

DPZ office use only:

BA Case No.: BA-24-033C

Date Submitted: 5/27/2025

**PETITION OF APPEAL OF
HEARING EXAMINER DECISION
TO THE HOWARD COUNTY BOARD OF APPEALS**

A person who wishes to appeal a decision of the Hearing Examiner to the Board of Appeals must use this petition form. A person must have been a party to the original case before the Hearing Examiner in order to file an appeal. In addition, it is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person.¹ The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of the issuance of the Hearing Examiner decision.

1. **Name of Case** In the Matter of Woodbine Bank WI, LLC and Woodbine Bank WP, LLC, Petitioners.
BA Case No. BA Case No. 24-033C
Date Decision and Order Mailed April 24, 2025
2. **Reason for Appeal** The Hearing Examiner erred in denying the Petition for Conditional Use for Motor Vehicle Fueling Facility in a B-2 Zoning District. The facts and law support granting the Petition.
3. **Name of Appellant** 15920 Old Frederick Road (Woodbine), LLC
Trading as (if applicable) _____
Mailing address 18 Loveton Circle, Sparks-Glencoe, Maryland 21152
Phone number(s) 410-235-1070
Email John.Phelps@carrollfuel.net
Name of principal contact (if different) John Phelps, President
4. **Counsel for Appellant** Dino C. La Fiandra, Esquire, The Law Office of Dino C. La Fiandra, LLC
Mailing Address 100 W. Pennsylvania Avenue, Suite 305, Towson, Maryland 21204
Phone number(s) 443-204-3473
Email dcl@lafiandralaw.com
Secondary contact for counsel (if any) _____

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.

5. **Declaration of Interest**

☒ The Appellant ^{is the successor-in-interest to the original Petitioners.} ~~is the original petitioner~~

☐ The Appellant was a party to the original case

6. **Amended Petition (This section is to be completed only if the Appellant was the petitioner in the original case before the Hearing Examiner and the case was other than an administrative appeal)**

If the original petition was substantively amended during the hearing before the Hearing Examiner, the appeal will proceed on the amended petition unless the original petitioner elects to proceed on the original petition. If you are the original petitioner, complete one of the following:

☐ I elect to proceed on the original petition

☒ I agree to proceed on the amended petition

Note: This section does not apply to a case that came before the Hearing Examiner as an appeal of an administrative decision.

7. **Copies:** The Appellant must submit **one signed original and nine copies of the signed original**, for a total of **10 copies**, of this petition. If supplementary documents or other materials are included, **10** complete sets must be submitted.

8. **Public Notice Requirements**

a. Posting: If the Appellant is the owner or has a beneficial interest in the subject property, the Appellant must (i) post the property in accordance with Section 2.203(b) of the Rules of Procedure of the Board of Appeals and (ii) file an Affidavit of Posting as required by Section 2.203(c).

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.

b. Advertising: The Appellant must (i) advertise the date, time and place of the initial public hearing of this appeal petition before the Howard County Board of Appeals in accordance with Section 2.203(a) of the Rules of Procedure of the Board of Appeals and (ii) file a Certificate of Advertising as required by Section 2.203(c).

c. Responsibility for Compliance: In accordance with Section 2.203(g), the Appellant is responsible for assuring compliance with the advertising and posting requirements of the Board of Appeals.

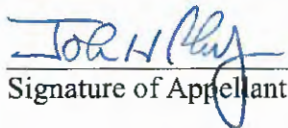
9. On The Record Appeals

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.

10. Signatures

By signing below, the Appellant hereby affirms that:

- The Appellant has read the instructions on this form and has filed herewith all of the required accompanying information.
- All of the statements and information contained in or filed with this petition are true and correct.
- The Appellant agrees to furnish such additional plats, reports, plans, or other materials the Department of Planning and Zoning and/or the Board of Appeals may require in connection with the filing of this petition.
- The Appellant agrees to pay all costs in accordance with the current schedule of fees.


Signature of Appellant

5/23/2025
Date

John Phelps for 15920 Old Frederick Road (Woodbine), LLC
Print Name of Appellant

Signature of Appellant

Date

Print Name of Appellant


Signature of Attorney (If any)

Dino C. La Fiandra

5/23/2025

Make checks payable to "Director of Finance."

For DPZ use only: Filing Fee is \$2,050.00 plus \$50.00 per poster if required.

Hearing fee: \$ _____

Poster fee: \$ _____

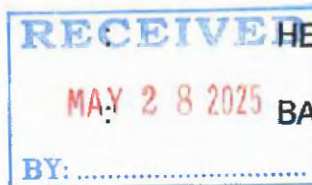
TOTAL: \$ _____

Receipt No. _____

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

County Website: www.howardcountymd.gov

IN THE MATTER OF : BEFORE THE
WOODBINE BANK WI, LLC : HOWARD COUNTY
and : BOARD OF APPEALS
WOODBINE BANK WP, LLC : HEARING EXAMINER
Petitioners : BA Case No. 24-033C



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DECISION AND ORDER

On April 9, 2025, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, held the evidentiary hearing for the Petition of Woodbine Bank WI, LLC and Woodbine Bank WP, LLC (Petitioners) for a Motor Vehicle Fueling Facility Conditional Use in a B-2 (Business: General) Zoning District, filed pursuant to Section 131.0.O.2 of the Howard County Zoning Regulations (HCZR), in Council District 5, identified as Tax Map, 7 Grid 6, Parcel 226, also known as 15920 Old Frederick Road, Woodbine, Maryland.

The Petitioners certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Eric Gundeson, Esq. and Gregory Bedward, Esq. represented the Petitioners. Joseph Rutter and Jim Witmer (civil engineer)

testified in support of the Petition. Philip Dales, Esq. represented Lisbon Plaza, LLC (Opposition). William Holzman (Retail Leasing, St. John Properties, LLC), Thomas Pilon (Executive Vice President, Development, St. John Properties, LLC), William Zeid (civil traffic engineer), Cecily Bedwell (land planner), and Wayne Newton (civil engineer) testified in opposition to the Petition. Ronald Anderson, Kay Campbell Anderson, Charles Sharp, Dorothy Cider, Earle Crehan, Dale Maxion, Dawn Macey-Boyette, William Gleaves, Christina Nolan, James Massey, Cynthia Brennan McAuliffe and Megan Pace participated in cross-examination and testified in opposition.

Opposition introduced into evidence the following Exhibits:

1. Traffic Analysis (Groove Slade)
- 2.a. Cecily Bedwell CV
- 2.b. Cecily Bedwell Presenter Bio
- 2.c. Cecily Bedwell Expert Testimony Summary
- 2.d. Planning Analysis (Design Collective)
- 3.a. Wayne Newton CV
- 3.b. Engineering Analysis (Messick and Associates)

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds the following facts:

1. Property Identification. The subject Property is located in the northeast intersection of Old Frederick Road and Old Woodbine Road, east of Woodbine Road and north of US I-70. It is in Council District 5, identified as Tax Map 7, Grid 6, Parcel 226, and is also known as 15920 Old Frederick Road, Woodbine, Maryland (the Property).

2. Property Description. The Property consists of approximately 3 acres and is developed with a former 2,967 sq. ft. PNC bank building (originally constructed in 1967) with 24 parking spaces and a drive through window. The Property currently has three curb cuts on Old Frederick Road and a fourth curb cut on the extension of Old Woodbine Road that serves the Woodbine Rd. Park & Ride.

3. Vicinal Properties.

Direction	Zoning	Land Use
North	B-2	Commercial
South	RD-DEO	Single-Family Detached Residences
East	B-2	Commercial
West	RC-DEO	Single-Family Residences

4. Roads. The Property fronts on Old Frederick Road and Old Woodbine Road. Old Frederick Road has two travel lanes within a 25-foot right-of-way. The speed limit is 30 miles per hour. There are no Average Daily Traffic counts for this segment of Old Frederick Road.

Old Woodbine Road has two travel lanes within a varying right of way. The speed limit is 25 miles per hour. There are no Average Daily Traffic counts for this

segment of Old Woodbine Road.

5. Water and Sewer Service. The Property is located outside the Planned Service Area for Water and Sewer. The Property is served by private water and sewer.

6. The General Plan. HoCo By Design designates the Property as Suburban Commercial on the Future Land Use Map. The Plan's Functional Road Classification Map depicts Old Frederick Road as a Major Collector and Old Woodbine Road as a local road.

7. Zoning History. There are no prior zoning cases for the subject Property.

8. Reported Agency Comments. Pertinent Agency or Department comments are as follows:

The Health Department is working closely with the current engineers to produce an approvable Perc Certification Plan. Right now, we are waiting on an MDE variance form to be submitted that will ask for an allowance of a portion of the proposed SDA to be upgradient from an existing (commercial) well. Since it is commercial grade waste that will be produced by the intended future development, there is no guarantee MDE will allow that potentially hazardous impact to occur even with pre-treatment. If the engineer does not obtain that approval from MDE, the proposed SDA will have to shrink to meet all minimum setbacks and safety concerns.

The Development Engineering Division takes no exception to the request for a motor vehicle fueling facility subject to meeting the stormwater management requirements, sight-distance and APFO requirements for the development. Frontage improvements along both Old Woodbine Road and Old Frederick Road shall be provided

in accordance with Design Manual Volume III Complete Streets and Bridges. Two proposed points of access are currently shown at existing access points. A third existing access point is to be eliminated.

The Division of Land Development:

CRITERIA: Potential to comply with all technical requirements:

- A site development plan (SDP) for this development will be required should the conditional use be granted. As shown on the plan exhibit, the development has the potential to comply with the technical requirements in subsequent plan stages. Proposed site improvements and features shall be evaluated by DPZ staff and county review agencies as part of the SDP submission requirements, including access requirements, parking, landscaping, forest conservation, etc.
- This development is subject to the County's Forest Conservation requirements in accordance with Section 16.1200 of the County Code and will be evaluated at the site development plan stage.
 - A forest stand delineation will be required to determine the existing forest resources on the site. If the site contains specimen trees, the approval of an alternative compliance application is required for the removal of any specimen trees, if applicable.
 - Please be informed that approval of a Conditional Use plan and specific site design does not serve as unwarranted hardship justification for any potential alternative compliance requests to the Subdivision and Land Development Regulations. Future review of the site development plan

for compliance with the Forest Conservation regulations may cause changes to the plan. If such changes do not constitute "minor modifications" as defined in Section 131.0.1.2.c, these changes may require a new hearing by the Hearing Authority, unless otherwise specified in the Decision and Order.

CRITERIA: Existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures

- Landscape requirements will be reviewed and evaluated at the SDP stage.
- A type-A landscape perimeter edge will be required for the proposed fueling station use since all abutting properties are non-residential uses. A type-B landscape perimeter edge is required adjacent to the public roads. The perimeter and parking lot landscape edge types indicated on the plan comply with the Landscape Manual requirements.

CRITERIA: The number of parking spaces will be appropriate to serve the particular use. Parking areas loading areas, driveway and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties

- Parking requirements will be reviewed and evaluated at the SDP stage. The Zoning Regulations require 3 spaces for a motor vehicle fueling facility without service bays, and 5 spaces per 1,000 SF for convenience stores. Based on the proposed uses, and the required ratios outlined in Section 133.0.D.4.i & e of the Zoning Regulations, the proposed development appears to have adequate parking capacity. Please note, the convenience store parking ratio indicated on the plan is different than the ratio in the Zoning Regulations.

- The adjacent properties contain commercial uses. All loading, driveway and refuse areas shall be adequately screened per landscape comments above.

CRITERIA: The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere (streams, wetlands, floodplain, forest conservation, etc.)

- There do not appear to be environmental impacts within the Limit of Disturbance as shown on the conditional use exhibit. An environmental concept plan for the site must be approved prior to the site development plan to identify any impacts to streams, wetlands, and their buffers, floodplain, steep slopes and specimen trees on site which are protected from disturbance per the Subdivision and Land Development Regulations. The existing natural environmental conditions of the subject site must be thoroughly assessed by an environmental professional and findings must be provided with the forthcoming plans.

CRITERIA: Design Advisory Panel review

- The proposed development is not subject to Design Advisory Panel (DAP) review as it is not within the boundaries of a DAP review area.

9. Conditional Use Proposal. The Petitioners are requesting approval for a new Motor Vehicle Fueling Facility with a 4,731 square foot convenience store. The Fueling Facility would consist of 16 fuel dispensers sheltered by a canopy. The entire site would include 44 parking spaces, including 2 handicapped spaces and 3 electric

vehicle charging spaces. Ingress and egress would include one point of access each to Old Frederick Road and Old Woodbine Road.

10. Opposition. The citizens testifying in opposition were united in their concerns and therefore will be summarized here collectively and generally and addressed specifically in response to the laws governing the conditions precedent for the proposed use. In general, Opposition expressed concerns regarding the lighting plan, the size and capacity of the fuel storage tanks, surface water run-off, lights from vehicles shining into the residential properties, the 24/7 hours of operation, the lack of specificity (vagueness) on the Conditional Use application and proposed Plan due to the failure to identify an end user for the development of the Motor Vehicle Fueling Facility, the on-site truck turning radius, stormwater management issues including the capture of storm events, the proposal to drain the water issues onto neighboring residential properties including the Nolan farm, the lack of car vs truck anticipated usage counts, the lack of pass-by vs destination car vs truck vehicle counts, and the location of the proposed micro biotic retention ponds on the lowest elevations of the Property.

Mr. William Zeid prepared the Traffic analysis and raised, in summary, the following issues: intersection delay, both off and on-site truck movements, failure of the existing roundabout to handle the proposed additional traffic, if any prong of the roundabout fails the entire roundabout fails, the failure to provide adequate queuing lanes to meet the anticipated car and truck traffic generated by the proposed use, the 24/7 nature of the trip generation, the failure to identify the types and numbers of anticipated vehicles and whether they will be pass-by or destination trips, the limited line of sight and

sight distance at the entrances and exits, the shared nature of the proposed access with the adjacent existing High's station and convenience store, the intensity of the proposed development on adjoining properties, failure to provide acceleration and deceleration lanes, and the failure of the existing road infrastructure to support the proposed use.

Ms. Cecily Bedwell, land planner, prepared the Planning Analysis. With regards to HoCo By Design (The General Plan) (2023):

- HoCo by Design, Howard County's current General Plan (passed on October 11, 2023), defines a planning path for the County over the next 15 years through 2040. It emphasizes protection of natural resources, reduced impacts, and responsible and balanced growth.
- Lisbon is in Tier IV, outside Planned Service Area, in the Rural West; "Tier IV: not planned for sewer service, dominated by agricultural and forest land planned for resource protection" – GCF pp. 16 [also GCF pp. 19-20: Map 2-2 showing Growth Tiers]
- There are 18+ mentions of preserving the character of the Rural West in HoCo By Design.
- "Land uses in the County were organized into four high-level categories:
 - areas to preserve, areas to strengthen, areas to enhance, and areas to transform (P-S-E-T). Each category is described...with a general objective,

important considerations, and targeted treatments...expectations generally

follow 'less change' to 'more change' and 'lower-intensity growth' to

'higher-intensity growth'.." - GCF p. 25 [also GCF pp. 29-30: Map 2-3 The

General Plan Map] The PNC Bank parcel (the subject Property) is in Areas

to Preserve (Other) and surrounded by Open Space Areas to Preserve. It

would follow that a Fueling Facility as a Conditional Use in Areas to

Preserve should be under elevated scrutiny, compared to a similar use in

Areas to Strengthen, Enhance, or Transform.

- In the Future Land Use Map (FLUM), the PNC Bank parcel appears to be

(and is listed on the TSR as) Suburban Commercial, though flanked by

Rural Conservation and surrounded by Preservation Easement overlay

areas (Environmental and Agricultural) [also GFC pp. 41-42: Map 2-4

Detailed Future Land Use]

- Just to the south of US 40 / 1-70, is an area, denoted as Rural Crossroads

on the FLUM and designated as an Area to Strengthen which seems to

better align with such a use. Rural Crossroads are described as, "Small

nodes of mixed-use areas focusing on commercial activity along rural highways at important intersections in older farming communities in the Rural West."- p. 36 In fact, there are 2 existing gas stations within this Rural Crossroads currently. [also GFC pp. 41-42: Map 2-4 Detailed Future Land Use] "The Rural West [also] includes three Rural Crossroads, which are small nodes of mixed-use areas with a focus on commercial activity along a rural highway." - GFC p. 55

- In Chapter 3: Ecological Health (EH), again, there is a clear intent to focus on preservation; EH-9 Policy Statement reads, "Continue to promote agricultural land preservation, recognizing that uncommitted land in the Rural West is a diminishing resource." Additionally, Howard County has an Agricultural Land Preservation Program (ALPP) that focuses on the Rural West part of the County, and notes that a renewed effort is needed to improve the ecological health of agricultural land. This includes agricultural land and agriculture-adjacent land that share the same ecosystems. - p. GCF-9, GCF-18, EH-50
- HoCo By Design notes that per capita growth in vehicle miles traveled in Howard County is 37% higher than the national average and states an intention to reduce emission from vehicles. In Chapter 4:

County In Motion (CIM), CIM-11 Policy Statement in part states "support an economically and environmentally sustainable transportation system that moves people safely and efficiently throughout the County and supports the land use and equity goals in HoCo By Design, including its emphasis on mixed-use activity centers. Similarly, advanced land use patterns and individual site development that support an economically and environmentally sustainable transportation system." - CIM p. 36

- No Significant Transportation Investments are shown in the area (nothing west of Marriottsville)- CIM pp. 37-38
- Map 5-5: Housing Types Near Activity Center Locations, shows Single Family Detached Neighborhoods surrounding the PNC Bank parcel – pp. 37-38
- It is clear that Howard County has described a vision for the Rural West as preserved for agricultural and open space, with an intentional shift away from automobiles and suburban shopping centers. While zoning may allow fueling facilities as a Conditional Use, such a decision would clearly not align with the policies described in Howard County's

General Plan.

Ms. Bedwell also opined that the proposed Conditional Use has the following atypical adverse impacts:

- o the market for the Motor Vehicle Fueling Facility use would include "some element" of I-70 travelers
- o there may be greater impacts to the nearby residential uses than at other Motor Vehicle Fueling Facility uses in the B-2 zoning district contrary to General Plan Rural West Policy
- o potential for greater noise impacts due to the 24/7 proposed hours of operation and Site elevation
- o potential for greater lighting impacts
- o closeness to area residences and elevation of Site have adverse lighting effects
- o insufficient landscaping
 - A. Little screening and buffering of the canopy and fueling areas because of tree heights and extant of shrubs along the limited landscape area along the frontage.
Unscreened views into the site will continue to be a problem owing to the location of the entrances. Screening would be reduced during winter months as deciduous trees lose leaves
- o location along a two-lane road from multiple single-family detached residential uses
- o potential sight distance problem for motorists on Old Woodbine Road
 - A. Site Plan fails to provide sight distance details
- O there are three (3) Motor Vehicle Fueling Facilities within less than a 1 mile radius of the Property, one being immediately adjacent and with which the Property is proposing to share the existing access drive, a

truly unique situation

- o the majority of properties within a 2-mile radius of the Property are located within Preservation Easements

Mr. Wayne Newton, traffic engineer, prepared an impact analysis, which included, but not limited to, the loss of trees in the existing stormwater management areas, the loss of landscaping and vegetation as a result of the widening of the right-of-way along Old Frederick Road necessitated by the proposed use, the surface and stormwater runoff to be propelled onto the Nolan property, the attractive nuisance of the use of the existing Park and Ride for truck parking, the traffic issues arising from the non-separated shared driveway with High's, the lighting pollution and adverse impact exacerbated by the 24/7 use, and the issues regarding the Septic Disposal Area. Mr. Newton testified that since the end user is unknown, the Site Plan is merely illustrative and will have to be changed once an end user is identified.

Mr. William Holzman, St. John Properties, LLC, testified that the Highs Property has extensive pine landscaping the like of which are not being provided on the subject Property, the High's gasoline sales are not overburdened, and the proposed shared driveway is unique and creates traffic hazards.

Mr. Thomas Pilon, Executive VP of Development, St. John Properties, LLC, testified as to the proposed Conditional Uses adverse effect on the community and vicinal properties, including, but not limited to traffic, stormwater management, the septic disposal area, onsite lighting and vehicle headlights.

BURDEN OF PROOF

The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Conditional Use. The Conditional

Use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Conditional Use is a valid zoning mechanism that delegates to an administrative body a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The legislative body has statutorily determined that a Conditional Use is compatible in a particular zoning district absent specific facts adduced to the contrary at a particular location. The duties given the hearing body are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Zoning Plan.

The Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community.

These prescribed standards and requirements are conditions precedent to the approval of a conditional use. If he shows to the satisfaction of the zoning body that the conditions precedent have been met and that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest to a greater extent than if the proposed use were located elsewhere, he has met his burden.

The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly

debatable, the matter is one for the zoning body to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a Conditional Use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974).

These standards dictate that if a requested Conditional Use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

The appropriate standard to be used in determining whether a requested Conditional Use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Conditional Use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

CONCLUSIONS OF LAW

1. General Criteria for Conditional Uses (Section 131.0.B)

HCZR Sections 131.0.B.1-3 require the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the landscape uses and policies indicated in the Howard County General Plan for district in which it is located through the application of three standards: harmony with the General Plan, overall intensity and scale of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

Section 131.0.B.1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.

HoCo by Design has designated this B-2 cluster of properties as Suburban Commercial on Map 2-4 "Detailed Future Land Use Map." The property is located in one of only three Suburban Commercial land use areas outside of the Planned Service Area. Suburban Commercial is defined as "contributing to the County's office employment base and serving the daily needs of the office users and surrounding residential neighborhoods." The Property is unique as it is flanked by Rural Conservation and surrounded by Preservation Easement overlay areas (Environmental and Agricultural). Ms. Bedwells testimony, summarized *supra*, extensively supports a finding that the proposed Conditional Use plan is not in harmony with the land policies in HoCo By Design.

The Property location and site design does not provide a well-designed high quality development. Additionally, the location of the access drive with the roundabout and shared driveway, and the line of sight may prove hazardous. The probability of loss of existing established foliage on both the Property and adjacent properties, and the lack of site within which to provide adequate landscaping, the issues of stormwater management and surface runoff, and the questionable location of the Septic Disposal Area, are not demonstrative of a well-designed sustainable development.

Section 131.0.B.2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.

The proposed fueling facility includes 16 fueling stations and a 4,731 square feet convenience store. The size of the property is 3 acres or 130,680 square feet, which exceeds the minimum lot size requirement of 51,373 square feet for a Motor Vehicle Fueling Facility. The site has direct access to and frontage on Old Frederick Road and Old Woodbine Road. Old Frederick is a designated Major Collector and Old Woodbine Road is a designated Local Road. Old Woodbine Road would provide secondary access to accommodate the proposed use.

The Petitioners are proposing to consolidate the three points of access on Old Frederick Road to one point of access that meets current dimensional standards. The current access point on Old Woodbine Road will be relocated to the north as shown on the Conditional Use Plan.

The testimony of the citizens and Opposition witnesses, summarized *supra*, demonstrate that the nature and intensity of the proposed use, the size of the property in relation to the use i.e. inadequate size to provide sufficient landscaping and buffering, with respect to streets giving access to the site are such that the overall intensity and

scale of the uses are not appropriate for this site. Furthermore, the failure to provide a line of sight or traffic study leaves doubt as to the safety of the access drives at the proposed location. Traffic safety is further questionable due to the existing roundabout and the lack of analysis for acceleration and deceleration lanes.

B. Adverse Impacts (Section 131.0.B.3)

Unlike HCZR Section 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, or Section 131.0.B.2, which concerns the on-site effects of the proposed use, compatibility of the proposed use with the neighborhood is measured under Section 131.0.B.3's six off-site, "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (d) access; (e) environmentally sensitive areas; and (f) impact on the character and significant historic sites.

Inherent in the assessment of a proposed Conditional Use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in a B-2 Zoning District. The proper question is whether there are facts and circumstances showing the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008);

Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, Petitioners have not met its burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Motor Vehicle Fueling Facility in the B-2 Zoning District.

Section 131.0.B.3.a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

The inability to provide sufficient landscaping and berming due to site configuration, the noise generated by a 24/4 truck fueling facility on the residential/rural/preservation easement neighborhood, the unobstructed lighting and vehicle lights onto neighboring properties, the potential expansion of the roundabout to accommodate the increased truck and vehicle traffic and potential queuing, the amount of increased traffic and stormwater/surface water issues are but a few of the atypical adverse effects that would be greater at the subject site than generally elsewhere in the B-2 zoning district.

Section 131.0.B.3.b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

The instant Petition and Site Plan contain much uncertainty and the lack of an end user gives rise to a conclusion that the Site Plan is merely illustrative and many changes will be made once an end user is obtained. Thus, the location, nature and height of

structures, walls or fences, the uncertainty regarding the location of the Septic Disposal Area and resultant movement of structures, the uncertainty regarding the right-of-way resulting in tree and vegetation loss, the inability to provide adequate landscaping and berming in the narrow landscape strips, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the B-2 zoning district or other similar zoning districts.

Section 131.0.B.3.c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be approximately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The lack of certainty in the Petition and Site Plan create a situation wherein this required finding cannot be met. The location of parking, loading areas, driveways and refuse areas are all subject to change. Even at their current location they will not be buffered or screened from public roads and residential uses so as to minimize adverse impacts on adjacent properties.

Section 131.0.B.3.d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

As a condition precedent to the approval of a Conditional Use, it is the Petitioners burden to prove that the ingress/egress points will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes as appropriate. Petitioners ask that it be relieved of this burden

of proof until a later stage in the development process, Site Development Review. Unfortunately, this is a condition precedent to approval and therefore must be found prior to approval. Precise sight distance measurements can only be determined by a Detailed Sight Distance Analysis, which Petitioner did not provide.

The proposed use will share access with the adjacent High's property and evidence was presented that the proposed usage of this shared drive will adversely impact the convenience and safety of the patrons utilizing High's.

Petitioners have failed to meet its burden that the shared driveway and all ingress/egress points will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes as appropriate.

Section 131.0.B.3.e The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

Ms. Bedwells testimony, summarized *supra*, supports a finding that the proposed use will have a greater potential for adversely impacting environmentally sensitive areas in the vicinity (residential/rural/preservation easements) than elsewhere in the B-2 zoning district.

Section 131.0.B.3.f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

The nearest historic property, HO-908 (the Knock-Franklin Farm), is approximately 2,000 feet from the Property. The subject Property is adjacent to, and surrounded by residential/rural/preservation easements to such a large extent that the proposed use will have a greater potential for diminishing the character and significance

of historic sites in the vicinity than elsewhere in a B-2 zoning district. See Ms. Bedwells summary, *supra*.

2. Specific Criteria for Motor Vehicle Fueling Facilities (Section 131.0.O.2)

A Conditional Use may be granted in the B-2, SC, M-1, M-2, or PEC Districts for Motor Vehicle Fueling Facilities, provided that:

- a. ***The use will not adversely affect the general welfare or logical development of the neighborhood or area in which the Motor Vehicle Fueling Facility is proposed and will not have a blighting influence as a result of a proliferation of Motor Vehicle Fueling Facilities within a particular area.***

In western Howard County, along the Interstate-70/Frederick Road corridor outside of the public service area, there are a limited number of locations zoned to accommodate Motor Vehicle Fueling Facilities. The proposed use will be adjacent to an existing High's Motor Vehicle Fueling Facility and will share High's access driveway. The proposed use will include a convenience store in addition to 16 refueling stations. There are three existing Motor Vehicle Fueling Facilities within a mile radius of the Property. Petitioners failed to provide a Needs Analysis. Consequently, the proposed use will adversely affect the general welfare or development of the neighborhood or cause a blighting influence. See supra.

- b. ***The minimum lot size for a Motor Vehicle Fueling Facility is 40,000 square feet. If a Motor Vehicle Fueling Facility is combined with another use on the same lot, the minimum lot size shall be increased in accordance with the provisions of Section 131.0.O.1.k..***

The Motor Vehicle Fueling Facility will be combined with a convenience store. The convenience store is a permitted use in the B-2

zone, and is proposed to consist of 4,731 gross square feet with 41 parking spaces for a total of 11,373 square feet. The property is 3 acres or 130,680 square feet which exceeds the required 51,373 square feet for the combined uses.

- c. ***The lot shall have at least 180 feet of frontage on a public road. If at the intersection of two public roads, the total of the frontage along both roads may be counted.***

As shown on the Conditional Use Plan, the site has approximately 315 feet of frontage on Old Frederick Road, which is a public road designated as a Major Collector.

- d. ***Fuel dispensers shall be located at least 300 feet from any school, park, or day care or assisted living facility. This criterion is not applicable to existing Motor vehicle fueling facilities, except that it shall be applicable if an existing motor vehicle fueling facility proposes an enlargement that includes additional fuel dispensers.***

There are no schools, parks, day cares, or assisted living facilities within 300 feet of the fuel dispensers.

- e. ***The proposed use shall be located at least 100 feet from any streams, rivers or floodplains. This criterion is not applicable to existing motor vehicle fueling facilities, except that it shall be applicable if an existing motor vehicle fueling facility proposes an enlargement that includes additional fuel dispensers.***

The proposed use is located more than 100 feet from all streams, rivers or floodplains.

- f. ***At least 20 percent of the site area shall be landscaped. The landscaping plan shall include plantings which enhance the appearance of the site from public roads and***

provide appropriate buffering for adjacent uses.

As shown on Sheet 2 of the accompanying Conditional Use Plan, 1.54 acres or 51.4% of the Property is proposed to be landscaped or grass area.

- g. ***Solid walls such as masonry or wood and masonry may be required by the Hearing Authority when the site borders a residential district. When solid walls are required, landscape planting is required on the outside of the wall.***

The Property is adjacent to B-2 zoned properties to the east and northwest. To the south it is bordered by Old Frederick Road. To the west, the Property is bordered by Old Woodbine Road and a commuter parking area. The commuter parking area is zoned RC-DEO, but it is not a residential use.

- h. ***Refuse areas shall be fenced or screened from view. The plan shall indicate the disposal methods to be used for all waste material generated by any vehicle repair operations.***

The proposed refuse area will be located on the north side of the site within a proposed enclosure to screen it from view. The Petitioners are not proposing any vehicle repair operations. Therefore, this criterion is met.

- i. ***A proposed site plan shall show that efficient traffic flow and queuing at the pump islands may be accommodated. Access driveways and on-site paved areas shall be designed and located to ensure safe and efficient movement of traffic and pedestrians.***

Insufficient information was provided by Petitioners to make this required finding.

j. **Operation**

- a. ***Outside operations shall be limited to the dispensing of motor vehicle fuel, oil, water, pressurized air, the changing of tires and minor servicing. Storage of all automotive supplies shall be within the main structure.***

The Petitioners indicate that they will comply with the criterion. Outdoor operations will be limited as required.

- b. ***Vending machines and the sale of propane are permitted as accessory uses, provided these uses are screened or enclosed if required by the Hearing Authority.***

The Petitioners indicate that they will comply with the criterion. No vending machines are proposed and any accessory propane for sale will be screened and enclosed.

- c. ***The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the Motor Vehicle Fueling Facility.***

The Petitioners indicate that they will comply with the criterion.

- d. ***Where a Motor Vehicle Fueling Facility is adjacent to a residential district, its hours of operation and a detailed landscaping and screening plan and a lighting plan shall be approved by the Hearing Authority.***

The Conditional Use Plan includes detailed landscaping and lighting plans respectively on sheets 2 and 3. Petitioners note that

these Plans are subject to change dependent on the end user when acquired, the resolution of the transportation and right-of-way issues, and the resolution of the Septic Disposal Area issues. Therefore these plans cannot be approved at this time. The Petitioners are proposing a 24/7 operation.

k. **Other Uses**

- a. ***Other uses may be located on the same lot as a Motor Vehicle Fueling Facility, including uses permitted in the zoning district as well as car washes and convenience stores, provided that all uses are approved by the Hearing Authority, and;***

In addition to the Motor Vehicle Fueling Facility, the Petitioners are also proposing a 4,731 square foot convenience store. Convenience stores are a permitted use in the B- 2 Zoning district pursuant to Section 119.0.B.29.

- b. ***The Minimum lot area is increased to accommodate the combination of uses. At a minimum, the minimum lot size of 40,000 square feet must be increased by an area equal to the gross square footage of floor area, parking area and loading or stacking areas required for the additional uses.***

The Convenience Store is 4,731 sq. ft. in size with 41 spaces devoted to the store, for a total of 11,373 sq. ft. additional lot area required for this additional use. The Property is 3 acres in size; therefore, it meets this criterion.

- c. ***In the PEC, M-1 and M-2 districts, the gross floor area of convenience stores shall not exceed 3,500 feet.***

The Property is located in a B-2 Zoning District. Therefore, this criterion does not apply.

1. ***Abandonment***

- a. The premises (including landscaping) of any Motor Vehicle Fueling Facility which is not in continuous operation or is abandoned shall be maintained in the same manner as is required under these regulations for operating Motor Vehicle Fueling Facilities.***

The Petitioners indicate that they will comply with this criterion.

- b. A Conditional Use for a Motor Vehicle Fueling Facility shall become void upon notice of abandonment by the owner. If notice of abandonment is not received, but it is determined by the Department of Planning and Zoning that a Motor Vehicle Fueling Facility has not been in continuous operation for a period of twelve months, a revocation hearing shall be initiated by the Department of Planning and Zoning in accordance with the procedures set forth in Section 131.0. For purposes of this subsection, "continuous operation" shall mean operation as a Motor Vehicle Fueling Facility at least eight hours per day, five days per week.***

The Petitioners indicate that they will comply with this criterion.

- c. If a Motor Vehicle Fueling Facility is abandoned and the Conditional Use becomes void as provided above, all multiple-product dispensers, canopies and other improvements including buildings shall be removed from the site within six months of the date the***

Conditional Use becomes void.

The Petitioners state that they will comply with this criterion.

CONCLUSION

A Conditional Use is determined to be legislatively compatible within a specific Zoning District provided all of the conditions precedent to the approval of a particular Conditional Use are met. In the instant Petition, Petitioners have asked that many of the conditions precedent be put off until a later stage in the development process in lieu of being addressed in the Conditional Use process as required. There is a desire not to spend money engineering a development unless the Conditional Use is first approved. Then, once the Conditional Use is approved, this approval is used as a wedge to obtain subsequent approvals. Additionally, as the end user has not been obtained, the proposed plans are merely illustrative and subject to change prior to development. They are insufficient to meet the required conditions precedent of the general criteria for a conditional use and the specific conditions precedent for a Motor Vehicle Fueling Facility. In addition to a failure to meet its burden of proof on so many issues, the Petition is fundamentally in violation of HoCo By Design.

ORDER

Based upon the foregoing, it is this 24th day of April, 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Woodbine Bank WI, LLC and Woodbine Bank WP, LLC for a Motor Vehicle Fueling Facility Conditional Use, in a B-2 (Business: Commercial) Zoning District, Tax Map 7, Grid 6, Parcel 226, Council District 5, identified as 15920 Old Frederick Road, Woodbine, Maryland, be and is hereby **DENIED**.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.