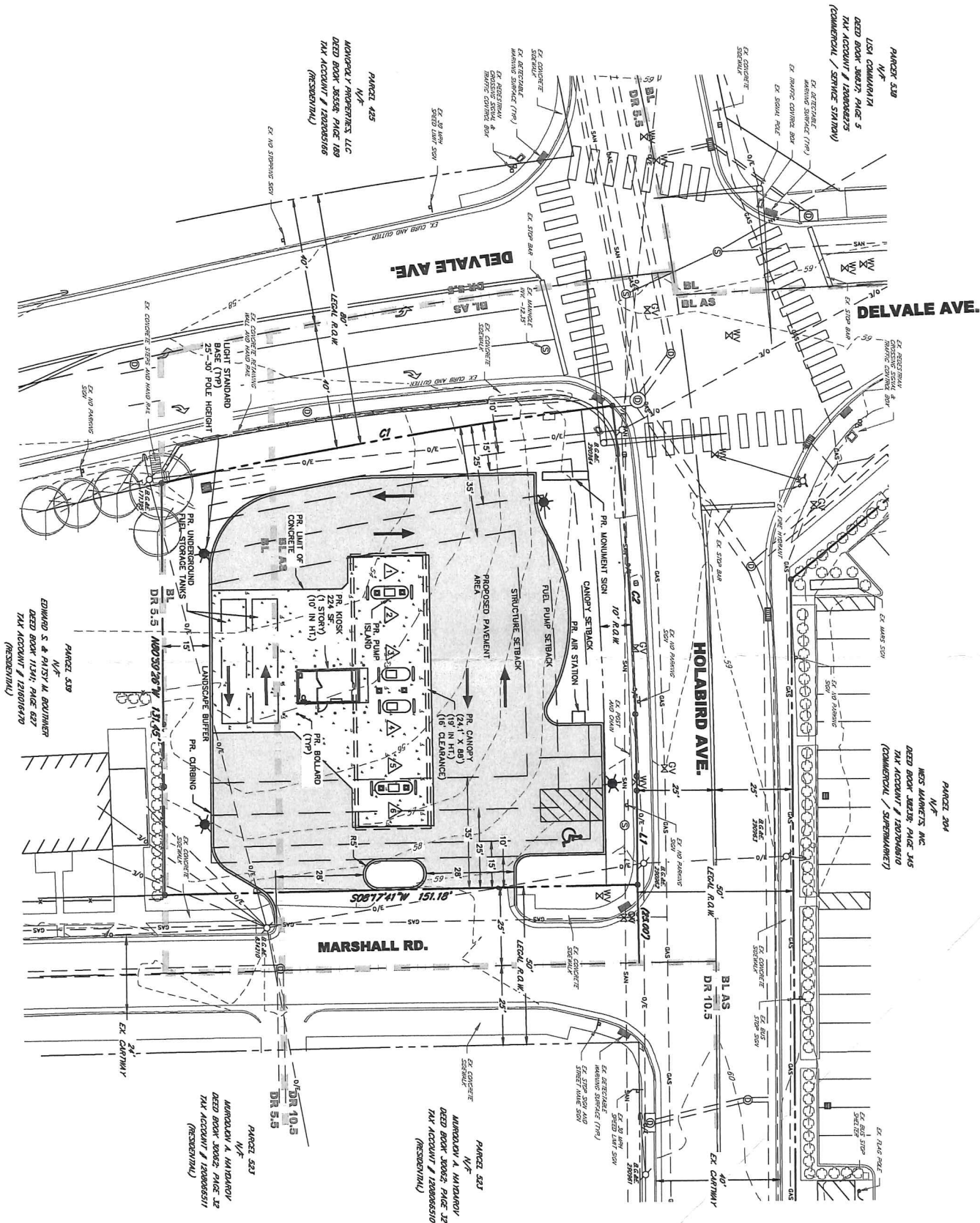
CURVE TABLE				
ID	RADIUS	ARC LENGTH	CHORD DIRECTION	CHORD LENGTH
C1	1738.08	146.06	N0705°16'W	146.02
C2	1120.92	123.22	S041°32'0"E	123.15

LINE TABLE		
ID	DIRECTION	LENGTH
L1	S81°04'22"E	29.70

LEGEND

ADJOINING PROPERTY LINE	_____
EXISTING EASMENT LINE	_____
EXISTING CENTER LINE	_____
EXISTING BUILDING SETBACK LINE	_____
EXISTING CURB	_____
EXISTING FENCE	_____
EXISTING GUTTERAL	_____
PRIORITARY LINE	_____
EXISTING RIGHT-OF-WAY	_____
STREAM	_____
100 YEAR FLOOD PLAIN	_____
ZONING BOUNDARY	_____
EXISTING TREE LINE	_____
EXISTING STREET SIGN	_____
EXISTING ACCESSIBLE PARKING	_____
PROPOSED RIGHT-OF-WAY	_____
PROPOSED CURB	_____
PROPOSED FENCE	_____
PROPOSED STREET LINE	_____
PROPOSED STREET SIGN	_____
PROPOSED ACCESSIBLE PARKING	_____

PHOTOPLOTTED



A white rectangular label with rounded corners. At the top, the word "EXHIBIT" is printed in bold, black, sans-serif capital letters. Below it, the number "5" is printed in a large, bold, black, sans-serif font. A horizontal line is drawn across the label, positioned below the number "5". On the left side of the label, the word "tabbles" is printed vertically in a bold, black, sans-serif font.

No.	DATE	REVISION	BY

DRAWN BY: SMG	CHECK BY:
CADD FILE No. 117-31A Z STE	
DATE: 3-1-17	JOB No.: 117-31A
SCALE: 1" = 20'	

WEIS MARKETS #84 GAS-N-GO

ZONING EXHIBIT
FOR
WEIS MARKETS, INC.

7179 HOLABIRD AVENUE

BALTIMORE COUNTY, MARYLAND

SITE PLAN

FIRST CAPITAL ENGINEERING

48 South Richland Avenue
York, PA 17404
Phone (717) 845-FCAP
FAX (717) 852-7891



Gettysburg, PA 17326
Phone (717) 337-3827
www.FCAP.com

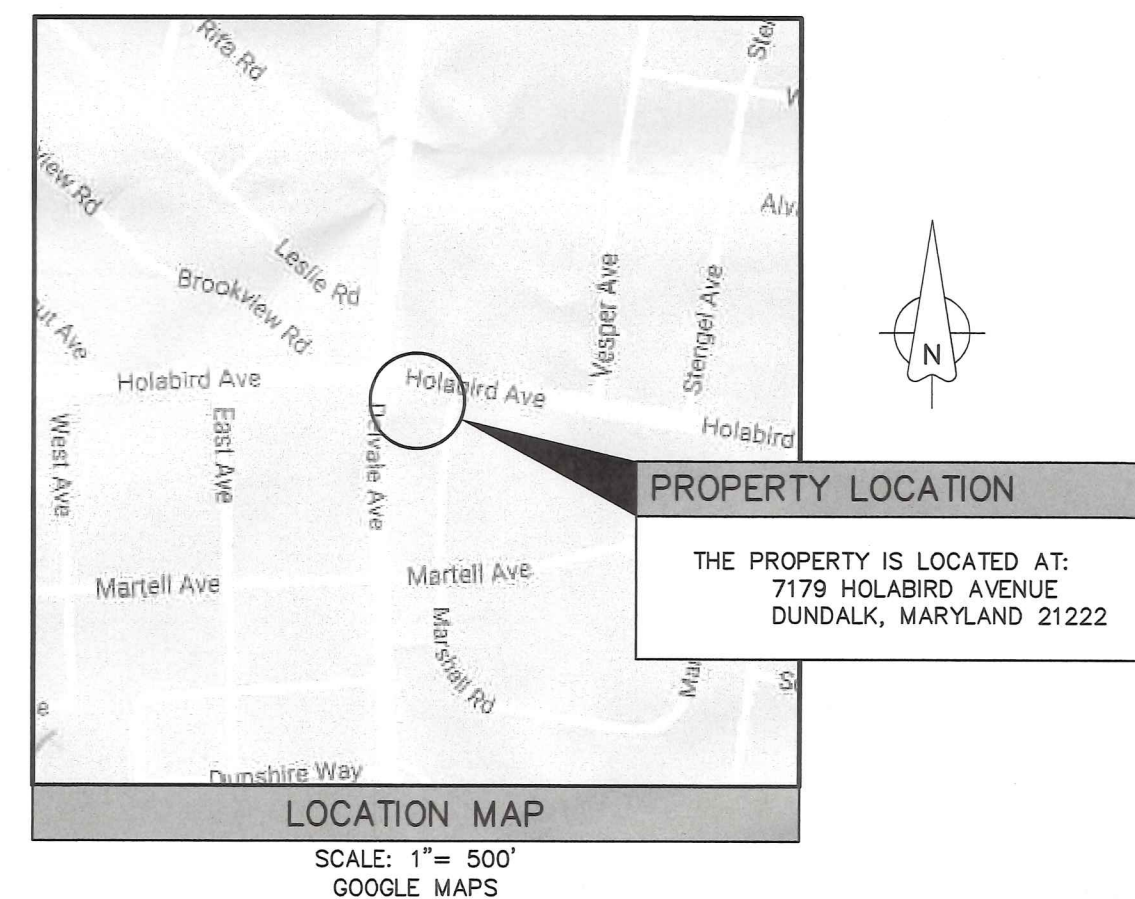
☆ CIVIL ENGINEERS ☆ MUNICIPAL ENGINEERS ☆ ENVIRONMENTAL SCIENTISTS ☆
☆ LANDSCAPE ARCHITECTS ☆ PLANNERS ☆ SURVEYORS ☆

Z-2
SHEET

PLANS TO ACCOMPANY VARIANCE AND
SPECIAL HEARING PETITION
WEIS MARKETS #84 GAS-N-GO
WEIS MARKETS, INC.
BALTIMORE COUNTY, MARYLAND
ELECTION DISTRICT: 12-008
COUNTY COUNCIL DISTRICT: 7
ZONING MAP NUMBER: MAP: 103, GRID: 10, PARCEL: 193

FIRST CAPITAL ENGINEERING
48 South Richland Avenue
York, PA 17404
Phone (717) 845-FCAP
FAX (717) 852-7891
Gettysburg, PA 17325
Phone (717) 337-3827
www.FCAP.com
☆ CIVIL ENGINEERS ☆ MUNICIPAL ENGINEERS ☆ ENVIRONMENTAL SCIENTISTS ☆
☆ LANDSCAPE ARCHITECTS ☆ PLANNERS ☆ SURVEYORS ☆

FCE # 117-31A
DATE: 3-1-17
PROJECT MANAGER: JMG
DRAWN BY: SMG
CHECKED BY:



SHEET LIST TABLE

SHEET NUMBER	SHEET TITLE
Z CS	COVER SHEET
Z-1	EXISTING CONDITION PLAN
Z-2	SITE PLAN
Z-3	CONCEPTUAL LANDSCAPE PLAN
Z-4	LIGHTING PLAN

SURVEYOR'S CERTIFICATION

I, MICHAEL ALLEN WHITE, A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF MARYLAND DO HEREBY CERTIFY THAT THIS PLAN CORRECTLY REPRESENTS THE LOTS AND LANDS AS SURVEYED AND PLOTTED FOR THE OWNER.

MICHAEL ALLEN WHITE, PROFESSIONAL LAND SURVEYOR,
MD NO. 21740

DATE 5-17-2017



ENGINEER'S CERTIFICATION

I, JOHN JOSEPH LUCIANI, A REGISTERED PROFESSIONAL ENGINEER OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THIS LAND DEVELOPMENT PLAN WAS PREPARED USING ACCEPTED ENGINEERING METHODS AND TO THE BEST OF MY KNOWLEDGE, REPRESENTS THE EXISTING CONDITIONS AND PROPOSED IMPROVEMENTS AS SURVEYED AND PLOTTED UNDER MY DIRECTION FOR THE OWNERS OR AGENTS.

JOHN JOSEPH LUCIANI, PROFESSIONAL ENGINEER,
MD NO. PE-20075

DATE 5/17/2017



ZONING DISTRICTS

BL - BUSINESS LOCAL

BL AS - BUSINESS LOCAL - AUTOMOTIVE SERVICES DISTRICT

SITE DATA

OWNER:	PARCEL 193:	WEIS MARKETS, INC.
TAX PIN:	PARCEL 193:	2000012799
PROPERTY LOCATED AT:	PARCEL 193:	7179 HOLABIRD AVE.
SOURCE OF TITLE:	PARCEL 193:	D.B. 38239, PG. 340
EX. PROPERTY AREA:	PARCEL 193:	
	1ST TRACT:	5,184.58 SF 0.119 ACRES
	2ND TRACT:	2,974.85 SF 0.068 ACRES
	3RD TRACT:	13,250.30 SF 0.304 ACRES
TOTAL:		21,409.73 SF 0.491 ACRES
EX. LOT COVERAGE:		274.42 SF 1.3%
PR. LOT COVERAGE:		14,868.16 SF 69.4%

ZONING DATA (BL AS ZONE, SECTION 405)

ZONE:	BUSINESS LOCAL - AUTOMOTIVE SERVE DISTRICT
MINIMUM LOT AREA:	15,000 SF. OR 1,500 SF. PER FUEL SERVICE SPACES
SETBACK:	REQUIRED PROVIDED
STRUCTURES FROM R.O.W.:	35 ft. 59.52 ft.
FUEL PUMP FROM R.O.W.:	25 ft. 31.02 ft.
CANOPY FROM ROW:	15 ft. 19.44 ft.
LANDSCAPE BUFFER FROM PR. LINE:	15 ft. 15 ft.
LANDSCAPE BUFFER FROM R.O.W.:	10 ft. 10 ft.

ZONING DATA (BL ZONE)

ZONE:	BUSINESS LOCAL
SETBACK LINES:	REQUIRED PROVIDED
A. FRONT YARD:	10 ft. 59.52 ft.
B. SIDE YARD:	10 ft. 42.67 ft.
C. REAR YARD:	0 ft. 42.67 ft.
BUILDING:	20 ft. (ABUTTING RESIDENTIAL ZONE)
D. STREET CENTER LINE:	40 ft. 84.61 ft.
MAXIMUM BUILDING HEIGHT:	40 ft. KIOSK 10 ft. CANOPY 19 ft.
MAX. FLOOR AREA RATIO:	3 0.01

GENERAL NOTES

- ITEM 5: THERE ARE NO COMMERCIAL PERMITS ON FILE
- ITEM 6: THERE ARE NO ZONING HEARING, CRG DRG, WAIVERS.
- ITEM 25: THE SITE IS NOT LOCATED IN ANY FAILED BASIC SERVICE AREAS.

AS SURVEY LEGAL DESCRIPTION

PARCEL 193
TAX ACCOUNT #2000012799
PART A
BEGINNING AT A POINT ON THE SOUTH SIDE OF HOLABIRD AVE. WHICH IS 50 FEET WIDE AT THE RIGHT-OF-WAY, AT A DISTANCE OF 25 FEET WEST OF THE CENTERLINE OF MARSHALL ROAD WHICH IS 50 FEET WIDE AT THE RIGHT-OF-WAY.
PART B
BEGINNING FOR THE FIRST THEREOF AT A DRILL HOLE (SET) AT THE INTERSECTION AND OF THE SOUTH SIDE OF HOLABIRD AVENUE AND THE WESTSIDE OF MARSHALL ROAD AS LAID OUT 50 FEET WIDE THENCE AND BINDING ON THE WEST SIDE OF MARSHALL ROAD (1) SOUTH 08° 17' 41" WEST 151.18' FEET TO A REBAR (SET) AT THE NORTHEASTERN CORNER OF LOT 1 AS LAID OUT ON PLAT A PART 1 OF THE PLAT SHOWING LOT SUBDIVISION TALBOT PARK WHICH PLAT IS RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN PLAT BOOK NO. JWB 14, PAGE 49 AND BINDING ON THE SAME THE FOLLOWING COURSE AND DISTANCE (2) NORTH 80° 59' 26" WEST 131.45' TO A REBAR (SET) ON THE EAST SIDE OF DELVALE AVENUE AS LAID OUT 80' WIDE ON HRW 58-197-2 WHICH IS RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN LIBER 3573, PAGE 131; THENCE LEAVING SAID LOT 1 AND BINDING ON DELVALE AVENUE THE FOLLOWING COURSE AND DISTANCE, (3) BY AN ARC TO THE RIGHT HAVING A RADIUS OF 1738.08' AND ARC LENGTH OF 146.09' THE CHORD AND DISTANCE BEING NORTH 00° 05' 16" WEST 148.02' TO A DRILL HOLE (SET) ON THE SOUTH SIDE OF HOLABIRD AVENUE; THENCE LEAVING SAID DELVALE AVENUE AND BINDING ON THE SOUTH SIDE OF HOLABIRD AVENUE THE FOLLOWING COURSE AND DISTANCE (4) BY AN ARC TO THE RIGHT HAVING A RADIUS OF 1120.92' AND ARC LENGTH OF 123.22' THE CHORD AND DISTANCE BEING SOUTH 84° 13' 20" EAST 123.15' TO A POINT; THENCE SOUTH 81° 04' 22" EAST 29.70' TO THE PLACE OF BEGINNING.
CONTAINING 0.491 ACRES MORE OR LESS
LOCATED IN THE 12TH ELECTION DISTRICT AND 7TH COUNCIL DISTRICT

ADJOINING PROPERTY LINE
EXISTING EASEMENT LINE
EXISTING CENTER LINE
EXISTING BUILDING SETBACK LINE
EXISTING CURB
EXISTING FENCE
EXISTING GUIDERAIL
PROPERTY LINE
EXISTING RIGHT-OF-WAY
STREAM
100 YEAR FLOOD PLAIN
ZONING BOUNDARY
EXISTING TREE LINE
EXISTING STREET SIGN

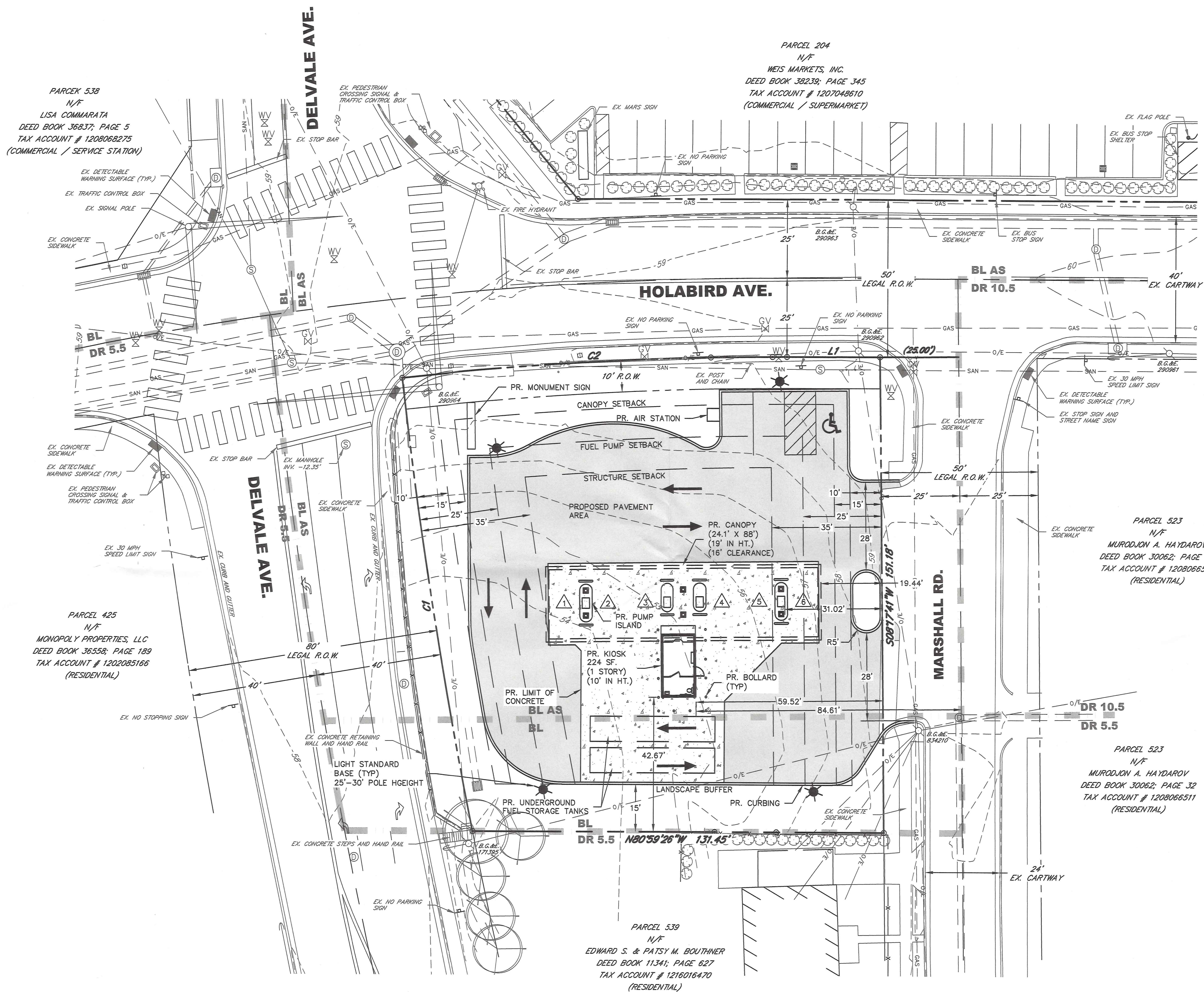
EXISTING ACCESSIBLE PARKING
PROPOSED RIGHT-OF-WAY
PROPOSED CURB
PROPOSED FENCE
PROPOSED TREE LINE
PROPOSED STREET SIGN

PROPOSED ACCESSIBLE PARKING

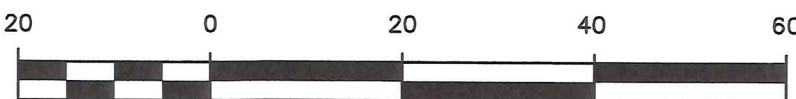
△ INDICATES NUMBER OF FUELING POSITIONS

CURVE TABLE				
ID	RADIUS	ARC LENGTH	CHORD DIRECTION	CHORD LENGTH
C1	1738.08	146.06	N0°05'16"W	146.02
C2	1120.92	123.22	S84°13'20"E	123.15

LINE TABLE		
ID	DIRECTION	LENGTH
L1	S81°04'22"E	29.70



GRAPHIC SCALE



SCALE 1" = 20'

2017-0322-SPHX

FIRST CAPITAL ENGINEERING

8 South Richland Avenue
York, PA 17404
Phone (717) 845-FCAP
FAX (717) 852-7891



Gettysburg, PA 17325
Phone (717) 337-3827
www.FCAP.com

☆ CIVIL ENGINEERS ☆ MUNICIPAL ENGINEERS ☆ ENVIRONMENTAL SCIENTISTS ☆
☆ LANDSCAPE ARCHITECTS ☆ PLANNERS ☆ SURVEYORS ☆

WEIS MARKETS #84 GAS-N-GO

PLANS TO ACCOMPANY VARIANCE AND SPECIAL HEARING PETITION

FOR
WEIS MARKETS, INC.

7179 HOLABIRD AVENUE
CN

BALTIMORE COUNTY, MARYLAND

SITE PLAN

DRAWN BY:	CHECK BY:
-----------	-----------

CADD FILE No.

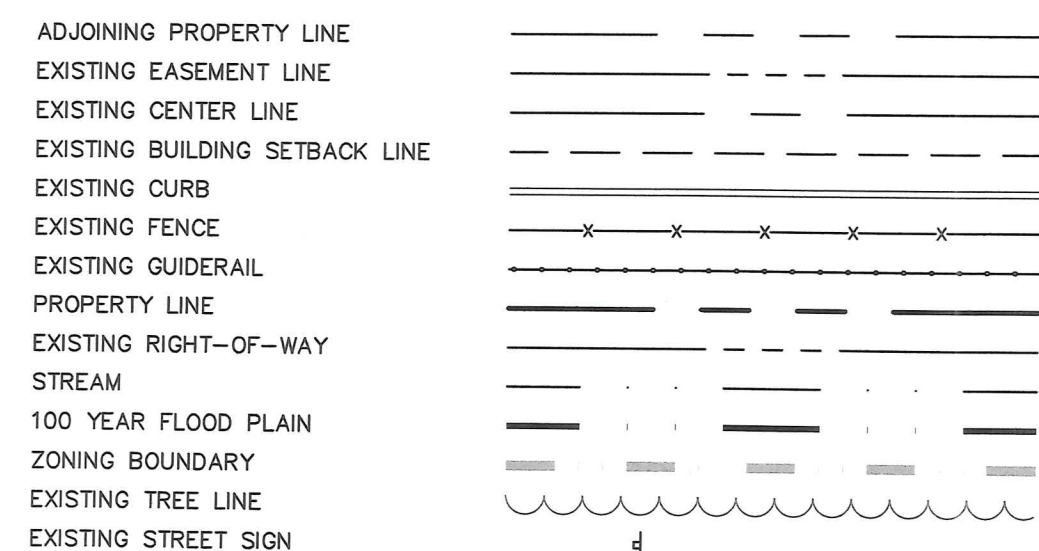
DATE:	JOB No.:
-------	----------

3-1-17	117-31A
--------	---------

SCALE:

SHEET
Z-2

LEGEND



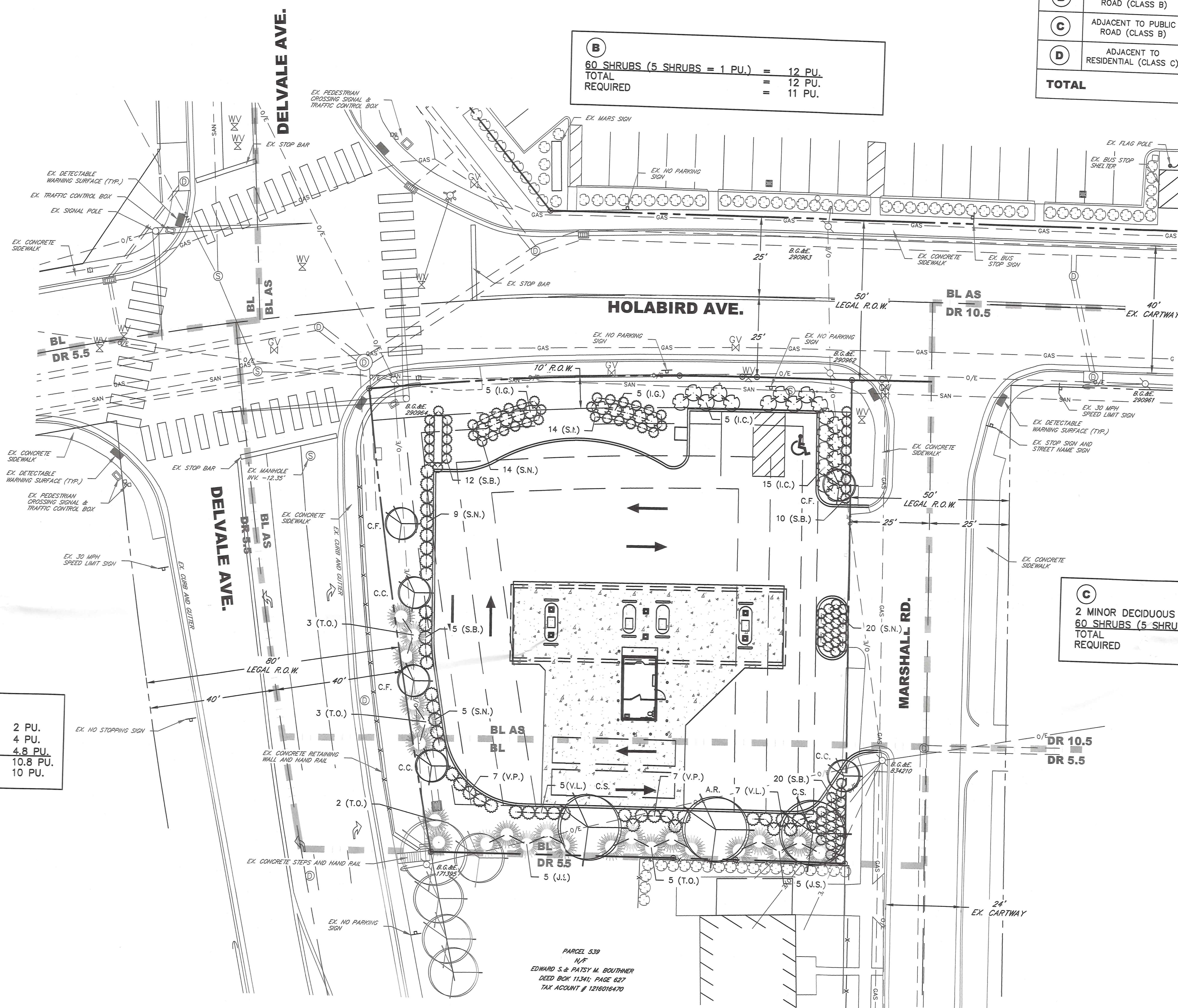
EXISTING ACCESSIBLE PARKING
PROPOSED RIGHT-OF-WAY
PROPOSED CURB
PROPOSED FENCE
PROPOSED TREE LINE
PROPOSED STREET SIGN

PROPOSED ACCESSIBLE PARKING

MINIMUM LANDSCAPE MAINTENANCE REQUIREMENTS

1. LAWN AREAS SHALL BE MOWED TO A HEIGHT OF 2 TO 3 INCHES AND NOT ALLOWED TO REACH A HEIGHT OF 4 INCHES BEFORE MOWING.
2. ALL CURBS AND WALKS SHALL BE EDGED AS NEEDED.
3. ALL LAWN AREAS ADJACENT TO BUILDING FACES OR STRUCTURES SHALL BE TRIMMED.
4. A SLOW RELEASE NITROGEN BALANCED FERTILIZER WITH A 2-1-1 RATIO SHALL BE APPLIED AT A RATE OF 2 POUNDS OF NITROGEN PER 1000 SQUARE FEET IN SEPTEMBER, OCTOBER, AND FEBRUARY.
5. LIME SHALL BE APPLIED AT THE RATE DETERMINED BY A SOILS REPORT.
6. IT IS RECOMMENDED THAT LAWN AREAS BE TREATED IN MID-MARCH TO EARLY APRIL WITH PRE-EMERGENT HERBICIDE (BETASAN) OR EQUAL APPLIED AT THE MANUFACTURER'S RECOMMENDED RATE.
7. A POST-EMERGENT HERBICIDE (TRIMEC) OR EQUAL IS RECOMMENDED TO BE SPRAYED ON LAWN AREAS IN THE LATE SPRING OR THE EARLY FALL. FOLLOW MANUFACTURER'S RATES AND RECOMMENDATIONS.
8. INSECTICIDES AND FUNGICIDES ARE RECOMMENDED FOR INSECT AND DISEASE CONTROL.
9. RESEED BARE AREAS OF LAWN AS NECESSARY. YEARLY AERATION IS RECOMMENDED.
10. ALL TRASH, LITTER, AND DEBRIS SHALL BE REMOVED FROM LAWN AREAS, PARKING LOTS, AND SHRUB BEDS AS NEEDED.
11. MULCH ALL SHRUB AND GROUND COVER BEDS YEARLY WITH 3 INCHES OF SHREDDED HARDWOOD BARK.
12. PERMIT SHRUBS AND TREES TO GROW AND ENLARGE TO THEIR DESIGN SIZE. CONSULT PROJECT LANDSCAPE ARCHITECT FOR DETAILS.
13. PRUNE TREES IN ACCORDANCE WITH LANDSCAPE SPECIFICATION GUIDELINES FOR BALTIMORE-WASHINGTON METROPOLITAN AREAS.

A	4 MINOR DECIDUOUS (2 MINOR DECIDUOUS = 1 PU.)	=	2 PU.
	8 EVERGREEN (2 EVERGREEN = 1 PU.)	=	4 PU.
	24 SHRUBS (5 SHRUBS = 1 PU.)	=	4.8 PU.
	TOTAL REQUIRED	=	10.8 PU.



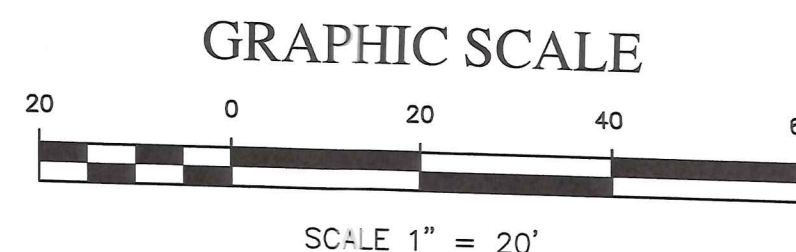
B	60 SHRUBS (5 SHRUBS = 1 PU.)	=	12 PU.
	TOTAL REQUIRED	=	12 PU.

C	2 MINOR DECIDUOUS (2 MINOR DECIDUOUS = 1 PU.)	=	1 PU.
	60 SHRUBS (5 SHRUBS = 1 PU.)	=	12 PU.
	TOTAL REQUIRED	=	13 PU.

C	3 MAJOR DECIDUOUS (1 MAJOR DECIDUOUS = 1 PU.)	=	3 PU.
	15 EVERGREEN (2 EVERGREEN = 1 PU.)	=	7.5 PU.
	19 SHRUBS (5 SHRUBS = 1 PU.)	=	3.8 PU.
	TOTAL REQUIRED	=	14.3 PU.

CONCEPTUAL LANDSCAPE MATERIALS SCHEDULE

MAJOR DECIDUOUS				
KEY	QUAN.	BOTANICAL NAME / COMMON NAME	ROOT	SIZE @ PLANTING
A.R.	3	Acer rubrum / Red Maple	B&B	2"-2 1/2" CAL.(MIN.)
C.S.	5	Halesia carolina / Carolina Silverbell	B&B	2"-2 1/2" CAL.(MIN.)
MINOR DECIDUOUS				
KEY	QUAN.	BOTANICAL NAME / COMMON NAME	ROOT	SIZE @ PLANTING
C.C.	1	Cercis Canadensis / Eastern Redbud	B&B	1"-1 1/2" CAL.(MIN.)
C.F.	2	Cornus florida / Florida Dogwood	B&B	1"-1 1/2" CAL.(MIN.)
EVERGREEN TREES				
KEY	QUAN.	BOTANICAL NAME / COMMON NAME	ROOT	SIZE @ PLANTING
J.S.	10	Juniperus scopulorum 'Moonglow' / Moonglow Juniper	B&B	6" HEIGHT (MIN.)
T.O.	13	Thuja occidentalis 'Smaragd' / Emerald Green Arborvitae	B&B	6" HEIGHT (MIN.)
SHRUBS				
KEY	QUAN.	BOTANICAL NAME / COMMON NAME	ROOT	SIZE @ PLANTING
I.C.	20	Ilex crenata 'Soft Touch' / Soft Touch Compact Holly	NO. 3 CONT.	18" HEIGHT (MIN.)(CLASS B)
I.G.	10	Ilex glabra / Inkberry Holly	NO. 3 CONT.	24" HEIGHT (MIN.)(CLASS B)
S.B.	47	Spiraea x bumalda 'Red Darts' / Red Darts Spiraea	NO. 3 CONT.	18" HEIGHT (MIN.)(CLASS B)
S.N.	62	Spiraea nipponica 'Snowmounds' / Snowmound Spiraea	NO. 3 CONT.	18" HEIGHT (MIN.)(CLASS B)
V.L.	12	Viburnum prufolium / Blackhaw Viburnum	NO. 3 CONT.	18" HEIGHT (MIN.)(CLASS B)
V.P.	14	Viburnum lentago / Nannyberry Viburnum	NO. 3 CONT.	18" HEIGHT (MIN.)(CLASS B)



KEY	ELEMENT	RATE	LINEAR FEET (LF)	PLANTING UNIT (PU)
A	ADJACENT TO PUBLIC ROAD (CLASS B)	1 PU / 15 LF	146.06 LF	9.74 = 10 PU
B	ADJACENT TO PUBLIC ROAD (CLASS B)	1 PU / 15 LF	152.92 LF	10.19 = 11 PU
C	ADJACENT TO PUBLIC ROAD (CLASS B)	1 PU / 15 LF	151.18 LF	10.07 = 11 PU
D	ADJACENT TO RESIDENTIAL (CLASS C)	1 PU / 10 LF	131.45 LF	13.15 = 14 PU
TOTAL				50.1 PU. PROVIDED 46 PU REQUIRED

2017-0322-SPHX

WEIS MARKETS #84 GAS-N-GO
PLANS TO ACCOMPANY VARIANCE, AND SPECIAL HEARING PETITION

WEIS MARKETS, INC.

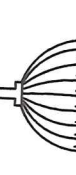
7179 HOLABIRD AVENUE

BALTIMORE COUNTY, MARYLAND
CONCEPTUAL LANDSCAPE PLAN

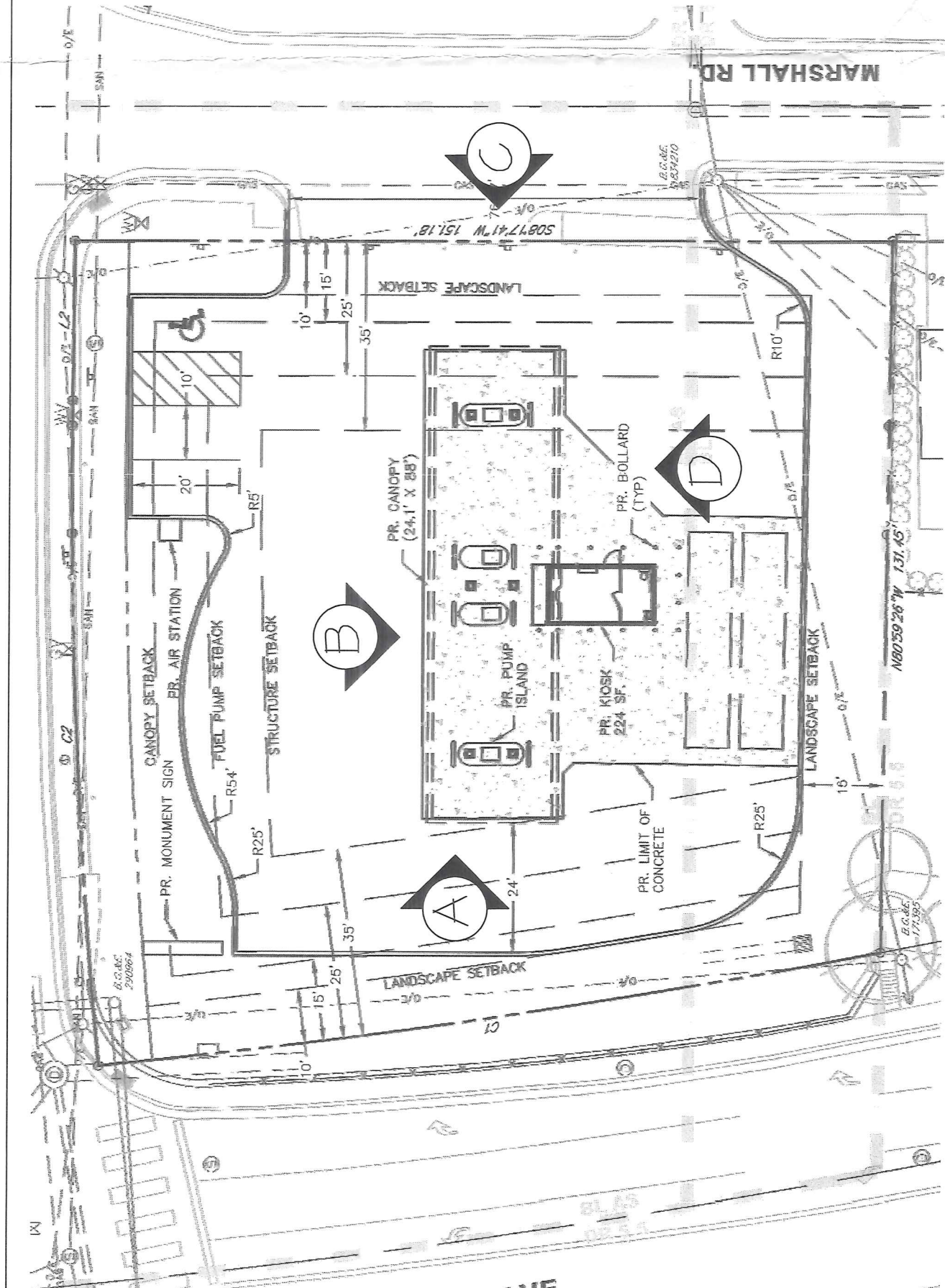
DRAWN BY:	CHECK BY:
SMG	SMG
CADD FILE NO.	JOB NO.
117-31A Z LND	117-31A
DATE:	3-1-17
SCALE:	1" = 20'

SHEET
Z-3

48 South Richmond Avenue
P.O. Box 4404
Pikesville, MD 21208
Phone: (410) 441-5555
Fax: (410) 441-5555
www.FCAF.com



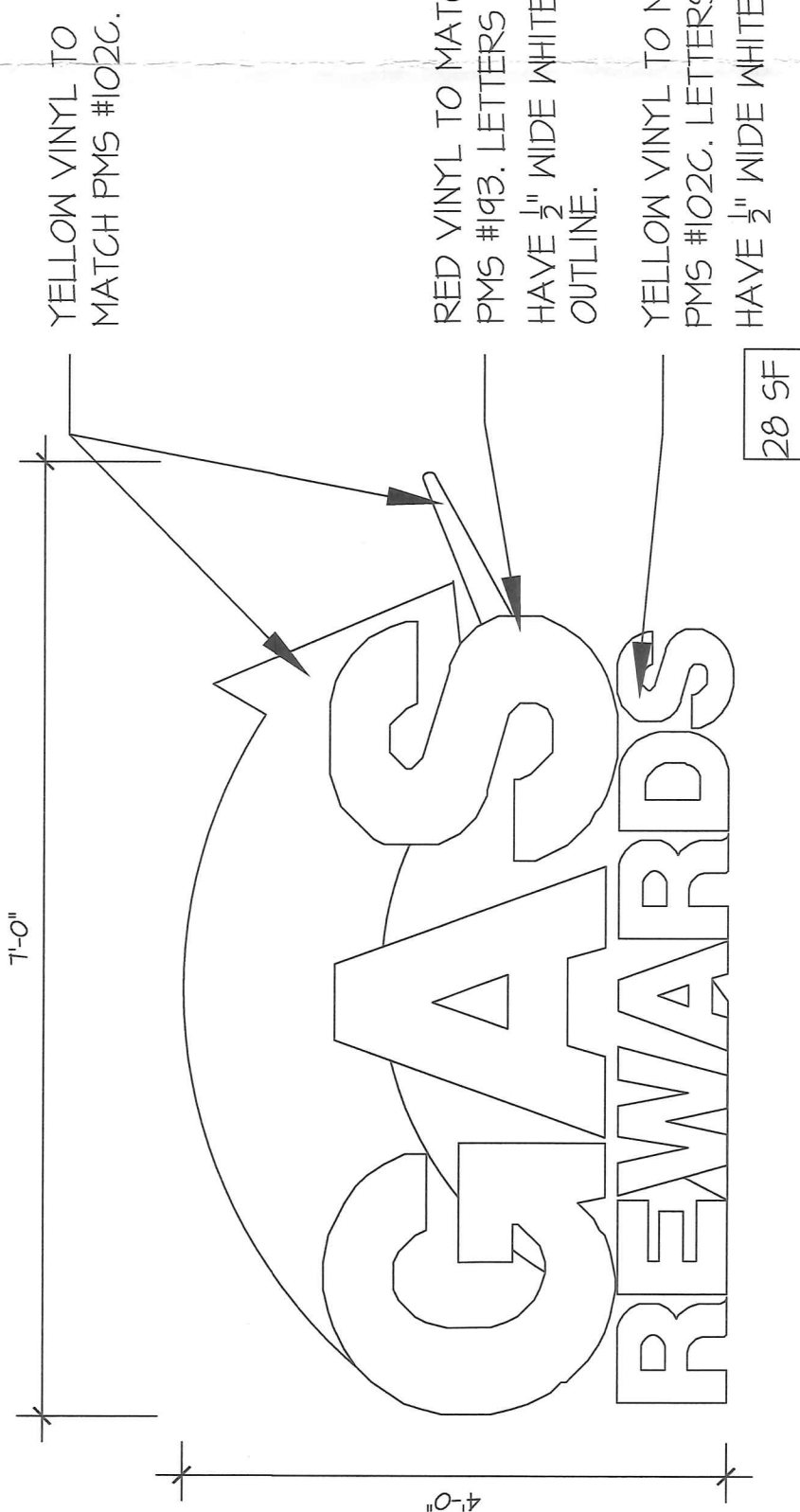
First Capital Engineering
★ CIVIL ENGINEERS ★ MUNICIPAL ENGINEERS ★ ENVIRONMENTAL SCIENTISTS ★
★ LANDSCAPE ARCHITECTS ★ PLANNERS ★ SURVEYORS ★



PARTIAL SITE PLAN

NOT TO SCALE

1
6-1

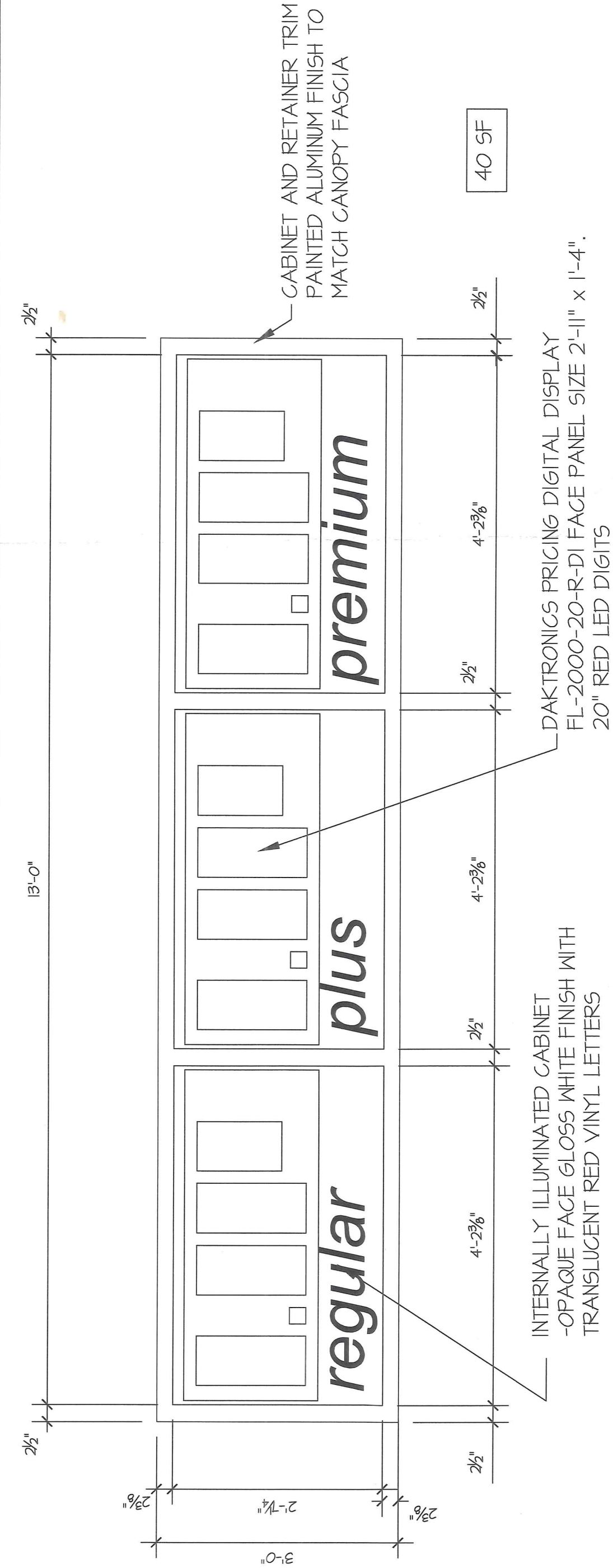


KIOSK VINYL DECAL

3/4" = 1'-0"

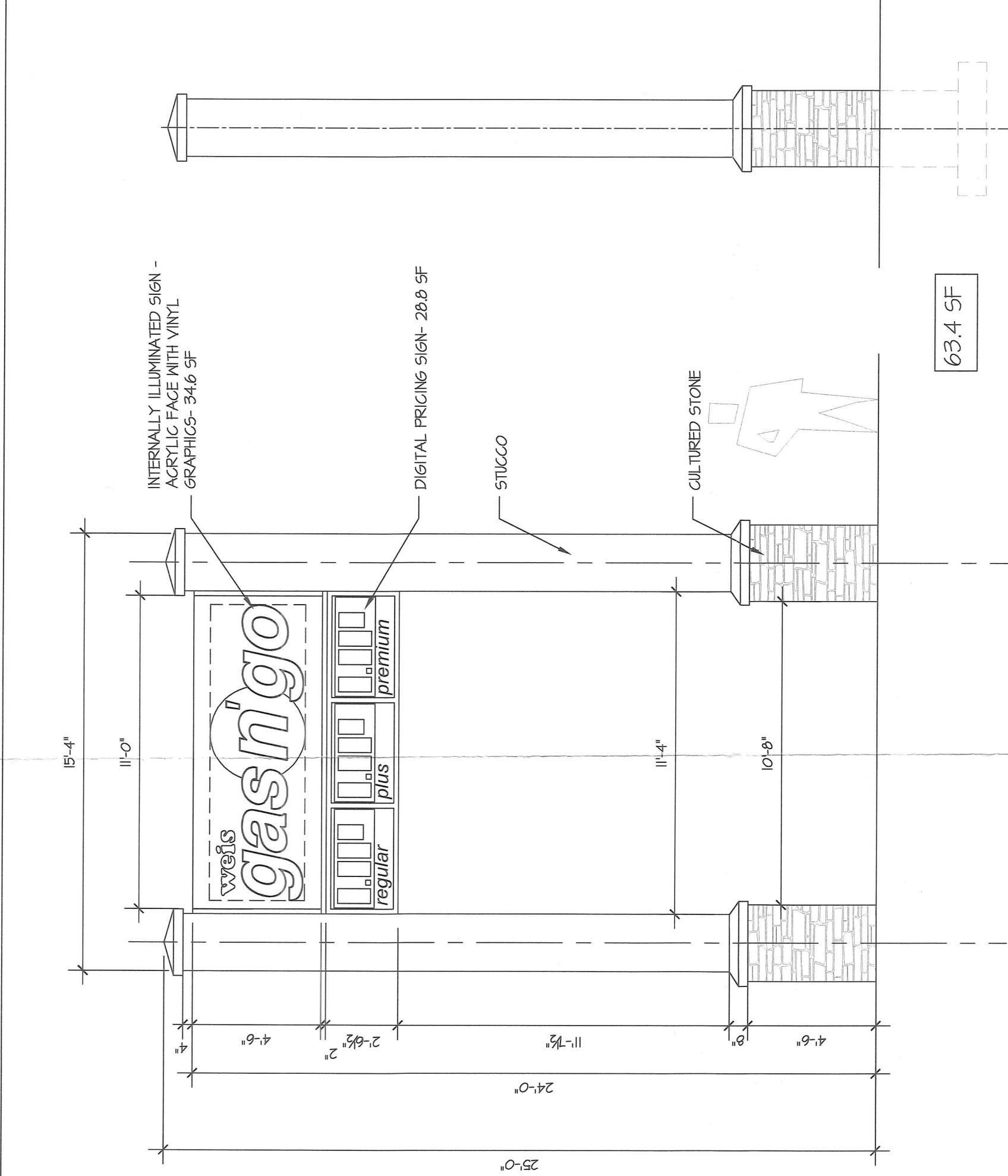
CANOPY GAS PRICE CABINET SIGN ELEVATION

3/4" = 1'-0"



MONUMENT SIGN

1/4" = 1'-0"

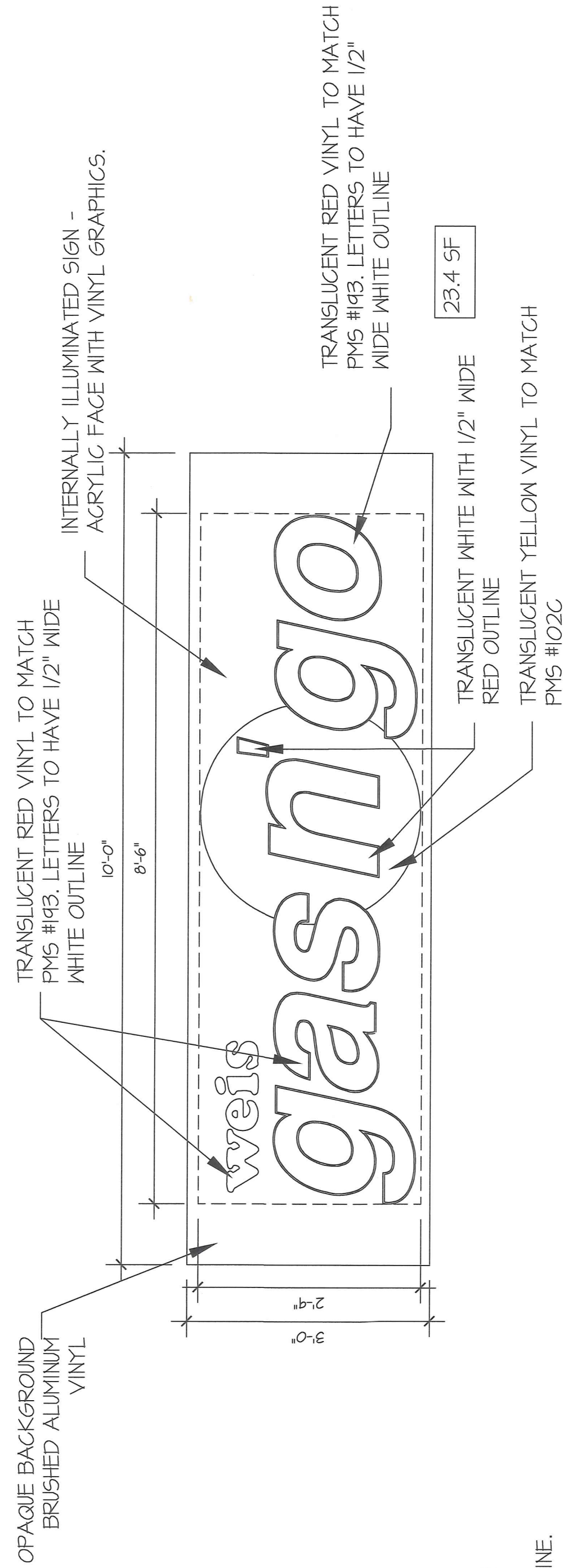


MONUMENT SIGN

1/4" = 1'-0"

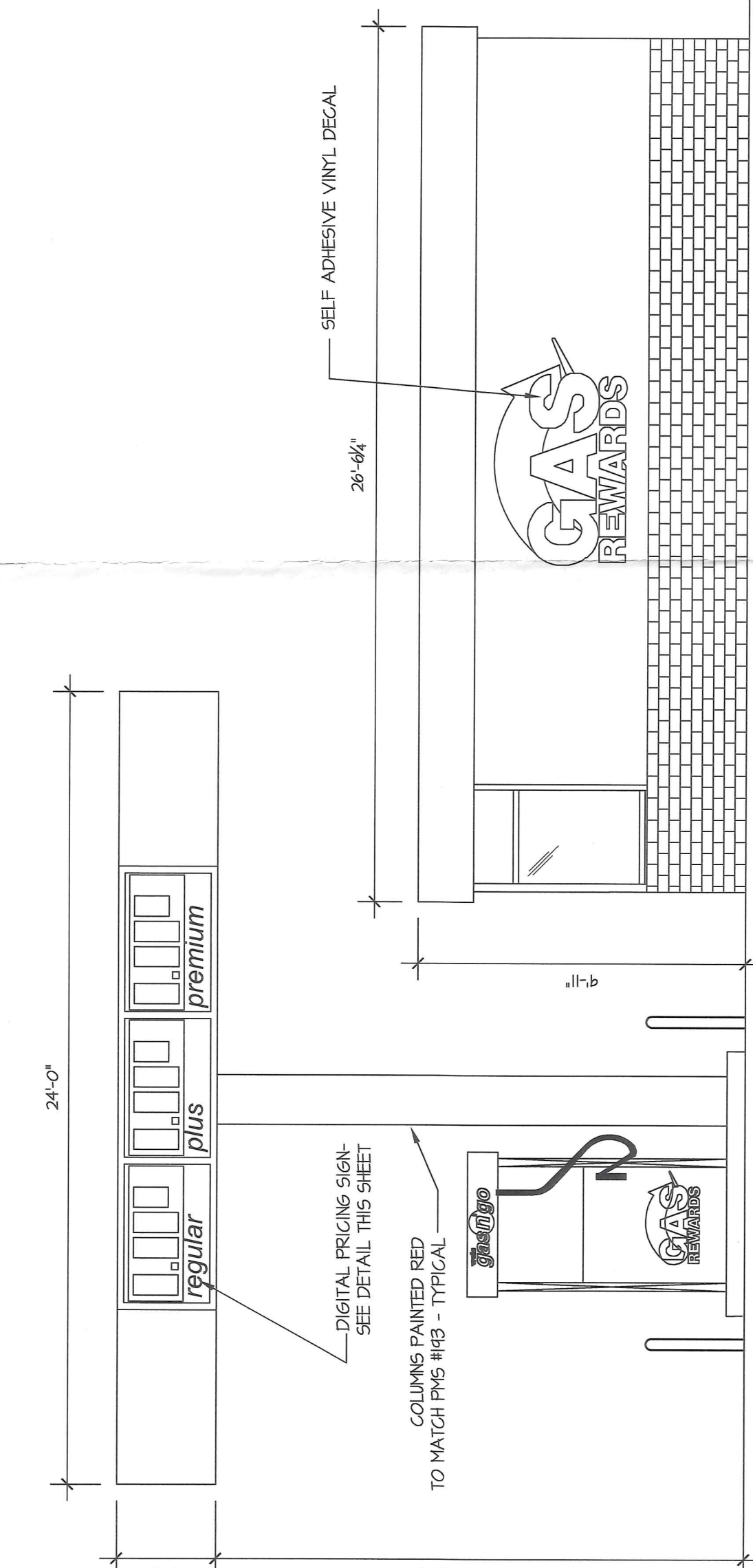
CANOPY ILLUMINATED SIGN

3/4" = 1'-0"



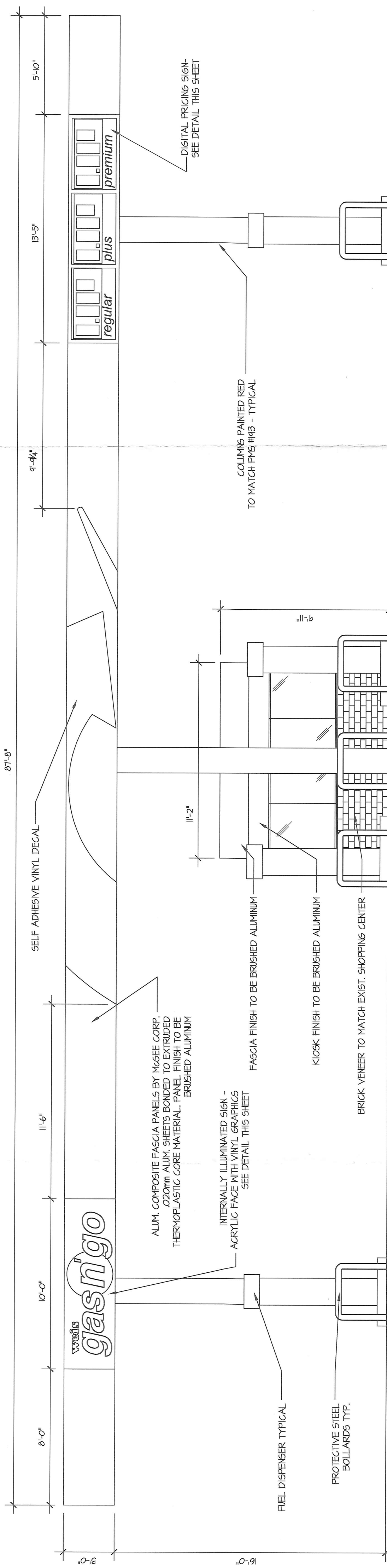
ELEVATION - A

1/4" = 1'-0"



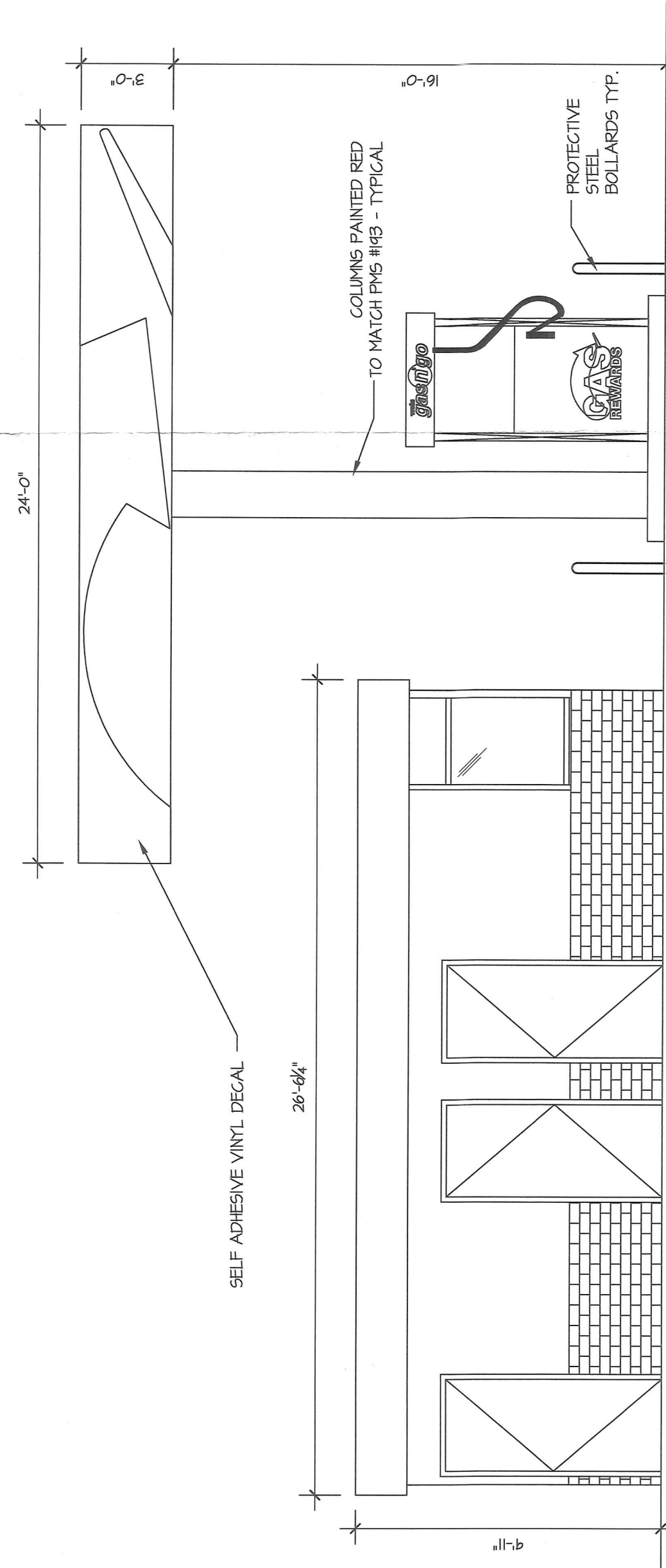
ELEVATION - B

1/4" = 1'-0"



ELEVATION - C

1/4" = 1'-0"



ELEVATION - D

1/4" = 1'-0"

