



For DPZ Office use only:

BA Case No. BA-7660

Date Submitted: 4/5/19

ADMINISTRATIVE APPEAL PETITION TO THE HOWARD COUNTY HEARING AUTHORITY

A person who wishes to appeal a departmental decision must use this petition form. It is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person¹. The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of issuance of the departmental ruling or action.

1. APPEAL REQUEST

BRIEF DESCRIPTION OF RULING OR ACTION FROM WHICH THIS APPEAL IS

TAKEN: PLANNING Board Approval SDP 17-041
Royal Farm Store 186

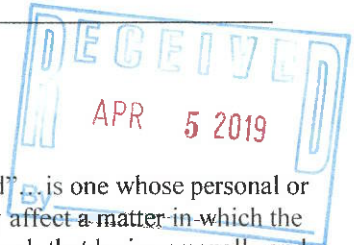
DATE OF RULING OR ACTION: March 7, 2019

BRIEF DESCRIPTION OF ERROR OF FACT, OR LAW, IF ANY, PRESENTED BY
THIS APPEAL: See Supplemental Statement

MANNER IN WHICH THE APPELLANT IS AGGRIEVED BY THE RULING OR
ACTION: See Supplemental Statement

OTHER FACTORS WHICH THE APPELLANT WISHES THE HEARING AUTHORITY
TO CONSIDER: See Supplemental Statement

¹ As a brief explanation of this concept: Generally speaking,....a person "aggrieved" is one whose personal or property rights are adversely affected by the decision...The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally. The Department of Planning and Zoning does not advise persons on whether they may or may not qualify as being aggrieved. Persons intending to file an appeal may want to obtain separate legal advice on this issue because it may have an impact on the validity of the appeal.



2. APPELLANT'S NAME British American Building LLC, and others
TRADING AS (IF APPLICABLE) See Attached
ADDRESS 9577 Berger Rd. Columbia, MD 21046
PHONE NO. (H) 410 952 6856 (W) 410-381-2700
EMAIL beengland@comcast.net

3. COUNSEL FOR APPELLANT N/A
COUNSEL'S ADDRESS _____
COUNSEL'S PHONE NO. _____
EMAIL _____

4. RESPONDENT Two Farms, Inc
RESPONDENT'S ADDRESS 3611 Roland Ave. Baltimore, MD 21211

5. PROPERTY IDENTIFICATION (IF REAL PROPERTY IS INVOLVED)
ADDRESS OF SUBJECT PROPERTY 9585 Snowden River Pkwy
Columbia, MD 21046
TOTAL ACREAGE OF PROPERTY 3.81
PROPERTY LOCATION Columbia EGU Subdivision, Section 2 Area 2 Lot 22
ELECTION DISTRICT 3rd Council ZONING DISTRICT NT
TAX MAP # 42 GRID # 009 PARCEL/LOT # 375

6. APPELLANT'S INTEREST IN SUBJECT PROPERTY
☐ OWNER (Including joint ownership) ☒ OTHER (Describe and give name and address of owner) _____

7. ADDITIONAL MATERIAL, FEES, POSTING, AND ADVERTISING
A) The Appellant must submit **one (1) signed original and nine (9) copies of the signed original**, for a total of **ten (10) copies**, of this petition. If supplementary documents or other materials are included, **ten (10)** complete sets must be submitted.
B) The appellant is advised to consult the Rules of Procedure of the Board of Appeals. In accordance with Section 2.210(b) of that document, an "on the record" appeal requires that within 30 days of filing an administrative appeal, the appellant file a record transcript of the hearing being appealed. In addition, within 15 days of filing the transcript, the appellant must file a Memorandum addressing the points of law upon which the appeal is based.

C) The undersigned agrees in matters involving land use, except in administrative appeals from the issuance of a notice of violation of County laws or regulations, to properly post the property at least thirty (30) days immediately prior to the hearing and to maintain the posters as required and submit an affidavit of posting at, or before the time of the hearing. If the Appellant is not the owner or does not have a beneficial interest in the subject property, the posting of the property is not required; however, the Appellant must send copies of the petition and notification of the public hearing to the property owner and the adjoining property owners in accordance with Section 2.203(e) of the Rules of Procedure of the Board of Appeals.

D) The undersigned also agrees in matters involving land use, except in administrative appeals from the issuance of a notice of violation of County laws or regulations, to insert legal notices, to be published one (1) time in at least two (2) newspapers of general circulation in Howard County, as prepared and approved by the Department of Planning and Zoning, within at least thirty (30) days prior to the hearing, and to pay for such advertising costs; and further agrees to submit (2) approved certificates of the text and publication date(s) of the advertisement at or before the time of the hearing.

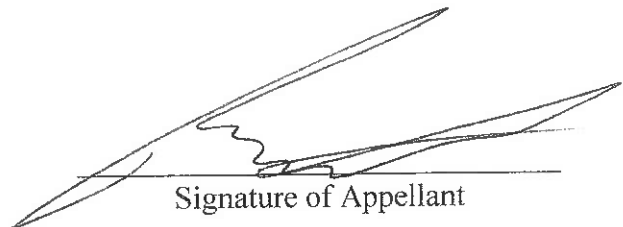
E) The undersigned also agrees to furnish such additional plats, reports, plans, or other materials as may be required by the Department of Planning and Zoning and/or the Hearing Authority in connection with the filing of this petition.
The undersigned agrees to pay all costs in accordance with the current schedule of fees.

8. SIGNATURES

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct.

The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

N/A
Signature of Attorney


Signature of Appellant

For DPZ office use only: (Filing fee is \$250.00 plus \$25.00 per poster)

Hearing Fee: \$ _____

Poster Fee: \$ _____

TOTAL: \$ _____

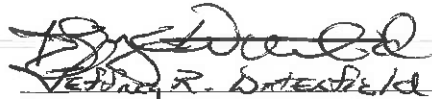
Receipt No. _____

County Website: howardcountymd.gov

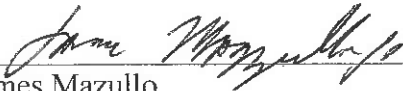
(Make check payable to "Director of Finance")

SDP 17-041 Appeal

Names and Addresses of Additional Appellants and their Signatures



Robert Bell, 9620 Gerwig Lane LLC
9620 Gerwig Lane
Columbia, MD 21046
410 995




James Mazullo
Efficient Properties LLC
9620 Gerwig Lane
Columbia, MD 21046

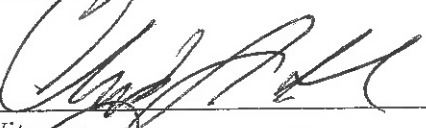
Affidavit made pursuant to the pertinent provisions of Title 22 of the Howard County Code as amended.

THE UNDERSIGNED DOES HEREBY DECLARE THAT NO OFFICER OR EMPLOYEE OF HOWARD COUNTY, WHETHER ELECTED OR APPOINTED, HAS RECEIVED PRIOR HERETO OR WILL RECEIVE SUBSEQUENT HERETO, ANY MONETARY OR MATERIAL CONSIDERATION, ANY SERVICE OR THING OF VALUE, DIRECTLY OR INDIRECTLY, UPON MORE FAVORABLE TERMS THAN THOSE GRANTED TO THE PUBLIC GENERALLY IN CONNECTION WITH THE SUBMISSION, PROCESSING, ISSUANCE, GRANT OR AWARD OF THE WITHIN APPLICATION OR PETITION IN BA CASE # _____ FOR A ZONING CHANGE AS REQUESTED.


I, WE, DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE AFOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY, OUR, KNOWLEDGE, INFORMATION AND BELIEF.



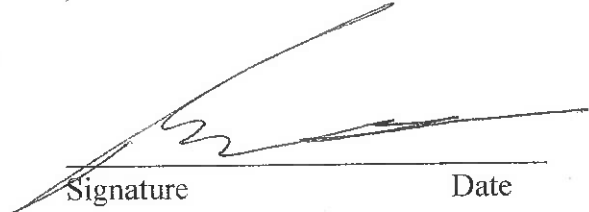
Witness



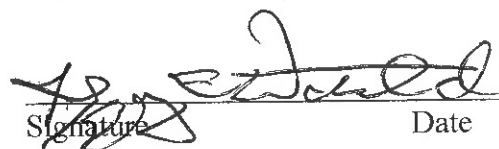
Witness



Witness



Signature Date

 7/3/19

Signature Date



Signature Date

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

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**PLEASE READ CAREFULLY
DATA TO ACCOMPANY PETITION**

Drawings: Where a parcel of land and/or building(s) as defined in the Zoning Regulations is involved in that which is being appealed, petition forms must be accompanied by **(10) copies of required drawings** showing the following information:

- ☒ (a) Courses and distances of outline boundary lines and the size of the property
- ☒ (b) North arrow
- ☒ (c) Existing zoning of subject property and adjoining property
- ☒ (d) Location, extent, boundary lines and area of any current use and proposed change in use
- ☒ (e) Any existing or proposed building(s), structures, signs, points of access, natural features, landscaping, parking, and other objects and/or uses on subject property which may be relevant to the petition
- ☒ (f) Same as (e) above, if any, of adjoining property which may be required in the proper examination of the petition
- ☒ (g) Location of subject property in relation, by approximate dimension, to nearest intersection of two public roads
- ☒ (h) Ownership of effected roads
- ☒ (i) Election District in which the subject property is located
- ☒ (j) Tax Map number on which the subject property is located
- ☒ (k) Name and local community in which the subject property is located or name of nearby community
- ☒ (l) Name, mailing address, telephone number (and e-mail address, if any) of the appellant
- ☒ (m) Name, mailing address, telephone number (and e-mail address, if any) of attorney, if any
- ☒ (n) Name and mailing address of property owner
- ☒ (o) Any other information as may be necessary for full and proper consideration of the appeal.

** Information is in SDP-17-091, Subject of the appeal and TSR attached*

BA Case # _____

PETITIONER: British American Building LLC

ADDRESS: See Attached

Manner in which Appellants are Aggrieved

A showing of aggrievement is not applicable for de novo appeals of Planning Board decisions rendered in a meeting without a record. One of the primary purposes of the Hearing Examiner in administrative appeals is to establish the record. This is not an appeal of an “administrative agency” decision. The Hearing Examiner is an arm of the Board of Appeals. Under the Howard County code, appeals of Hearing Examiner decisions to the Board of Appeals, the Board hears cases de novo, as if the Hearing Examiner’s hearing had never occurred.

Nevertheless, the appellants are the fee owners of property adjoining and confronting the subject property. The appellant’s property rights are adversely affected by the decision that would allow a change in allowing retail gas stations and convenience stores that will irreparably alter the character of this industrial zoned area. It will create conflicts and congestion with negative implications to the value of their property and the conduct of their business.

Under a long history of Appeals cases in Howard County, the appellant enjoys presumptive standing. Accordingly, the burden is on any party (or the Board) to show by a preponderance of the evidence that the appellant is not specially aggrieved.

This issue was adjudicated in 2007 when The Board of Appeals was overturned by the Court of Special Appeals in *Broida v. Renaissance Centro Columbia, LLC*. In this case, the Board of Appeals ruled 2-2 that Broida did not have standing. The CoSA ruled he had presumptive standing, by virtue of being an adjoining property owner. Also, they ruled that the Board had failed to shift the burden of proof since Broida had what they called a rebuttable presumption of standing. Furthermore, they ruled that the 2-2 vote for denial was not effective and a tie gave Broida standing.

The CoSA included this excerpt from a NY State decision *Sun Brite Car Wash LLC* that is instructive here:

‘Standing principles, which are in the end matters of policy, should not be heavy-handed; in zoning litigation in particular, it is desirable that land use disputes be resolved on their own merits rather than by preclusive, restrictive standing rules (see, Matter of Douglaston Civic Assn. v Galvin, supra, at 6). Because the welfare of the entire community is involved when enforcement of a zoning law is at stake, there is much to be said for permitting judicial review at the request of any citizen, resident or taxpayer; this idea finds support in the provision for public notice of a hearing. But we also recognize that permitting everyone to seek review could work against the welfare of the community by proliferating litigation, especially at the instance of special interest groups, and by unduly delaying final dispositions.

While something more than the interest of the public at large is required to entitle a person to seek judicial review — the petitioning party must have a legally cognizable interest that is or will be

affected by the zoning determination — proof of special damage or in-fact injury is not required in every instance to establish that the value or enjoyment of one's property is adversely affected. The fact that a person received, or would be entitled to receive, mandatory notice of an administrative hearing because it owns property adjacent or very close to the property in issue gives rise to a presumption of standing in a zoning case. But even in the absence of such notice it is reasonable to assume that, when the use is changed, a person with property located in the immediate vicinity of the subject property will be adversely affected in a way different from the community at large; loss of value of individual property may be presumed from depreciation of the character of the immediate neighborhood. Thus, an allegation of close proximity alone may give rise to an inference of damage or injury that enables a nearby owner to challenge a zoning board decision without proof of actual injury.

Conclusion:

This is a change in use and it reasonable to assume that the appellants are differently affected than the community at large. If challenged, the burden falls to the challenger to show otherwise. There has been longstanding abuse in Howard County of obstructing property owners with legitimate objections from having their right to a due process. The Court of Special Appeals faulted the Board of Appeals for their errors in the Broida case. They sent it back the Board of Appeals, but the developer abandoned their plans so the Board never corrected the error of their ways. Unfortunately, the Board failed to resolve this profound question of Howard County Citizen's rights. This is the perfect opportunity for the Hearing Examiner to restore public confidence and right these egregious wrongs.



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

March 7, 2019

Two Farms, Inc.
3611 Roland Avenue
Baltimore, MD 21211

RE: SDP-17-041 EGU Subdivision
Royal Farms 186 & Canton Car Wash

Dear Sirs:

The Howard County Planning Board, at its regularly scheduled meeting held on March 7, 2019, considered the above referenced Site Development Plan consisting of one lots on a total of 3.81 ± acres of land zoned NT-Employment Center - Industrial for the construction of a gasoline service station, car wash, convenience store, and carry out restaurant.

Based upon the testimony presented, the Planning Board:

- ☐ **Approved the plan**
- ☒ **Approved the plan with modifications** (2)
- ☐ **Denied the plan**

If you have any questions, please contact Donna Despres at (410) 313-3429 or email at ddespres@howardcountymd.gov.


Chairperson
Howard County Planning Board

cc: Research
DED
Morris & Ritchie Associates, Inc.
Snowden Car Wash, LLC

1. The applicant work with DP2 to strengthen landscaping and screening to buffer the use from Snowden River Parkway.
2. The applicant consider additional pedestrian crossings and sidewalk extensions on Minstrel way.



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Courthouse Drive ♦ Ellicott City, Maryland 21043 ♦ 410-313-2350

Valdis Lazdins, Director

www.co.ho.md.us

FAX 410-313-3467

TDD 410-313-2323

TECHNICAL STAFF REPORT

EGU Subdivision Royal Farms Store 186 and Canton Carwash

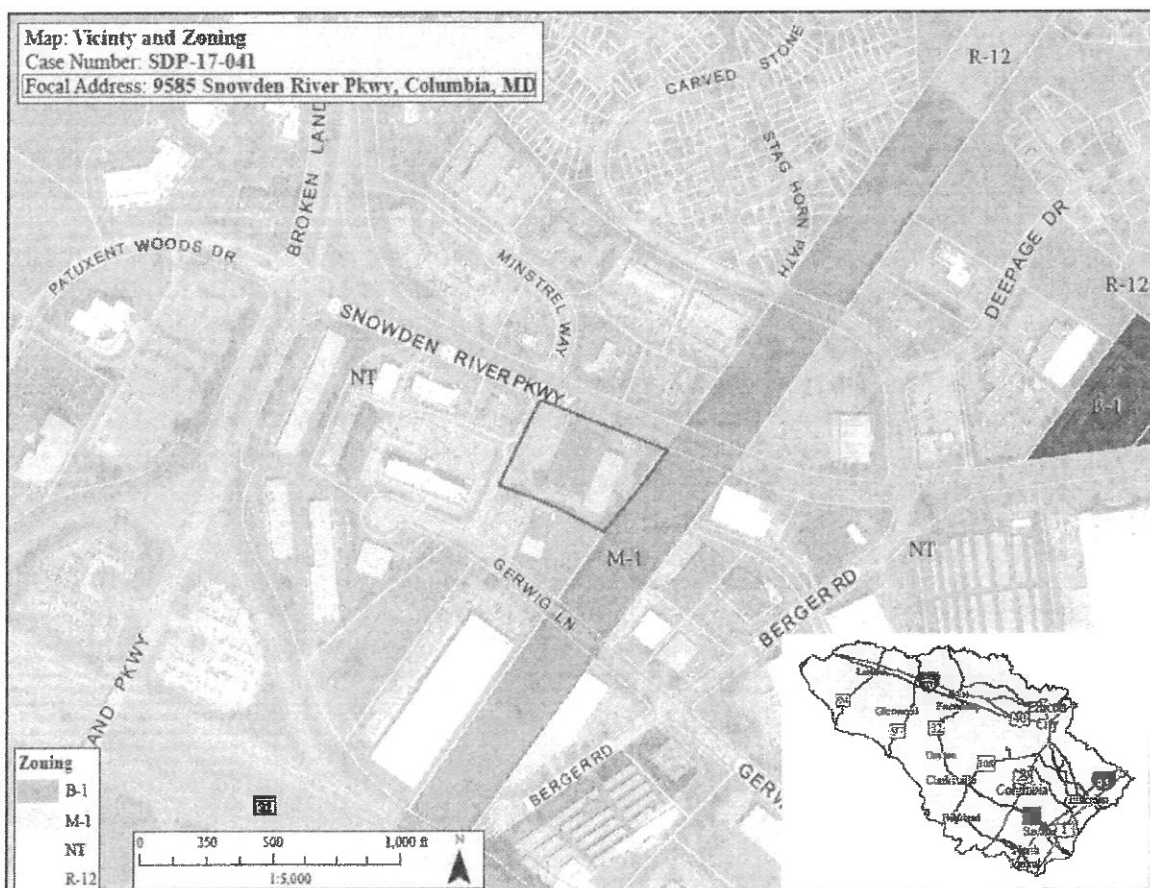
Planning Board Meeting March 7, 2019

File No. / Petitioner: Site Development Plan SDP-17-041, Two Farms, Inc.

Subject: SDP-17-041 EGU Subdivision, Section 2, Area 2, Lot 22
Royal Farms Store 186 & Canton Carwash

Request: For the Planning Board to approve SDP-17-041, consisting of a gasoline station, convenience store, car wash, and associated site improvements; including: two one-story commercial buildings (convenience store and car wash), gas pumps and an overhead canopy, detailing shelter, pay shelter, attendant's booth, parking facilities, landscaping and stormwater management facilities. The 3.81 acre property is zoned New Town – Employment Center – Industrial.

DPZ Recommendation: On May 3, 2018, after one year of plan review by the Subdivision Review Agencies (SRC), the Department of Planning and Zoning (DPZ) determined SDP-17-041 complies with County and State requirements and now recommends **approval**, subject to Planning Board conditions of approval.



Location:

The property is at the southeast corner of Snowden River Parkway and Minstrel Way, as shown on Tax Map 42, Grid 9, Parcel 375, EGU Subdivision, Section 2, Area 2, Lot 22, Sixth Election District, Howard County, Maryland.

Site Description:

The site is accessed from Minstrel Way, a public local road, and contains a warehouse/office building and parking. It is mostly paved and does not contain forests or environmental resources.

Vicinal Properties:

The site is in Columbia EGU Subdivision, Section 2, Area 2, Lot 22, and is surrounded by:

North: Snowden River Parkway, a public intermediate arterial road.

East: 250-foot wide Baltimore Gas and Electric Company right-of-way with overhead power lines.

South: Warehouse/office building on Lot 23, Columbia EGU Subdivision, Section 2, Area 2.

West: Minstrel Way, a public local road providing site access and across the street is a bank and hotel on Lots 24 and 26, Parcel 7 & 8, EGU Subdivision, Section 2, Area 2, Plat No. 19555. The lots are also known as Land Unit 1 and 5, Parcel 529, Condominium Plat No. 20305.

General Comments:

A. Regulatory Compliance: This project is subject to Section 125.0.G.1 of the Howard County Zoning Regulations (effective October 6, 2013), Final Development Plan FDP-55 development criteria, and the amended Fifth Edition Howard County Subdivision and Land Development Regulations (approved April 8, 2009).

B. DPZ Plan History:

Columbia E.G.U. Subdivision Section 2, Area 1 – recorded April 18, 1968, Plat Book 13, Folio 97.

FDP-55 - recorded June 2, 1969, Plat Book 16, Folio 118-121.

FDP-55-A – Denied by the Planning Board September 28, 2017, to amend FDP criteria to prohibit retail fuel sales.

F-69-026, E.G.U. Subdivision, Section 2, Area 2 – Final Plat recorded June 2, 1969, Plat Book 17, Folio 35-37 – a re-subdivision of Section 2, Area 1.

F-73-45C, Columbia EGU Subdivision Section 2, Area 2– Resubdivision of Lots 6 & 9 into Lots 6A & 9A. Recorded as Plat Book 25, Folio 86, August 10, 1973.

F-01-051, Columbia EGU Resubdivision Section 2, Area 2 Lots 22 and 23 – A resubdivision of Lots 6A & 9A to revise a common division line between Lots 6A & 9A and a vehicular ingress and egress note. Recorded October 16, 2000, Plat #14470.

SDP-71-070, Warehouse and Office – Site Development Plan approved by the Planning Board May 19, 1971; signed by DPZ November 1971.

SDP-72-078c, Proposed Office and Shop for Grinnell – Planning Board approved the Site Development Plan April 19, 1972; signed by DPZ April 26, 1972.

SDP-14-013, Royal Farms Store 186 & Canton Carwash – Site Development Plan denied by the Planning Board, October 8, 2015. Proposed motor vehicle fueling station, convenience store and carwash with a proposed right-in/right-out access to Snowden River Parkway. Related files:

ECP-13-002, Environmental Concept Plan – approved by DPZ September 5, 2012.

F-14-018, EGU Subdivision Section 2, Area 2, Lot 22 – Revision Plat to dedicate land to the County to widen Snowden River Parkway - adding private and public utility easements, and creating a break in the Snowden River Parkway access restriction. Approved by DPZ February 14, 2014, subject to Planning Board approval of SDP-14-013.

WP-14-080 Alternative Compliance Request – Requested relief from Section 16.119(f)(1) of the Subdivision Regulations to allow vehicular access to Snowden River Parkway. Approved by DPZ February 11, 2014, subject to Planning Board approval of SDP-14-013.

WP-15-058 Alternative Compliance Request – Approved December 15, 2014, - extend approval of F-14-018 and the deadline to submit final plat originals to August 13, 2015.

SDP-17-041, EGU Subdivision Royal Farms Store 186 & Canton Car Wash – The current plan - submitted May 5, 2017, which proposes a motor vehicle fueling station, convenience store and carwash with access from Minstrel Way. After a one year review by SRC agencies to ensure that the plan complies with County and State requirements, DPZ determined on May 3, 2018, that the plan was approvable, subject to approval by the Planning Board. Related files:

WP-18-017 Alternative Compliance Request – Approved by DPZ September 7, 2017, to extend the deadline to submit revised plans to October 22, 2017.

WP-18-047 Alternative Compliance Request – Approved by DPZ October 26, 2017, to extend the deadline to submit revised plans from October 22, 2017, to December 25, 2017.

- C. **Proposed Development Plan/Site Improvements:** SDP-17-041 proposes two, one-story commercial buildings (convenience store and car wash), gas pumps and an overhead canopy, detailing shelter, pay shelter, attendant's booth, parking facilities and associated site improvements. The buildings total 13,315 square feet.
- D. **Vehicular Access:** Access is proposed from Minstrel Way, a public local road, in compliance with Subdivision and Land Development Regulations Section 16.119(f)(1) - "*Access Restrictions: (1) Where a proposed subdivision involves frontage on an arterial road, ..., the street layout should provide vehicular access to the subdivision by a lower classification public road...*" An existing entrance on Minstrel Way, constructed under SDP-72-78, will be used.
- E. **Stormwater Management:** Environmental site design (bioretention and micro-bioretention facilities) will be used for stormwater management practices.
- F. **Environmental considerations:** The site contains no environmental resources.
- G. **Landscaping:** The landscape plan complies with Section 16.124 of the Howard County Code and the Landscape Manual. Landscaping meets or exceeds requirements except for the eastern perimeter of the site. Landscaping Alternative Compliance, as outlined in the Landscape Manual, was approved for this area to avoid conflicts with utilities and easements. Shrubs will be substituted for trees at a 10:1 ratio and relocated to other property borders.
- H. **Forest Conservation:** The plan is exempt from forest conservation requirements in accordance with Subtitle 12, Section 16.1202(b)(1)(iv) of the Howard County Code – "*Exemptions... A planned unit development which has preliminary development plan approval and 50 percent or more of the land is recorded and substantially developed before December 31, 1992.*"
- I. **Adequate Public Facilities:** The traffic study for this project, dated October 18, 2017, was approved by DPZ, Development Engineering Division January 9, 2018.
- J. **Final Development Plan Analysis:** SDP-17-041 complies with all FDP-55 requirements:
 - 1. **Setback Requirements (Criterion 6):** A structure or parking lot shall not be located within 25 feet of a public street, road, or highway right-of-way. The fuel canopy, convenience store, and car wash are located 49 feet, 163 feet, and 123 feet respectively, from the Snowden River Parkway right-of-way,

and 64 feet, 98 feet, and 281 feet respectively, from the Minstrel Way right-of-way. The detailing shelter, pay shelter and attendant's booth are all located internal to the site. Parking areas are located 25 feet or more from the Snowden River Parkway and Minstrel Way rights-of-way. Consequently, the plan complies with Criterion 6 with respect to structure and parking setbacks.

2. **Permitted Land Uses (Criterion 7):** All uses in the M-1 zoning district are permitted, which includes car wash facilities. Uses that are ancillary to, or compatible with permitted industrial uses are also permitted including, but not limited to: restaurants, lunchrooms and similar establishments serving food and/or beverages (item a) and gasoline service stations (item d). Therefore, the convenience store and carryout uses, which are ancillary to or compatible with both the gasoline service station and restaurant, are permitted and comply with Criterion 7.
3. **Height Requirements (Criterion 8):** The maximum building height is 50 feet. The mean height of the convenience store is 24'-9" and the car wash is 23'-4". The detailing shelter, pay shelter and attendant's booth are all less than 20' tall; therefore, the plan complies with Criterion 8 height requirements.
4. **Parking Requirements (Criterion 9):** For industrial uses, one parking space is required for each two employees. For commercial uses, five parking spaces are required per 1,000 square feet of building area. Based on the below, the plan complies with Criterion 9.
 - a. The FDP considers the car wash an industrial use; however, the more restrictive zoning regulations apply and require one space per employee and one space per customer. Parking is based on 15 employees per shift and up to 23 customers, for a total of 38 required parking spaces and 40 spaces are provided. The Howard County Design Manual requires 15 stacking spaces for customers queued up for service and the plan provides 25 spaces.
 - b. For the gas station/convenience store, parking is calculated under the commercial use criterion of 5 spaces per 1000 square feet of building area. In this case, the FDP and the zoning requirements are consistent. The proposed building totals 4,649 square feet and includes the convenience store, the carry out restaurant, restrooms and register area. The required parking is 24 spaces and the plan provides 65 spaces.
5. **Lot Coverage (Criterion 12):** No more than 50 percent of a lot may be covered by buildings or major structures. The lot is 3.69 acres and 0.36 acre (9.75%) is covered by buildings and major structures. Consequently, the plan complies with Criterion 12.

K. SRC Action

In a letter dated May 3, 2018, the Division of Land Development notified the petitioner that the site development plan may be approved, subject to Planning Board approval.

DPZ Recommendation: Based upon the above findings, the Department of Planning and Zoning recommends **Approval** of SDP-17-041, subject to any conditions by the Planning Board.


Valdis Lazdins, Director
Department of Planning and Zoning

This file is available for review by appointment at the Department of Planning and Zoning's public service counter, Monday through Thursday, 8:00 a.m. to 5:00 p.m. and Friday, 8:00 a.m. to 3:00 p.m.

Staff Report Prepared by: Donna Despres
VL/DD/JMF/KS

SUPPLEMENTAL STATEMENT

Page 1 of 8

SDP 17-041 APPEAL

This supplemental statement articulates nine (9) counts as the basis of the appeal of SDP 17-041 heard by the Planning Board in a meeting March 7, 2019. The undersigned are filing this appeal without counsel. Nevertheless, large parts of testimony entered by counsel at the meeting are incorporated herein.

We have undertaken this appeal to preserve our right to appeal. Because of the Board of Appeals and Hearing Examiner longstanding and the abusive practice of dismissing appellants for lack of standing, even adjoining property owners such as in this case, we concluded that it was imprudent to waste time and money on legal counsel at this time. Of course, we reserve the right to retain counsel should this appeal be heard on the merits, or for any other reason.

1. **The Decision and Order dated March 7, 2019, as rendered is in violation of Howard County Code §16.900(j)(2)(i),** whereby it states that in its “decision making process, the planning board shall make decisions with respect to matters submitted to it pursuant to the laws, rules, regulations, and ordinances of the county.” Decisions and Orders by the Planning Board are governed by The Howard County Administrative Procedure Act, § 2.119 that in turn sets forth the requirements for agency Decisions and Orders:
 - (a) *Voting Requirements. The same members of the Agency who were present at the hearing shall make the decision on the case...*
 - (b) *Content. Decisions of an Agency, except rulings on preliminary matters or on motions or objections, shall be in writing, based on evidence of record. The decisions shall contain findings of facts, conclusions of law, and an appropriate written order or consent decree.*
 - (d) *Basis of Decisions. The decisions of the Agency shall be based upon and supported by a preponderance of the evidence of record, except as otherwise provided by law or procedural rule.*
 - (e) *Notification of Decision. The decisions of the Agency shall be issued and sent simultaneously to the parties of record.*

In other words, every decision and order rendered by an agency, including the Planning Board, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact as well as the reasons or basis therefor presented on the record, together with the appropriate rule, order, sanction, relief or denial thereof. In arriving at its decision and order, the vote of each member, together with his reasons therefor, shall be taken and recorded as part of the record of proceedings. A copy of the agency's decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or to

his attorney of record. A form letter with illegibly scrawled suggestions falls far short of satisfying these requirements.

The conduct of the meeting was deficient because the Planning Board failed to discharge their responsibilities under §16.900(j)(2)(i) by not considering the testimony of opposition parties to the case, or at best gave it cursory consideration, including competent on point testimony by professional engineers, attorneys, and architects as well as adjoining and confronting property owners including the undersigned. As to the sufficiency the Board accorded the testimony, we'll never know as it was not memorialized in a proper decision and order.

2. **The Planning Board defied the persuasive authority that bears directly on this case under the Hearing Examiner's Decision** and Order on BA 753 and 754 wherein the opponents appealed the "approvable letter" rendered by the Department of Planning and Zoning in this case for the express purpose of preserving their rights to raise objections that SDP 17-41 violates numerous County ordinances and the Zoning Regulations. In that D&O, the Hearing Examiner held that the proper forum to raise these issues was before the Planning Board. We were denied that opportunity. I would add, that Two Farms and the Department of Planning and Zoning were represented by counsel in this case and declined to appeal this decision.
3. **Failure to Notice Village Boards.** We understand that Two Farms failed to provide electronic notice to the Village Boards as required under section 125.G.1 of the Zoning Regulations. You can appreciate how failing to provide these notices would deny them the opportunity to be heard. Formal notice is the trigger to initiate Board consideration and action.
4. **The grandfathering clause in Bill No. 46-2016 is an unconstitutional "special law."** Council Bill 46-2016, effective on October 5, 2016, among other things, added HCZR 125.0.A.11, which provides in pertinent part that

if the criteria in a recorded Final Development Plan identifies a gasoline service station or Motor Vehicle Fueling Facility as a specific permitted use, a newly proposed Motor Vehicle Fueling Facility is permitted only upon approval by the Planning Board after a public hearing where the petitioner establishes that the general standards and specific criteria in Section 131.0 which are applicable to a conditional use for a Motor Vehicle Fueling Facility are met. To the extent there is any conflict between the criteria in the recorded Final Development Plan and the general standards and specific criteria for a Conditional Use for a Motor Vehicle Fueling Facility in Section 131.0, the more restrictive provision shall apply.

HCZR §125.0.A.11. However, Bill 46-2016 also contained a “grandfathering provision” which provides, in pertinent part, that the provisions of subsection 125.0.A.11 (and other enumerated provisions not pertinent here), “shall not apply to a **property** for which any Conditional Use application for a gasoline service station was filed or for which an site development plan for a gasoline service station was submitted prior to June 27, 2016.” Amendment 3 to CB 46-2016 (emphasis added).

Thus, the grandfathering provision purports to exempt *in perpetuity* any *property* for which a site development plan for a gasoline station was filed prior to June 27, 2016 from the conditional use provisions in Section 131.0. While it may have been permissible to enact a grandfathering provision that exempted any *pending application* for a site development plan, the fact that the provision exempts the *property itself* renders the grandfathering provision in Bill 46-2016 invalid. Here, the property in question is arbitrarily receiving more favorable treatment than other properties in the same zoning district. As a result, SDP 17-041 is to be considered in the same context as if the law never passed, meaning that the Howard County Policy Concerning Final Development Plan Phase Criteria Adopted by Planning Board: 1-17-79 would be applicable to the project. In accordance with that policy, which is described in greater detail in paragraph number 4 below, the Board must apply the conditional use criteria to the project.

5. **The grandfathering clause in Bill No. 46-2016 amounts to spot zoning and violates the uniformity requirement for zoning laws.** By exempting the property itself as opposed to any pending application for a site development plan, Bill 46-2016 has effectively rezoned the subject property into a different class from the surrounding properties in the same zoning district (which are not exempt from the conditional use provisions).

Based upon the foregoing, Bill No. 46-2016 is invalid because it violates the uniformity requirement applicable to zoning laws. As a result, as noted above and in more detail in paragraph 7 below, the Howard County Policy Concerning Final Development Plan Phase Criteria Adopted by Planning Board: 1-17-79 would be applicable to the project, requiring the Planning Board to apply the conditional use criteria to the project.

6. **The failure by the Planning Board to apply the conditional use criteria in HCZR Section 131 to this project renders the delegation of zoning authority by the County Council to the Planning Board unlawful.** The Howard County Council is the municipal legislative body in Howard County that was delegated the state police power over zoning. *See*, Md. Land Use Code Ann. §4-102 (2012). The zoning for the subject property was created by Final Development Plan Phase Fifty Five (FDP 55), approved by the Planning Board in 1969. The creation of FDP 55 was a result of the delegation of zoning authority by the County Council to an administrative body (i.e., the Planning Board). The authority for the Planning Board to approve final development plans is contained in HCZR §125. The zoning of property in Howard County through the FDP process in Section 125 amounts to the creation of “floating” zones (as opposed to Euclidean zoning). Thus, the County Council has sub-delegated its zoning power to the Planning Board in connection with the creation of floating (New Town District) zones.

In order for a delegation by the County Council of the state police power over zoning to be lawful, there must be **definite and specific standards** set forth by the legislative body (i.e., the County Council) that protect the adjoining and nearby property owners from interference and injury. Russell R. Reno, *Non-Euclidean Zoning: the Use of the Floating Zone*, 23 Md.L.Rev. 105 (1963). Professor Reno refers to the case of *Huff v. Board of Zoning Appeals from Baltimore County*, 241 Md. 48 (1957). In *Huff*, the Court considered whether the delegation of legislative authority to a Planning Commission to approve applications for floating manufacturing zones was lawful. The court drew the analogy for a special exception, and found that since there were definite and specific standards to protect the adjoining and nearby property owners from interference and injury, the law was valid. Section 131 of the HCZR addresses conditional uses for motor fuel facilities in Howard County. HCZR §131.002 addresses motor vehicle fueling facilities, and it includes the standards to protect adjoining and nearby properties. Among other more stringent requirements, the use cannot adversely affect the general welfare of the neighborhood or area where the motor fuel facility is proposed. HCZR § 131.002a.

Here, the subject property is being exempted from the conditional use standards in Section 131. When those standards are stripped away, the Planning Board is left with no other specific criteria or standards that protect the adjoining and nearby property owners from interference and injury to apply. In short, there is nothing in the site development plan regulations pertaining to the New Town zone (and specifically in HCZR §125.0G&H) that addresses the protection of neighboring property owners. As a result, the consideration of this project by the Planning Board amounts to an unlawful sub-delegation of zoning authority by the County Council, and any approval of the Site Development Plan without the application of the conditional use standards in HCZR Section 131 would therefore be unlawful.

7. **The Planning Board must apply the conditional use criteria to this project based upon the Howard County Policy Concerning Final Development Plan Phase Criteria Adopted by Planning Board: 1-17-79.** In the event that the grandfathering provision in CB 46-2016 were deemed to be valid, then SDP 17-041 would still be subject to the policies of the Planning Board as they existed prior to the adoption of that law. In this regard, Howard County Policy Concerning Final Development Plan Phase Criteria Adopted by Planning Board: 1-17-79 (copy attached) provides in pertinent part as follows:

2. *Specific uses permitted under the FDP Phase Criteria recorded prior to October 3, 1977, in the Land Records of Howard County, whether listed by name or by referenced section of the Zoning Regulations, which are only permitted as a Special Exception under the 1961 Zoning Regulations of Howard County outside of the New Town District, shall require Planning Board approval for the location of said uses except where a singular use has been assigned to a specific parcel under a recorded FDP Phase Criteria. In these matters the Planning Board of Howard*

County may refer to the specific considerations set forth under Section 19 of the Howard County Zoning Regulations (adopted May 16, 1961) "Special Exceptions," for the evaluation and approval of applicable uses.

Upon information and belief, the Howard County Planning Board has consistently applied this policy (and the special exception/conditional use criteria) to every gasoline service station/motor vehicle fueling facility) approved in the New Town District since the adoption of the policy in 1979. And as was noted in our Counsel's testimony Under the "*Accardi doctrine*" a decision of an administrative agency is subject to invalidation where the administrative agency fails to follow its own procedures or regulations. Therefore, the Planning Board, consistent with its policy since 1979, must apply the conditional use criteria to this project, and the failure to follow this policy would render any approval by the Planning Board of SDP-17-041 invalid.

8. Planning Board must comply with the adopted Master FDP Criteria.

The Planning Board has adopted the Columbia New Town Approved Master Comprehensive Final Development Criteria Index. Among other things, this Master criteria includes special criteria to be included on FDPs for gas stations. These criteria impose specific conditions on siting, setbacks, screening and buffering as well as operational restrictions are imposed under Section 131.

9. **The proposed retail use is not authorized by FDP 55.** The permitted uses are specified in paragraph 7 of FDP 55 as follows:

7. PERMITTED USES – SECTION 17.031 D:
EMPLOYMENT CENTER LAND USE-INDUSTRIAL
LAND USE AREAS

All uses permitted in industrial districts of industrial land use zones are permitted including, but not limited to, all uses permitted in M-1 and M-R districts except, however, that uses only permitted in M-2 and T-2 Districts are prohibited. Commercial uses ancillary to, or compatible with, permitted industrial uses are permitted including, but not limited to . . .

* * *

c. Personal service shops and retail stores which primarily sell or service merchandise manufactured on the premises.

d. Gasoline Service Stations.

* * *

k. Such other ancillary uses as may be approved by the Howard County Planning Board.

While gasoline service stations are permitted by FDP 55, as was shown through testimony, this provision has been consistently interpreted as meaning only fueling facilities that

serve the industrial uses within the industrial park, and not *retail* gasoline stations. In addition, a convenience store (retail) use is not permitted by the foregoing language. In fact, any retail stores are limited to those that “primarily sell or service merchandise manufactured on the premises.” Clearly, the proposed Royal Farms store does not fit into this type of retail category. In addition, the TSR dated September 17, 2015 (Criterion 7), misstates the standard in FDP 55 as whether a convenience store is compatible with the *gasoline service station*. The appropriate question is whether the convenience store use is compatible with an *industrial* use, and as will be shown through testimony, retail convenience stores are NOT compatible with the industrial uses at this site. The approval of the proposed site development plan would effectively change the zoning for the site from Employment Industrial to Employment Commercial—something that only the County Council may lawfully do.

9. **The site development plan process is not the proper process to approve this project.** HCZR §125.D.6 provides in pertinent part that, after an FDP is recorded among the Land Records of Howard County its provisions as to land use

bind the property with the full force and effect of Zoning Regulations. After such recordation, no new structure shall be built, no new additions to existing structures made, and no change in primary use effected different from that permitted in the Final Development Plan or Final Development Plan Amendment except by an amendment to the Final Development Plan.

For the reasons stated above and based upon the testimony to presented at the meeting, FDP 55 does not authorize the proposed retail use or a gasoline station at the subject site. Therefore, for the proposed use to be approved, an amendment to the existing Final Development Plan would be required. However, under HCZR §125.F.1 “**only the original petitioner for the New Town District may propose amendments to an approved Comprehensive Sketch Plan or Final Development Plan.**” Since the applicant is not the original petitioner for FDP 55, the only way to lawfully allow for the proposed retail use would be to create a new Final Development Plan, which would be preceded by the filing of a successor Preliminary Development Plan and Comprehensive Sketch Plan pursuant to HCZR §125.B. &C. In summary, SDP 17-041 is not in conformance with FDP 55, and for the proposed use to be lawfully approved, the developer would have to “start from scratch” at the Preliminary Development Plan stage.

Manner in which Appellants are Aggrieved

A showing of aggrievement is not applicable for de novo appeals of Planning Board decisions rendered in a meeting without a record. One of the primary purposes of the Hearing Examiner in administrative appeals is to establish the record. This is not an appeal of an “administrative agency” decision. The Hearing Examiner is an arm of the Board of Appeals. Under the Howard County code, appeals of Hearing Examiner decisions to the Board of Appeals, the Board hears cases de novo, as if the Hearing Examiner’s hearing had never occurred.

Nevertheless, the appellants are the fee owners of property adjoining and confronting the subject property. The appellant's property rights are adversely affected by the decision that would allow a change in allowing retail gas stations and convenience stores that will irreparably alter the character of this industrial zoned area. It will create conflicts and congestion with negative implications to the value of their property and the conduct of their business.

Under a long history of Appeals cases in Howard County, the appellant enjoys presumptive standing. Accordingly, the burden is on any party (or the Board to show by a preponderance of the evidence that the appellant is not specially aggrieved.

This issue was adjudicated in 2007 when The Board of Appeals was overturned by the Court of Special Appeals in *Broida v. Renaissance Centro Columbia, LLC*. In this case, the Board of Appeals ruled 2-2 that Broida did not have standing. The CoSA ruled he had presumptive standing, by virtue of being an adjoining property owner. Also, they ruled that the Board had failed to shift the burden of proof since Broida had what they called a rebuttable presumption of standing. Furthermore, they ruled that the 2-2 vote for denial was not effective and a tie gave Broida standing.

The CoSA included this excerpt from a NY State decision *Sun Brite Car Wash LLC* that is instructive here:

‘Standing principles, which are in the end matters of policy, should not be heavy-handed; in zoning litigation in particular, it is desirable that land use disputes be resolved on their own merits rather than by preclusive, restrictive standing rules (see, Matter of Douglaston Civic Assn. v Galvin, supra, at 6). Because the welfare of the entire community is involved when enforcement of a zoning law is at stake, there is much to be said for permitting judicial review at the request of any citizen, resident or taxpayer; this idea finds support in the provision for public notice of a hearing. But we also recognize that permitting everyone to seek review could work against the welfare of the community by proliferating litigation, especially at the instance of special interest groups, and by unduly delaying final dispositions.

While something more than the interest of the public at large is required to entitle a person to seek judicial review — the petitioning party must have a legally cognizable interest that is or will be affected by the zoning determination — proof of special damage or in-fact injury is not required

in every instance to establish that the value or enjoyment of one's property is adversely affected. The fact that a person received, or would be entitled to receive, mandatory notice of an administrative hearing because it owns property adjacent or very close to the property in issue gives rise to a presumption of standing in a zoning case. But even in the absence of such notice it is reasonable to assume that, when the use is changed, a person with property located in the immediate vicinity of the subject property will be adversely affected in a way different from the community at large; loss of value of individual property may be presumed from depreciation of the character of the immediate neighborhood. Thus, an allegation of proximity alone may give rise to an inference of damage or injury that enables a nearby owner to challenge a zoning board decision without proof of actual injury.

Conclusion:

This is a change in use and it reasonable to assume that the neighboring appellants are differently affected than the community at large. If challenged, the burden falls to the challenger to show otherwise. There has been longstanding abuse in Howard County of obstructing property owners with legitimate objections from having their right to due process. The Court of Special Appeals faulted the Board of Appeals for their errors in the Broida case. They sent it back the Board of Appeals, but the developer abandoned their plans so the Board never corrected the error of their ways. Unfortunately, the Board failed to resolve this profound question of Howard County Citizen's rights. This is the perfect opportunity for the Hearing Examiner to restore public confidence and right these egregious wrongs.

HOWARD COUNTY PLANNING BOARD

POLICY CONCERNING FINAL DEVELOPMENT PLAN PHASE CRITERIA

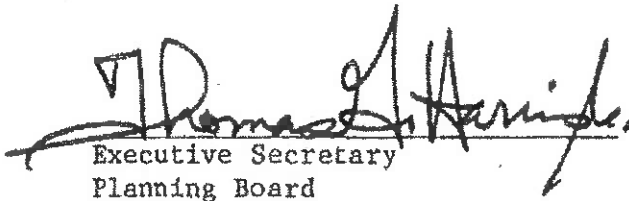
ADOPTED BY PLANNING BOARD: 1-17-79

1. Final Development Plan (FDP) Phase Criteria recorded in the Land Records of Howard County prior to October 3, 1977, which reference sections of the 1961 Zoning Regulations of Howard County, as amended, under "Permitted Uses," shall include all uses permitted under those referenced sections of the aforementioned regulations; such uses are not changed by the adoption of the Zoning Regulations on October 3, 1977, or by amendments thereafter.
2. Specific uses permitted under the FDP Phase Criteria recorded prior to October 3, 1977, in the Land Records of Howard County, whether listed by name or by referenced section of the Zoning Regulations, which are only permitted as a Special Exception under the 1961 Zoning Regulations of Howard County outside of the New Town District, shall require Planning Board approval for the location of said uses except where a singular use has been assigned to a specific parcel under a recorded FDP Phase Criteria. In these matters the Planning Board of Howard County may refer to the specific considerations set forth under Section 19 of the Howard County Zoning Regulations (adopted May 16, 1961) "Special Exceptions," for the evaluation and approval of applicable uses.
3. Final Development Plan (FDP) Phase Criteria recorded in the Land Records of Howard County after October 3, 1977, which reference sections of the 1977 Zoning Regulations of Howard County or any amendments thereto, under "Permitted Uses," shall include all those uses permitted

under those referenced sections; such uses are not changed by future amendments unless specifically included by amendments to the Final Development Plan (FDP) Phase Criteria and recorded in the Land Records of Howard County.

4. Specific uses permitted under the FDP Phase Criteria recorded after October 3, 1977, in the Land Records of Howard County, whether listed by name or by referenced section of the Zoning Regulations, which are only permitted as a Special Exception under the 1977 Zoning Regulations of Howard County outside of New Town District, shall require Planning Board approval for the location of said uses except where a singular use has been assigned to a specific parcel under a recorded FDP Phase Criteria.

In these matters the Planning Board of Howard County may refer to the specific considerations set forth under Section 122 of the Howard County Zoning Regulations (adopted October 3, 1977), "Special Exceptions," for the evaluation and approval of applicable uses.


Executive Secretary
Planning Board