



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Staff Report: **Preliminary Plan Amendment 12002056A and Site Plan
Amendment 82005008B: Wendy's Colesville**

ITEM #: _____

MCPB HEARING

DATE: June 18, 2009

REPORT DATE: June 2, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RAK*
Cathy Conlon, Supervisor *CA*
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Development Review Division

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**APPLICATION
DESCRIPTION:**

Construction of a 2,552 square-foot restaurant with a drive-through on 0.54 net acres in the C-1 Zone; located in the northeast quadrant of the intersection of Randolph Road and Vital Way within the White Oak Master Plan area.

APPLICANT: DavCo Restaurants, Inc.

FILING DATE: Preliminary Plan Amendment: September 24, 2008
Site Plan Amendment: April 8, 2009

RECOMMENDATION: Preliminary Plan Amendment: Approval with conditions
Site Plan Amendment: Approval with conditions

**EXECUTIVE
SUMMARY:**

The proposed amendments would allow the construction of a free-standing restaurant with a drive-through service window replacing the previous approvals for a two-story office building that was never built. The construction of a drive-through service window in the C-1 Zone requires a special exception approval, which was granted on May 29, 2009. The proposed development also includes outdoor seating, bike facilities, significant street upgrades, on-site parking, and on-site stormwater management via bio-filtration basins.

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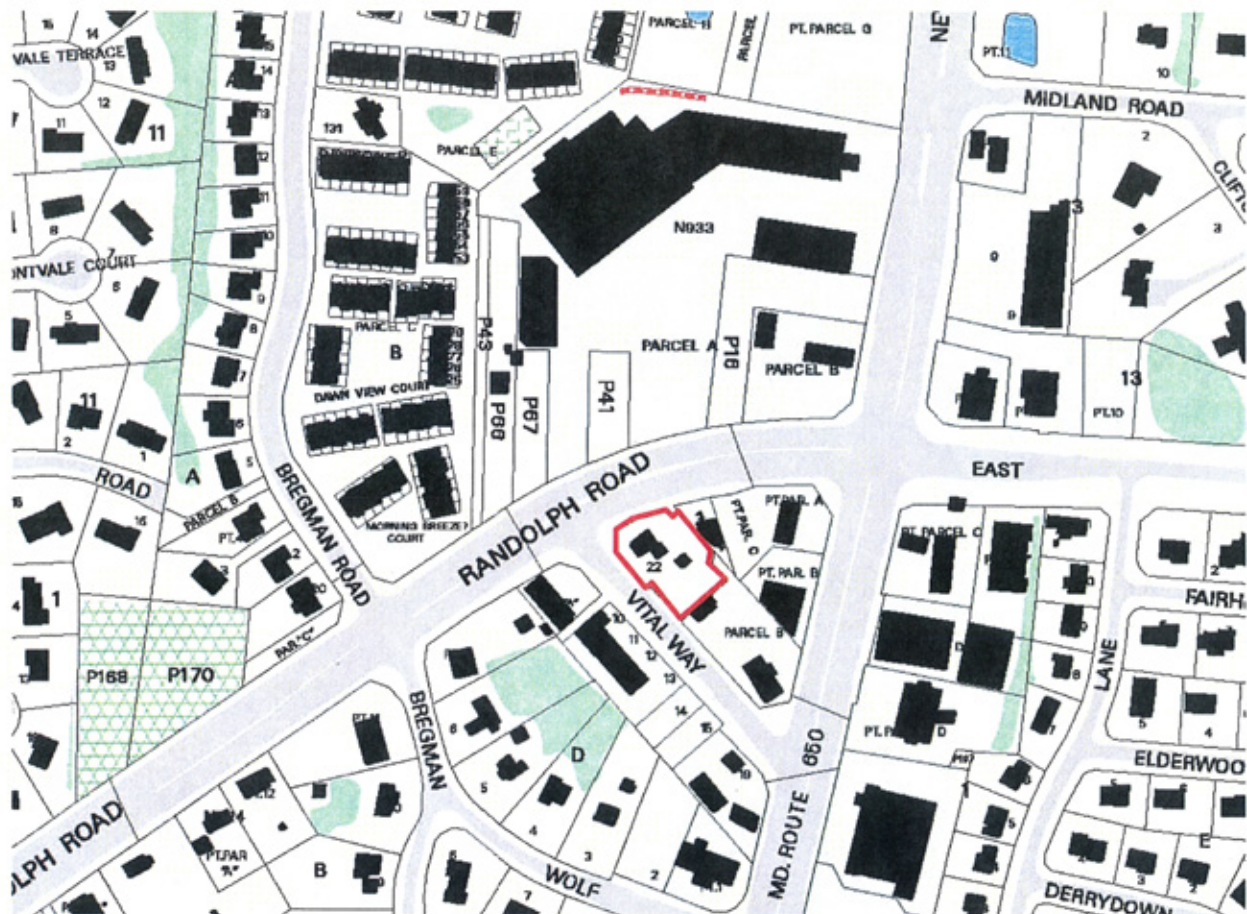
SECTION 1: CONTEXT AND PROPOSAL

SITE DESCRIPTION

Vicinity

The subject property is located on the corner of the intersection of Randolph Road and Vital Way. The triangle formed by Randolph Road, New Hampshire Avenue, and Vital Way houses a number of small commercial establishments. Directly north of the subject property is a large shopping center. The remainder of the vicinity is developed with commercial and residential uses.

This area is defined by the White Oak Master Plan as the Colesville Commercial Center: “primarily a local, neighborhood retail center with some office space, a post office, and a park-and-ride facility” (page 30). Because over 15 acres of this area, including the subject property, are zoned C-1, a site plan must be approved by the Planning Board and found to be “consistent with the criteria and guidelines relating to the property, if any, as shown in the area master or sector plan” (section 59-C-4.341.2).



Vicinity Map

Site Analysis

The existing site is an approximately 0.54-acre recorded lot. A one-family detached unit and detached garage existed on the site but were demolished in January of 2009 because of citations issued by the county. There is a slight slope toward the southeast of about 5%. There are no significant environmental features on site and the site was granted an exemption under the small property category from the requirement to submit a forest conservation plan. There are no known historic resources on site.



Aerial Photo

PROJECT DESCRIPTION

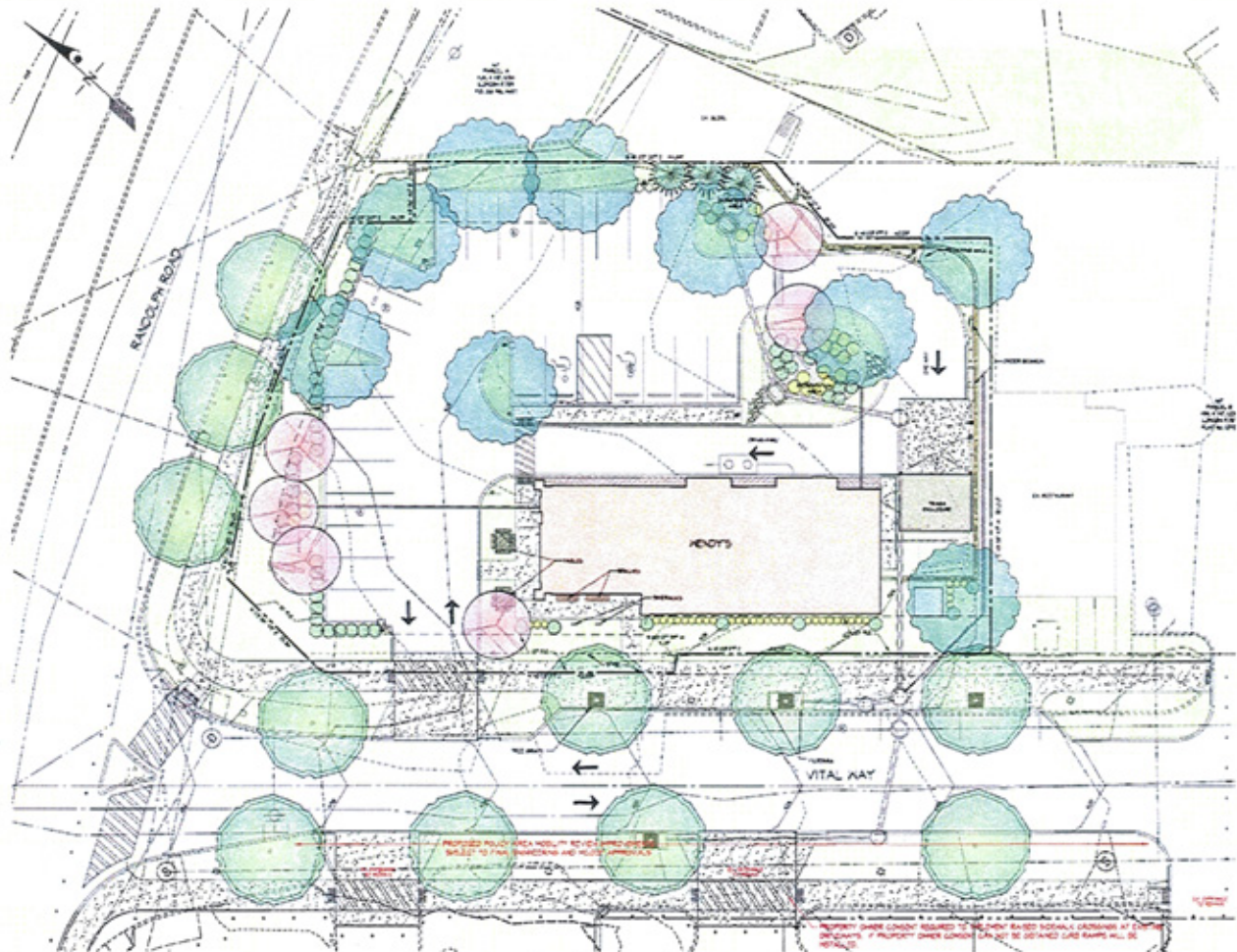
Previous Approvals

Preliminary & Site Plans

The subject property was previously approved for the creation of one lot for up to 10,192 square feet of office/retail uses (120020560 and 820050080). Site plan amendment 82005008A retained the uses but made minor changes to Vital Way's right-of-way and removed a sign from the approved plan. These approvals were never implemented. The Opinions for these approvals are appended to this Staff Report. Preliminary plan and site plan amendments are required to incorporate the proposed change in use.

Special Exception

A special exception is required for "Eating and drinking establishments, including drive-ins" in the C-1 Zone. The Planning Board recommended that Special Exception 2736 for a 2,552 square-foot drive-in restaurant be approved with conditions on January 29, 2009. The Hearing Examiner similarly recommended that the Board of Appeals approve the special exception, which the Board of Appeals did on May 20, 2009 with an effective date of May 29, 2009. The Planning Board's recommendation and the Hearing Examiner's report are appended to this Staff Report.



Landscape Plan

Proposal

The proposed development is a 2,552 square-foot free-standing Wendy's restaurant with a drive-through service window along the rear façade. Vehicular access is limited to one driveway from Vital Way and parking for 25 vehicles is provided on-site to the northeast and north of the restaurant. Additional parking for six vehicles is proposed along Vital Way, although this is not calculated within the parking requirements for the proposed use.

The location of the drive-through service behind the building allows the restaurant to sit near the right-of-way along Vital Way with direct pedestrian access from the sidewalk. Outdoor benches, tables, and bicycle facilities are also provided near the entrance to the dining area. Trash facilities are located to the side of the building and screened by plantings and fencing as well as by the building.

Ornamental plantings and evergreen hedges are provided within three bio-filtration areas, along the front foundation of the restaurant and as a screen around the perimeter of the parking areas. Shade trees are planted along both street frontages and dispersed throughout the site. Lighting within the site is limited to 20-foot pole-mounted fixtures that will be fitted with deflectors to reduce glare. Signage for the restaurant will be limited to a monument sign at the western corner of the site and on-building signage. The drive-through-related signage is placed behind the building.

COMMUNITY OUTREACH

The Applicant has complied with all submission and noticing requirements and staff has met with one citizen who voiced concerns about the circulation pattern. Specifically, questions were raised about the potential vehicular/pedestrian conflict at the crosswalk from the parking area across the drive-through lane and the lack of queuing area to turn left into the parking lot from Vital Way.

The first concern, regarding the crosswalk from the parking area, would not be alleviated by any alternative configuration but several precautions have been taken. First, proper signage and striping has been proposed by the Applicant. Second, Staff is recommending that the crosswalk be raised so the crossing is flush with the sidewalks. Third, Staff is recommending that additional signage and a convex mirror be installed at the corner of the restaurant to warn drivers of pedestrian traffic.

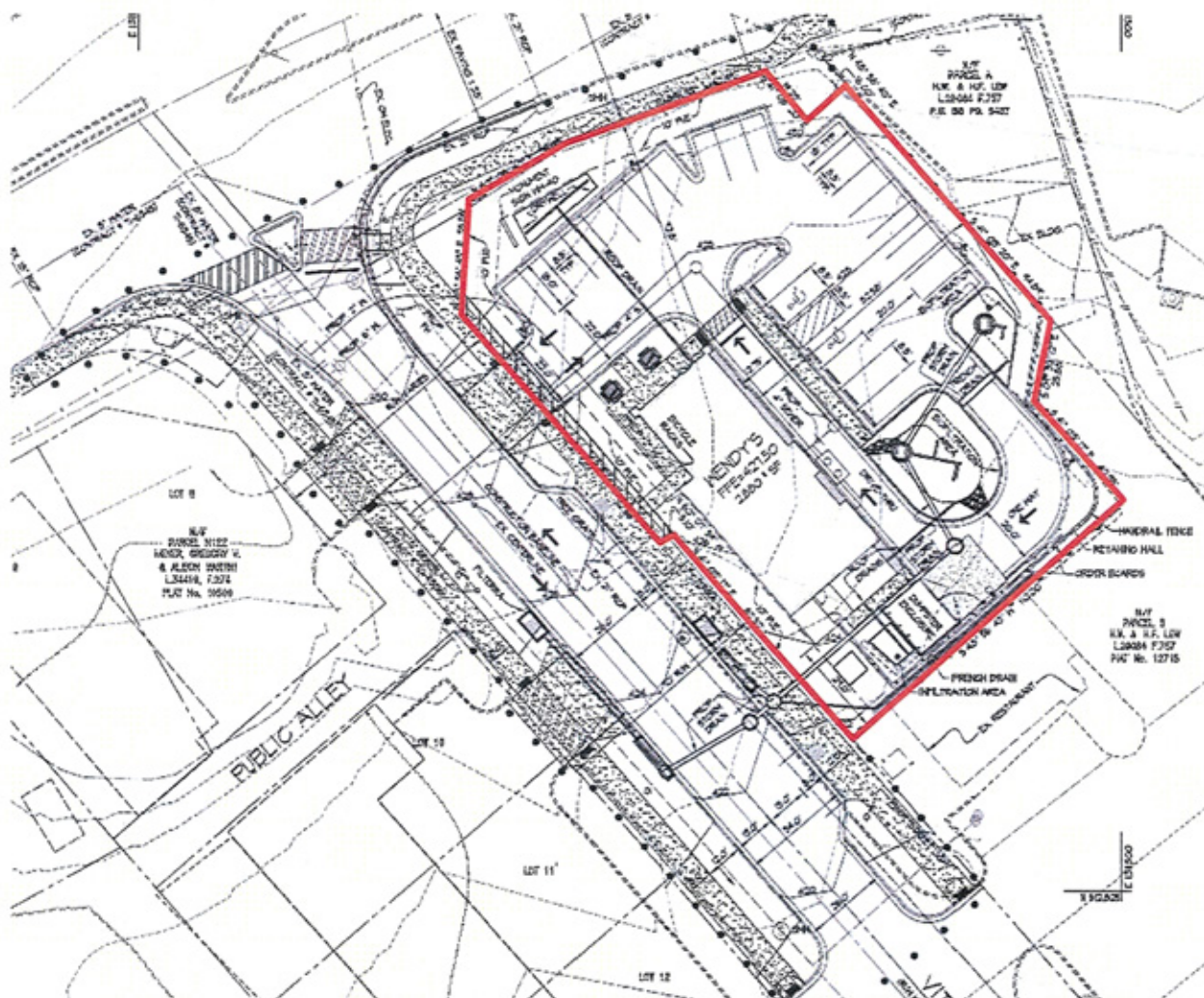
The second concern, regarding the left turn into the site, has been analyzed by the Department of Transportation, the Department of Permitting Services, Fire & Rescue Services, and Planning Department Transportation Planning staff. Each of these agencies has determined the layout to be safe. Further, any conflicts will be limited because Vital Way is used as a cut-through by morning commuters but Wendy's is limited to business hours after the morning peak rush hours. Last, it is hoped that the new cross-section of Vital Way will act as a traffic-calming design: narrower lanes, street trees, and parallel parking all help slow traffic down.

SECTION 2: PRELIMINARY PLAN REVIEW

Master Plan

The proposed preliminary plan amendment substantially conforms with the recommendations of the White Oak Master Plan. The site is identified as part of the Colesville Commercial Center shown in Figure 17 on page 31 in the Master Plan. The Plan recommends that properties along Vital Way in the Colesville Commercial Center "develop or redevelop in a manner that provides

a more unified 'main street' form of development" (page 32). The Plan also recommends that vehicular and pedestrian access be improved between the Colesville Shopping Center and the commercial properties along Vital Way. This proposed preliminary plan amendment locates the building close to Vital Way with parking to the side and rear as shown on Figure 18 on page 33. This and the streetscape treatment and parallel parking along Vital Way will contribute to an active, pedestrian-friendly street atmosphere.



Preliminary Plan

Compliance with the Zoning Ordinance and Subdivision Regulations

The lot was reviewed for compliance with the dimensional requirements for the C-1 zone as specified in Chapter 59, the Montgomery County Zoning Ordinance, and found to comply with all applicable provisions. The lot as proposed will meet all the dimensional requirements including, but not limited to, area, frontage, width, height, and setbacks in the C-1 zone and complies with Chapter 50, the Montgomery County Subdivision Regulations. Details of this review are found in the Subdivision Data Table.

Subdivision Data Table

Plan Name: Wendy's Colesville				
Plan Number: 12002056A				
Zoning: C-1				
# of Lots: 1				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Min Lot Area	n/a	0.54 acres	EG	6/2/09
Lot Width	n/a	174 ft. is minimum proposed	EG	6/2/09
Lot Frontage	n/a	174 ft. is minimum proposed	EG	6/2/09
Min Green Area	10%	24% is minimum proposed	EG	6/2/09
Setbacks				
Front	0 ft.	10 ft.	EG	6/2/09
Side	0 ft.	10 ft.	EG	6/2/09
Rear	0 ft.	10 ft.	EG	6/2/09
Height	30 ft. Max.	Must not exceed maximum	EG	6/2/09
Max Resid'l d.u. per acre	n/a	n/a	EG	6/2/09
MPDUs	n/a	n/a	EG	6/2/09
FAR	n/a	2,552 square feet	EG	6/2/09
Site Plan Req'd?	Yes		EG	6/2/09
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street		Yes	EG	6/2/09
Road dedication and frontage improvements		Yes	Agency Letter	5/29/09
Environmental Guidelines		N/a	Staff memo	4/24/09
Forest Conservation		N/a	Staff memo	4/24/09
Master Plan Compliance		Yes	EG	6/2/09
Stormwater Management		Yes	Agency letter	12/1/08
Water and Sewer (WSSC)		Yes	EG	6/2/09
10-yr Water and Sewer Plan Compliance		Yes	Agency comments	10/27/08
Local Area Traffic Review		Yes	Staff memo	6/3/09
Policy Area Mobility Review		Yes	Staff memo	6/3/09
Transportation Management Agreement		n/a	Staff memo	6/3/09
School Cluster in Moratorium?		n/a	EG	6/2/09
School Facilities Payment		n/a	EG	6/2/09
Fire and Rescue		Yes	EG	4/13/09

Adequate Public Facilities

Roads and Transportation Facilities

Vital Way is a 600-foot long, two lane business street within the southwest quadrant of Randolph Road and New Hampshire Avenue (MD 650). It connects Randolph Road with New Hampshire Avenue. At both ends, Vital Way is restricted to right-turns in/right-turns out only. Development

along Vital Way is entirely commercial. Parking is permitted along both sides of the road. A four-foot wide sidewalk exists along the east side of Vital Way for three-quarters of its length from New Hampshire Avenue. The roadway also functions as a defacto “right-turn lane” for eastbound Randolph Road to southbound New Hampshire Avenue traffic.

Randolph Road, along the northern boundary of the property, is a six-lane divided major highway. It currently has a 5-foot wide sidewalk along its south side and an 8-foot wide shared-use path along its north side. There are median breaks along Randolph Road where several of the major roadways intersect, including one at Vital Way where only eastbound Randolph Road left turns are permitted (to Colesville Shopping Center). Randolph Road has a posted speed limit of 40 mph in the vicinity of the site.

New Hampshire Avenue, to the east of the site, is a six-lane divided major highway with sidewalks on both sides. Metrobus routes C7, C8, C9, Z1, Z2, Z3, and Z4 as well as RideOn Route 10 serve the area and stop near the proposed use.

Local Area Transportation and Policy Area Mobility Review

The proposed use is required to satisfy both Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) tests as part of the Adequate Public Facilities Ordinance (APFO) review since the proposed Wendy’s is estimated to generate 30 or more peak-hour trips during the typical weekday evening (4:00 p.m. – 7:00 p.m.) peak period.

To satisfy the LATR component of the APF test, the consultant for the Applicant submitted a traffic study dated December 9, 2008, which examined traffic-related impacts of the subject development on nearby intersections. Peak-hour trip generation estimates for the proposed drive-through restaurant included in the traffic study were based on trip generation rates for a Fast Food Restaurant with Drive-Through Window (Land Use Code 934, trips per 1,000 square-foot) contained in the Institute of Transportation Engineers *Trip Generation*. A summary of the above is provided in Table 1 on the following page.

TABLE 1: Site Trip Generation Proposed Wendy’s Restaurant, Colesville

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
2,552 SF Fast Food Restaurant with Drive-Through	--	--	--	46	42	88
Primary (New) Trips – 50%	--	--	--	23	21	44
Pass-by Trips – 50%	--	--	--	23	21	44

Source: ITE Trip Generation Land Use Code 934; Fast Food Restaurant with Drive-Through Window. The Traffic Group, Inc., Wendy’s Colesville, Traffic Impact Analysis. December 9, 2008.

The proposed 2,552 square-foot drive-through restaurant will not open prior to 10:00 a.m., will not serve breakfast, and therefore will not generate any traffic during the 6:30 a.m. to 9:30 a.m. morning peak period. As shown in Table 1, the restaurant was estimated to generate approximately 88 total trips during the weekday evening peak-hour period. During this peak-hour, approximately half the peak-hour trips (44 trips) were considered “new” and the other half were considered “pass-by”. “Pass-by” trips represent site-generated trips that are already on adjacent roadways. A summary of the capacity analysis/Critical Lane Volume (CLV) analysis results for the study intersections for the weekday evening peak-hour from the traffic study is presented in Table 2 on the following page.

TABLE 2: Intersection Capacity Calculations Proposed Wendy's Restaurant, Colesville

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
Randolph Rd/Locksley Ln	--	913	--	915	--	918
Randolph Rd/Vital Way/Shop Ctr Dr	--	834	--	844	--	886
New Hampshire Ave/Randolph Rd	--	1,485	--	1,490	--	1,490
New Hampshire Ave/Vital Way	--	892	--	900	--	911
New Hampshire Ave/Wolf Dr	--	1,315	--	1,316	--	1,319

Source: The Traffic Group, Inc. Wendy's Colesville, Traffic Impact Analysis; December 9, 2008.

Note: Fairland/White Oak Policy Area Congestion Standard: 1,475 CLV

As shown in Table 2, under Total (Build) traffic conditions, CLV values for intersections included in the study are either below the Fairland/White Oak Policy Area congestion standard (1,475 CLV) or maintain the CLV determined under background traffic conditions. As such, the proposed preliminary plan satisfies the LATR requirements of the APF test.

To satisfy the PAMR component of the APF test, a development within the Fairland/White Oak Policy Area is required to mitigate 45% of “new” peak-hour trips generated by the use. Based on a total of 44 “new” peak-hour trips that will be generated by the proposed Wendy's (as summarized in Table 1), the mitigation requirement for the proposed use will be 20 peak-hour trips (44 “new” peak-hour trips x 0.45 = 20 peak-hour trips). As PAMR mitigation, the Applicant is proposing full reconstruction of approximately 300 linear feet of Vital Way to the south of Randolph Road along the site frontage per the White Oak Master Plan recommendations and DOT roadway standard MC-214.03 (see Attachment No. 3 – Special Exception Site Plan for Wendy's Colesville). The Applicant has coordinated this improvement with Transportation Planning, DOT, and DPS staff, and has concurrence from staff on counting the Vital Way improvement toward the Applicant's PAMR trip mitigation requirement. The proposed preliminary plan therefore satisfies the PAMR requirements of the APF test.

Other Public Facilities

Other public facilities and services are available and will be adequate to serve the proposed use. Schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. Water and sewer connections are available to serve the project. The application has been reviewed by the Montgomery County

Fire and Rescue Service who have determined that the Property has adequate access for fire and rescue vehicles.

Environment

Forest Conservation

According to the approved Natural Resources Inventory/Forest Stand Delineation Plan, there are no forest stands, floodplains, or specimen trees located on the site. This project is exempt from the requirements of the Montgomery County Forest Conservation Law under the small property category (Section 22A-5s).

Stormwater Management

The MCDPS Stormwater Management Section approved the revised stormwater management concept for the project on December 1, 2008 which includes the use of biofilters with added storage beneath the underdrain pipes and the use of an infiltration trench to provide water quality controls and onsite groundwater recharge. In addition, proprietary filtration inlets will provide water quality controls for 250 linear feet of roadway improvements.

PRELIMINARY PLAN RECOMMENDATION AND CONDITIONS

Approval of preliminary plan amendment 12002056A, pursuant to Chapter 50 of the Montgomery County Code and subject to the following conditions:

1. Approval under this preliminary plan amendment is limited to 1 lot for a drive-through restaurant not to exceed 2,552 square-feet that will not open for business prior to 10:00 a.m. unless a modified Adequate Public Facilities (APF) test is submitted and approved.
2. The Applicant must comply with the conditions of the Board of Appeals Opinion for Case S-2736 adopted May 20, 2009, effective May 29, 2009.
3. Prior to issuance of building permit, the Applicant must record a deed referencing the 5-foot public improvement easement along the Vital Way property frontage as shown on the preliminary plan.
4. The Applicant must remove approximately 140 linear feet of existing sidewalk along the Randolph Road property frontage and provide in its place a new 8-foot wide tree panel and 6-foot wide sidewalk.
5. The Applicant must fully reconstruct approximately 300 linear feet of Vital Way to the south of Randolph Road along the property frontage per the White Oak Master Plan recommendations on pages 30-33 and 48-50, and Montgomery County Department of Transportation (MCDOT) roadway standard MC-214.03 (Commercial/Industrial Road; on a 70-foot right-of-way) , with approval from DOT and the Montgomery County Department of Permitting Services (MCDPS) and with consent from adjoining and

confronting property owners. The Applicant must implement this improvement to mitigate twenty new weekday peak-hour vehicle trips and satisfy the Policy Area Mobility Review (PAMR) portion of the Adequate Public Facilities test.

6. Final design drawings for Vital Way road improvements and other installations must be submitted to all relevant permitting agencies prior to the release of a building permit for the proposed development. All Vital Way road improvements must be open to traffic or available to the public prior to the issuance of the use and occupancy permit for the restaurant. If for any unforeseeable reason the Vital Way improvements described above are not feasible, the Applicant may substitute these with Policy Area Mobility Review mitigation measures that are of equivalent or greater mitigation value, subject to Transportation Planning and MCDOT staff approval.
7. The applicant must comply with the conditions of the MCDPS stormwater management approval dated December 1, 2008. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
8. The applicant must comply with the conditions of the MCDOT letter dated May 29, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
9. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat.
10. No clearing, grading or recordation of plat prior to Certified Site Plan approval.
11. Final location of buildings, sidewalks, and amenities to be determined at Site Plan.
12. The Adequate Public Facilities (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
13. All other applicable conditions of the resolution dated April 7, 2003 for Preliminary Plan #120020560 remain in full force and effect.

SECTION 3: SITE PLAN REVIEW

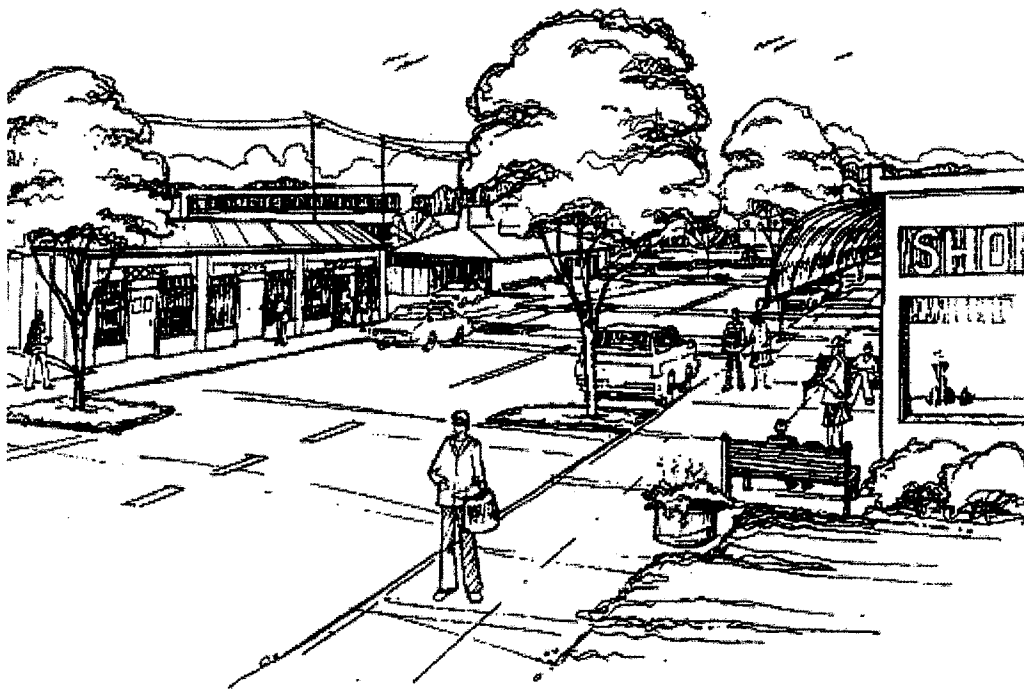
Master Plan

Section 59-C-4.241.2 of the Zoning Ordinance states,

“Any development or redevelopment of any portion of land zoned C-1 where C-1 zoning is in excess of 15 acres at one location requires approval of a site plan in accordance with Division 59-3 [sic]. In order to approve a site plan, the Planning Board must find that the proposed development is consistent with the criteria and guidelines relating to the property, if any, as shown in the area master or sector plan.”

This site is in an area of more than 20 acres of C-1 zoned land and, therefore, requires a site plan that is consistent with the zoning ordinance and the White Oak Master Plan. Although there are no specific criteria or guidelines regarding this property, there are a few general recommendations for this area that this proposed development satisfies:

- Provides services for local residents and employees;
- Establishes a better street wall with direct pedestrian access along Vital Way (because of the required public utility easement, the building remains 10' from the property line);
- Improves the character of Vital Way in keeping with the more "main street" vision of the master plan;
- Limits curb cuts and vehicular/pedestrian conflicts and places the parking and drive-through behind the building; and
- Improves pedestrian safety and connectivity across Vital Way.



Master Plan Concept for Vital Way

Development Standards

The proposed development is designated Convenience Commercial (C-1), which was created to provide locations for convenience shopping facilities with a neighborhood orientation that provide necessities usually purchased frequently. There are minimal setback requirements in the C-1 Zone and no coverage or density limits besides the required 10% green area; height is limited to 30 feet.

The following data table indicates the proposed development's compliance with the Zoning Ordinance.

Project Data Table for the C-1 Zone

Development Standard	Permitted/ Required	Proposed for Approval
Max. Building Height (feet)	30	30
Max. Floor Area (square feet)	n/a	2,552
Setbacks (feet)		
Right-of-Way	0	10
Adjoining Lot	0	10
Green Area (% of net lot)	10	24
Parking Area Landscaping (% of area)	5	6
Parking Spaces	25	25
Handicapped Parking Spaces	1	2
Bicycle Parking Facilities	0	4

FINDINGS

1. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

The proposed development was not subject to a development plan, diagrammatic plan, schematic development plan, or a project plan.

2. *The Site Plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the Convenience Commercial (C-1) zone as demonstrated in the project Data Table on page 14. In particular, the proposed development meets the requirements for height at 30 feet maximum and provides more than double the 10 percent green area required, which is consistent with the approved special exception for a restaurant with a drive-through facility.

3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Locations of buildings and structures

The proposed building provides a better street-wall than now exists along Vital Way, which is more in keeping with the vision of the master plan. This will set a precedent for redevelopment of other properties along Vital Way: limited curb cuts, direct pedestrian access from the sidewalk and parking and drive aisles to the side and behind the building. The location of the drive-through service window behind the building and use of structures to screen operational facilities maintains a more pedestrian-oriented atmosphere along Vital Way. The design and layout of the building is compatible with the surrounding buildings in terms of massing, detailing, and height. Both the use and the location of the building and structures provide an adequate, safe, and efficient layout on the subject site.

b. Open Spaces

The plan proposes 24 percent on-site green area including sidewalks, sitting areas, bio-filtration areas, and landscaped areas. Benches and bicycle facilities are also provided along the Vital Way frontage. This green area is more than adequate for such a site and serves several complementary purposes to create a safe and efficient open space for public use with environmental benefits.

c. Landscaping and Lighting

The proposed landscaping on the site consists of foundation plantings along the foundation of the building and street trees along both Vital Way and Randolph Road. The bio-filtration areas are heavily planted with colorful ground covers, perennials, and shrubs. Interior trees will shade the parking areas and sidewalks and decrease the heat-island created by asphalt. Evergreens are used effectively to screen parking and operational facilities such as the trash collection area.

The lighting plan consists primarily of pole-mounted fixtures within the site to provide adequate lighting for evening use. Other lighting is building-mounted to provide safe pedestrian ingress and egress.

d. Recreation Facilities

There are no required recreation facilities for commercial properties.

e. Pedestrian and Vehicular Circulation Systems

The streetscapes along Vital Way and Randolph Road will be improved; the Vital Way frontage substantially so. These sidewalks will integrate the development into the existing commercial uses and provide safe and efficient pedestrian access to the neighborhood circulation system. The pedestrian environment, as a whole, is greatly improved by the sidewalk, street trees, and parallel parking and is adequate, safe, and efficient.

This project will provide only one means of vehicular ingress and egress, which minimizes pedestrian conflicts. The driveway itself is raised with an apron keeping the sidewalk flush across the entrance/exit to ensure that the priority is focused on

pedestrians. The parking and internal circulation for the drive-through are adequately, safely, and efficiently designed.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The building is compatible with the other existing and proposed commercial buildings adjacent to the site and across Vital Way regarding massing, scale, detailing, and layout.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The subject site plan is exempt from the requirements of the forest conservation law.

The proposed storm water management concept consists of onsite water quality control and onsite recharge via construction of three bio-filters with additional storage beneath the under-drain pipes and installation of one infiltration trench. Additional water quality control for approximately 250 linear feet of roadway improvements will be via installation of three proprietary filtration inlets. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

6. *The Site Plan is consistent with the criteria and guidelines relating to the property, if any, as shown in the area master or sector plan.*

There are no specific criteria or guidelines relating to the subject property. The proposed site plan is, however, consistent with the general objectives of the White Oak Master Plan for the Colesville Commercial Center Area. Objectives such as a more pedestrian-oriented streetscape, provision of buildings near the sidewalk, and parking and drive aisles relegated to the side and rear of properties are all met by this development.

RECOMMENDATION AND CONDITIONS

Staff recommends approval site plan amendment 82005008B for 2,552 square feet of restaurant use with a drive-through service window on one 0.54-acre lot. All site development elements as shown on the site, landscape, and lighting plans stamped by the M-NCPPC on May 22, 2009 are required except as modified by the following conditions:

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of the approved Resolution for preliminary plan 12002056A.

2. Drive-Through Aisle Safety

- a. Modify the crosswalk from the parking area to the sidewalk entrance to create a raised crosswalk, flush with the sidewalks on either side of the drive-through aisle.

- b. Provide a convex mirror on the northern corner of the building to warn drive-through customers of pedestrians leaving the restaurant and using the crosswalk to the parking area.
- 3. Lighting
The Applicant must ensure that each of the following conditions is met:
 - a. Lighting distribution must conform to IESNA standards for commercial development.
 - b. Deflectors must be installed on all fixtures causing potential glare or excess illumination on the perimeter fixtures abutting adjacent properties.
 - c. Illumination levels for on-site lighting fixtures must not exceed 0.5 footcandles (fc) at any property line abutting county roads.
- 4. Development Program
The Applicant must construct the proposed development in accordance with a Development Program. A Development Program will be reviewed and approved by M-NCPPC staff prior to approval of the Certified Site Plan. The Development Program must include a phasing schedule with the following elements:
 - a. Streetscape improvements, limited to sidewalks, trees, and other amenities, within the right-of-way must be completed within six months of the issuance of any use and occupancy permits.
 - b. All on-site landscaping, lighting, benches, and tables must be installed within six months of the issuance of any use and occupancy permits.
 - c. Phasing of pre-construction meetings, dedications, sediment/erosion control, stormwater management, and other features.
- 5. Certified Site Plan
Prior to Certified Site Plan approval the following revisions shall be included and/or information provided, subject to staff review and approval:
 - a. Minor corrections and clarifications to site details and labeling.
 - b. Development Program, Inspection Schedule, Forest Conservation Exemption Letter, and Site Plan Resolution.

APPENDICES

- A. Original Preliminary Plan Opinion
- B. Original Site Plan Opinion
- C. Site Plan Amendment Opinion
- D. Planning Board Recommendation on Special Exception
- E. Hearing Examiner's Report on Special Exception
- F. Agency Correspondence



Date Mailed: April 7, 2003

Action: Approved Staff Recommendation

Motion of Comm. Wellington, seconded by Comm. Robinson with a vote of 4-0;

Comms. Berlage, Bryant, Robinson and Wellington voting in favor with Comm. Perdue absent

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-02056

NAME OF PLAN: BURDOFT PROPERTY

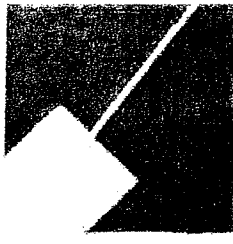
On 11/15/01, THOMAS J. REUGG submitted an application for the approval of a preliminary plan of subdivision of property in the C-1 zone. The application proposed to create 1 lot on 24,049 acres of land. The application was designated Preliminary Plan 1-02056. On 02/13/03, Preliminary Plan 1-02056 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-02056 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-02056.

Approval, Subject to the Following Conditions:

- 1) Approval under this preliminary plan is limited to 10,192 square feet of commercial office/retail uses
- 2) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Fairland White Oak Master Plan unless otherwise designated on the preliminary plan
- 3) Compliance with the conditions of approval of the MCDPS stormwater management approval dated November 29, 2001
- 4) Access and improvements as required to be approved by MCDPWT prior to recordation of plat
- 5) No clearing, grading or recording of plats prior to site plan enforcement agreement approval
- 6) Final approval of the location of buildings, on-site parking, site circulation, and sidewalks will be determined at site plan
- 7) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff
- 8) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed

- 9) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
 - 10) Other necessary easements
-

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSIONDate of Mailing: **JUN 06 2005**8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.orgMONTGOMERY COUNTY PLANNING BOARD
OPINIONSite Plan No.: 8-05008
Project: Burdoff Property
Date of Hearing: April 21, 2005

Action: **APPROVAL SUBJECT TO CONDITIONS.** (*Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Wellington; with a vote of 4-0, Commissioners Berlage, Bryant, Wellington, and Robinson voting in favor. Commissioner Perdue necessarily absent.*)

The date of this written opinion is **JUN 06 2005** (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State). This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On April 21, 2005, Site Plan Review #8-05008 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

THE SUBJECT PROPERTY

The subject property is approximately 0.55 acres in size at the intersection of Randolph Road and Vital Way in Colesville. The site contains an existing two-story house, garage and shed, with a consistent grade elevation difference from north to south by approximately eight feet. Current access to the site is from Vital Way. The site is zoned C-1. A five-foot-wide sidewalk currently exists on Vital Way along the property frontage and an existing 6-foot-wide sidewalk exists on Randolph Road.

BACKGROUND

Preliminary Plan 1-02056 was approved on April 7, 2003 for subdivision of 1 lot on 24,049 square feet of land. The approval of the preliminary plan is limited to 10,192 square feet of commercial office/retail uses.

PROPOSED DEVELOPMENT

The applicant requests approval for a total 10,192 square feet of commercial office and retail, in the C-1 Zone, on approximately 0.55 acres of property. The site plan is consistent with the preliminary plan (#1-02056) for total proposed square footage.

The proposed site is a key element to the improvements for the Vital Way corridor and unified "Main Street" type of development as envisioned in the White Oak Master Plan. The building design is a two-story structure with current plans for the retail space, including the restaurant space on the first level and office space on the second floor.

Access to the proposed parking lot is from Vital Way at the southwestern corner of the site. The parking wraps around the southern and northern perimeters of the proposed building and provides a separation between the existing uses to the south and east.

Landscaping consists of shade trees within the parking lot and within the rights-of-way for Randolph Road and Vital Way. Evergreen screening is provided for the perimeter parking adjacent to public roads. An outdoor seating area is proposed. Lighting consists of pedestrian oriented fixtures within the parking lot and around the building with respect to height of the poles, wattage and location of fixtures.

Recreation is not required for commercial properties. The proposed development is proposing 21 percent green space on the perimeter of the parking area and within the parking islands, which exceeds the 10 percent required by the C-1 Zone. The stormwater management concept was approved on February 10, 2005.

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Development Review Staff ("Staff") recommended approval of the site plan, with conditions, in its memorandum dated April 15, 2005 ("Staff Report"). Staff's testimony at the public hearing was consistent with the Staff Report.

The applicant appeared at the hearing with his engineer and testified that he agrees with Staff's recommendation and proposed conditions of approval.

The Record contains a letter from Robert G. Yeck, speaking for the Greater Colesville Citizens Association. In his letter, Mr. Yeck stated that he supports the application but sought assurance from the Board that parking standards would be complied with and that signage would be appropriate for the community. He asked that the amount of square feet for each use within the development be specified in the conditions of approval. Additionally, he asked that his organization have a presence in the sign approval process. Mr. Yeck also appeared at the hearing and presented testimony consistent with his letter. At the hearing, Mr. Yeck stated his concern that an insufficient number of parking spaces had been provided and that he understood the applicant would have to waive a space. In its rebuttal testimony, the applicant testified that he did not agree to the parking condition proposed by Mr. Yeck and noted that the proposal complies with the parking standards set forth in the Zoning Ordinance. Staff confirmed that the proposed parking satisfies and, in fact, exceeds the minimum parking requirements; and, additionally, stated that there had been some discussion concerning a parking waiver early in the application process but that, as the review progressed, Staff determined that no such waiver would be required. Finally, Staff advised the Board that the applicant would need to file an amendment should any future use of the development require more parking spaces than are provided. Mr. Yeck indicated that he was comfortable with that assurance. On Staff's recommendation at the hearing, the applicant proffered that it would present the sign design to the Greater Colesville Citizens Association for its support as part of the approval.

FINDINGS

Based on all of the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. An approved development plan or a project plan is not required for the subject development.
2. The Site Plan meets all of the requirements of the C-1 Zone in which it is located.

The Project Data Table, included on page 7 of the Staff Report dated April 15, 2005, confirms that the proposed development complies with all applicable C-1 Zone development standards. The Board expressly finds that evidence of record, including Staff and applicant testimony, and the Project Data Table demonstrates that, with 34 proposed parking spaces, the application provides more than the minimum number of parking spaces required for the uses proposed. The Project Data Table notes that, although the total required base parking is 39, the applicant is entitled

to a credit under the Zoning Ordinance for combined uses in the same building, thereby decreasing the required number of uses to 29.

3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

- a. Building

The location of the building and parking facilities are safe, adequate and efficient.

The proposed building is located in an optimal area of the site to provide visibility at a major vehicular intersection and buffer the parking from Vital Way and residential uses on the opposite side of the Vital Way corridor. Additionally, the architecture of the proposed commercial building emphasizes a residential character as envisioned in the Master Plan for the revitalization of this area.

- b. Open Spaces

The applicant is exceeding the required 10 percent of green space for the C-1 Zone. The plan proposed 0.12 acres of green space, or 21 percent of the property, on the perimeter of the property and within the planting islands that separate the parking spaces. The green space as well as the proposed trees along Vital Way and Randolph Road will visually enhance the streetscape and provide a green buffer to the adjacent commercial properties.

The proposed stormwater management concept consists of on-site water quality control and on-site recharge via construction of an infiltration trench. Channel protection is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

- c. Landscaping and Lighting

The proposed landscaping on the site consists of foundation planting to accentuate the entrance to the building and evergreen hedges along the perimeter of the parking lot adjacent to both public roads. Shade trees and groundcover are proposed within the planting islands of the parking lot. The perimeter of the parking lot, adjacent to the existing uses, contains shade trees within the 10-foot planting strip.

The streetscape for Vital Way includes shade trees in tree pits along the frontage of the property. Shade trees behind the existing sidewalk are also proposed along the property frontage on Randolph Road.

The lighting plan consists of low-level Granville fixtures located along the perimeter of the proposed parking lot. The light fixtures will be mounted on 12-foot-tall poles and equipped with shields to avoid spillover to county roads and adjacent properties.

d. Recreation

Recreation facilities are not required for commercial properties.

e. Vehicular and Pedestrian Circulation

Vehicular and pedestrian access is safe, adequate, and efficient.

The site plan proposes one vehicular access point to the site at the southwestern property line from Vital Way. The access point is a safe distance from the intersection of Randolph Road and provides full turning movements in and out of the subject site onto Vital Way.

The site plan proposes improved pedestrian access on Vital Way in accordance with the recommendations of the Master Plan for a more unified "Main Street" type of development that activates the street. The proposed shade trees will be located in 5' x 10' tree pits with a 5-foot-wide clear area for pedestrian circulation. The proposed 10-foot-wide walkway on Vital Way will connect with an existing 6-foot-wide sidewalk on Randolph Road. Six-foot-wide internal sidewalks will also be provided to facilitate pedestrian circulation around the perimeter of the building and to the sidewalks on Vital Way and Randolph Road.

4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The proposed building, parking and commercial use is consistent with the adjacent uses and compatible with the surrounding commercial establishments.

The proposed development encourages revitalization of the adjacent properties and establishes a precedent for the "Main Street" type of development within the corridor. The architecture of the proposed building is more residential in nature to

respond to the surrounding community and promote pedestrian circulation on the improved streets. The location of the parking is physically separated from the street allowing the building to front closer to the road. The planned parking area becomes more compatible with the adjacent parking facilities and buildings on the adjacent commercial properties to the south and east of the site.

With respect to the proposed sign, the Board notes that the condition of approval requiring support for the sign design from the Greater Colesville Citizens Association and Sign Review Board review and approval, will ensure that any such structure is compatible.

5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

The site is exempt from the forest conservation requirements since the site is less than one-half acre and less than 40,000 square feet of forest will be cleared.

PLANNING BOARD ACTION AND CONDITIONS

The Montgomery County Planning Board APPROVES Site Plan Review #8-05008 for 5,096 square feet of commercial office and 5,096 square feet of commercial retail, including restaurant use, on 0.55 gross acres in the C-1 Zone with the following conditions:

1. Preliminary Plan Conformance
The proposed development shall comply with the conditions of approval for Preliminary Plan 1-02056 as listed in the Planning Board opinion dated April 7, 2003.
2. Site Design
 - a. The dumpster enclosure shall be constructed of similar masonry material proposed for the building exterior.
3. Landscaping
 - a. Provide two 2.5-3" caliper shade trees behind the existing sidewalk on Randolph Road, subject to permitting by the Montgomery County Department of Permitting Services.
 - b. Provide 5' x 10' tree pits and 2.5-3" caliper shade trees within the Vital Way right-of-way.

4. Lighting

- a. Provide a lighting distribution and photometric plan with summary report and tabulations to conform to IESNA standards for commercial development.
- b. All light fixtures shall be full cut-off fixtures.
- c. Deflectors, reflectors or refractors shall be installed on all fixtures causing potential glare or excess illumination, especially on the perimeter fixtures abutting the adjacent commercial properties.
- d. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads.
- e. The height of the light poles shall not exceed 12 feet including the mounting base.

5. Pedestrian Circulation

- a. Provide a ten-foot-wide sidewalk along the property frontage on Vital Way.
- b. Provide 6-foot-wide sidewalk connections from the interior parking lot to Randolph Road and Vital Way.

6. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated February 10, 2005.

7. Development Program

Applicant shall construct the proposed development in accordance with a Development Program. The Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of signature set of site plan. The Development Program shall include a phasing schedule as follows:

- a. Street tree planting and the community-wide pedestrian pathway for Vital Way shall progress as street construction is completed, but no later than six months after completion of the commercial building.
- b. Landscaping associated with the parking lot and building shall be completed as construction of each facility is completed, but no later than six months after completion of the commercial building.
- c. Pedestrian pathways, including the 6-foot-wide led-walks to the existing sidewalk on Randolph Road and proposed pedestrian walkway on Vital Way, and outdoor seating area associated with the building shall be completed as construction of the building is completed.
- d. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.
- e. Provide each section of the development with necessary roads.

- f. Phasing of dedications, parking, stormwater management, sediment/erosion control, community paths, trip mitigation or other features.

8. Clearing and Grading

No clearing or grading prior to M-NCPPC approval of signature set of plans.

9. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. Development program, inspection schedule, and Site Plan Opinion.
- b. Limits of disturbance.
- c. Note stating the M-NCPPC staff must inspect protection devices prior to clearing and grading.
- d. Details of the material for the dumpster pad enclosure.
- e. Details of the proposed sign at the northeast corner of the property. Present the sign to the Greater Colesville Citizens Association for its support; and, additionally, to the Sign Review Board for review and approval, as required by Article 59-F of the Montgomery County Zoning Ordinance.
- f. All other items for site design, landscaping, lighting and pedestrian circulation in the conditions of approval above.

APPROVED AS TO LEGAL SUFFICIENCY

TAB

M-NCPPC LEGAL DEPARTMENT

DATE

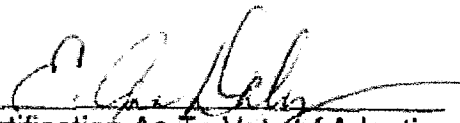
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[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

Site Plan No. 8-05008
Burdoft Property
Page 9

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on Thursday, **June 2, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Site Plan 8-05008, Burdoft Property**. Commissioner Perdue abstained.



Certification As To Vote of Adoption
E. Ann Daly, Technical Writer



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

JUL 02 2007

MCPB No. 07-33
Site Plan No. 82005008A
Project Name: Burdoff Property
Hearing Date: April 26, 2007

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on December 1, 2006, Randolph New Hampshire Retail Center LLC ("Applicant"), filed a site plan amendment application designated Site Plan No. 82005008A ("Amendment") for approval of the following modifications:

- 1) Modify the paved section within the approved 70-foot-wide right-of-way for Vital Way, as approved by DPWT; and
- 2) Remove a sign previously approved on the site plan.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated April 13, 2007 setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on April 26, 2007, Staff presented the Amendment to the Planning Board as a consent item for its review and action (the "Hearing"); and

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves Site Plan No. 82005008A; and

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this site plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this written resolution is JUL 02 2007
(which is the date that this opinion is mailed to all parties of record); and

APPROVED AS TO LEGAL SUFFICIENCY

Pyp 4/16/07
M-NCPPC LEGAL DEPARTMENT

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

At its regular meeting, held on Thursday April 26, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Bryant, seconded by Commissioner Wellington, with Chairman Hanson, Vice Chair Perdue, and Commissioners Bryant, and Wellington present and voting in favor. Commissioner Robinson was temporarily absent. This Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 82005008A, Burdoff Property.



Royce Hanson, Chairman
Montgomery County Planning Board



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

February 3, 2009

Ms. Catherine G. Titus, Vice Chairperson
Montgomery County Board of Appeals
100 Maryland Avenue
Stella B. Werner Council Office Building
Rockville, MD 20850

Re: **Special Exception S-2736**— Request of DavCo Restaurants, Inc. to establish a Drive-in Restaurant (Wendy's) on property known as Lot 22 of the "George W. Acorn's Addition to Colesville" subdivision located at the southeastern corner of the intersection of Vital Way and Randolph Road in Silver Spring.

Dear Ms. Titus and Board of Appeal Members:

At the regular meeting of the Montgomery County Planning Board on January 29, 2009, the Montgomery County Planning Board reviewed a request for a special exception to redevelop the subject property with a one-story drive-in restaurant. The restaurant will replace a vacant single family dwelling with attached garage and an outbuilding. The restaurant will have a total area of 2,552 square feet with 916 square feet of patron area. The plan also proposes a 260 square-foot trash enclosure with board on board gates and 23 off street parking spaces. The restaurant will have a total of 50 employees with up to 10 employees on site at any given time. Hours of operation for the Restaurant will be seven days a week from 10:00 a.m. to 11:00 p.m. for the dining room and 10:00 a.m. to 2:00 a.m. for the drive-through.

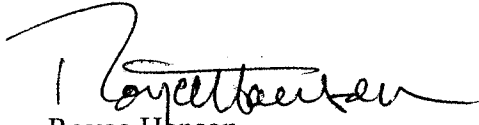
At the hearing, staff verbally amended condition No. 4, in reference to the hours of operation for the restaurant, to read "from 10:00 a.m. to 11:00 p.m., seven days a week for the dining room" After careful consideration of staff's recommendations and comments of those testifying at the public hearing, the Board voted to adopt staff's recommendation with the amended condition.

On a motion by Vice-Chairman Robinson and seconded by Commissioner Cryor, with Chairman Hanson and Commissioner Presley in agreement, and Commissioner Alfandre voting against the motion, the Planning Board, by a vote of 4 to 1, recommended that Special Exception 2736 be approved with the following conditions:

1. The Applicant must limit development on the property to a 2,552 square-foot drive-in restaurant; no more than 917 square feet of which may be devoted to a patron area.

2. The Applicant must provide 23 parking spaces on site.
3. The restaurant must not have more than 50 employees (including a manager), and not more than 10 employees on site at any given time.
4. The hours of operations for the restaurant are from 10:00 a.m. to 11:00 p.m., seven days a week, for the dining room and 10:00 a.m. to 2:00 a.m., seven days a week for the drive-in.
5. The adequacy of public facilities must be determined by the Planning Board at the time of subdivision review in this case. Therefore, subdivision approval is a condition of approval of this special exception.

A copy of the Technical Staff report is attached.



Royce Hanson
Chairman

cc: Françoise M. Carrier, Director, Office of Zoning and Administrative Hearings.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2736

PETITION OF DAVCO RESTAURANTS, INC.

OPINION OF THE BOARD
(Opinion Adopted: May 20, 2009)
(Effective Date of Opinion: May 29, 2009)

Case No. S-2736 is an application for a special exception, pursuant to Section 59-G-2.16 of the Zoning Ordinance, to permit a drive-through restaurant. The Hearing Examiner for Montgomery County held a hearing on the application on February 9, 2009, closed the record in the case on March 30, 2009, and on April 21, 2009 issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 22, George W Acorns Addition to Colesville Subdivision, located at the intersection of Randolph Road and Vital Way, Silver Spring, Maryland, 20904, in the C-1 Zone.

Decision of the Board: **Special Exception Granted Subject
To Conditions Enumerated Below.**

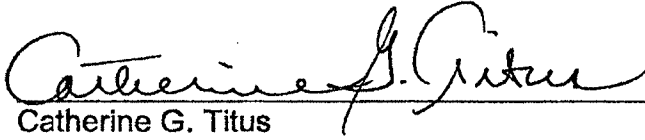
The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on May 20, 2009. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in the Opinion of the Board of Appeals.
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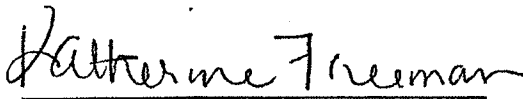
2. The Applicant must limit development on the property to a drive-in restaurant with 2,552 square-feet of floor area. The use may have no more than 917 square feet of indoor patron area, and there may be no more than 128 square feet of outdoor patron area.
3. The Applicant must provide 25 parking spaces on site.
4. The restaurant must not have more than 50 employees (including a manager), and not more than 10 employees on site at any given time.
5. The hours of operation for the restaurant are from 10:00 a.m. to 11:00 p.m., seven days a week, for the dining room, and 10:00 a.m. to 2:00 a.m., seven days a week, for the drive-through.
6. The adequacy of public facilities must be determined by the Planning Board at the time of subdivision review in this case. Therefore, subdivision approval is a condition of approval of this special exception.
7. Petitioner must meet the specifications of its revised site plan (Exhibit 59(a)) and provide streetscaping and landscaping as specified in its revised landscape plan (Exhibit 59(c)).
8. Petitioner may not post the signs it proposes until it obtains a permit therefor from DPS. A copy of the permit should be filed with the Board of Appeals. Any changes to the signage details shown on Exhibits 55, 59(a) and 59(b) must be submitted to the Board of Appeals for review following Site Plan Review by the Planning Board.
9. Petitioner shall keep dumpsters and outdoor storage areas for waste, fats, oils and grease covered and located so as not to impact upon the storm drain inlets.
10. Deliveries, trash pickup and recycling pickup must be scheduled outside of the peak traffic hours of 6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.
11. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with Walter S. Booth, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of May, 2009.


Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

December 1, 2008

Carla Reid
Director

RECEIVED

DEC 4 2008

DEVELOPMENT REVIEW

Mr. Timothy Hoffman
Gutschick, Little & Weber, P.A.
3909 National Drive, Suite 250
Burtonsville, MD 20866

Re: REVISED Stormwater Management **CONCEPT**
Request for Wendy's Colesville
Preliminary Plan #: Pending
SM File #: 234430
Tract Size/Zone: 0.538 acres / C-1
Total Concept Area: 0.538 acres
Lots/Block: N/A
Parcel(s): N123
Watershed: Paint Branch

Dear Mr. Hoffman:

Based on a review by the Department of Permitting Services Review Staff, the **revised** stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site water quality control and onsite recharge via construction of three Bio Filters with additional storage beneath the underdrain pipes, and installation of one Infiltration Trench. Additional water quality control for approximately 250 linear feet of roadway improvements will be via installation of three proprietary filtration inlets. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.
5. This stormwater concept revision includes approximately 250 linear feet of roadway improvements to Vital Way, beginning at the intersection with Randolph Road. Any additional roadway improvements will require submission of a formal stormwater management concept revision.
6. This approval supersedes the approval granted on October 21, 2008.

This list may not be all-inclusive and may change based on available information at the time.



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

June 3, 2009

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan #1-2002056A
Wendy's Colesville

Dear Ms. Conlon:

We have completed our review of the revised preliminary plan dated May 21, 2009. As a result, we have reconsidered the comments in our April 6, 2007 letter for Site Plan no. 820050080. This letter is to modify the following comments of our prior approval letter as follows (all conditions of that letter that are not mentioned herewith remain in effect as stated):

Comment 1 is to be modified as:

"The top typical section in the lower left corner of the sheet should be modified to provide twenty six (26) feet of pavement between the curbs within the tangent section. Each lawn panels can be narrowed by one (1) foot to accommodate this change.

The bottom typical section in the lower left corner of the sheet should be modified to match the revised plan view. That detail and the related note should be amended to indicate there will not be any on-street parking on the west (southbound) side of Vital Way. (On-street parking will only be allowed on the east (northbound) side of the road, within the protected parking spaces.)"

Comment 3 is to be modified as:

"Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.

Grant a five (5) foot wide Public Improvements Easement (PIE) for the construction, reconstruction and maintenance of the proposed sidewalk on private property. "

Comment 5 is to be modified as:

"The sight distances study has been accepted. A copy of the accepted Sight Distances Evaluation certification form is enclosed for your information and reference."

Division of Traffic Engineering and Operations

101 Orchard Ridge Drive, 2nd Floor • Gaithersburg, Maryland 20878
Customer Service 240-777-6000 • Main Office 240-777-2190 • 240-777-6013 TTY • 240-777-2080 FAX
trafficops@montgomerycountymd.gov

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Comment 9 is to be modified as:

"If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi of our Traffic Engineering Design and Operations Section at (240) 777-2190 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant."

Comment 13 is to be modified as:

"Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but not necessarily be limited to, the following improvements:

- B. Reconstruct Vital Way (from Randolph Road to the adjacent driveways on each side of the right-of-way south of the site) with paving, curbs and gutters, sidewalks and handicap ramps, enclosed storm drainage and appurtenances, lawn panels, street trees, and streetlights along site frontage on Vital Way - as shown in concept on the May 21, 2009 amended preliminary plan - as a modified DOT Standard MC-214.03 ("Commercial/Industrial Road").

The pavement widening and setting the new curbline to the ultimate profile may necessitate a mill and overlay (or more) reconstruction of existing Vital Way on the south/west side of the roadway, in order to achieve proper pavement transitions and drainage.

Provide amended soil panels and tree grates adjacent to the proposed street trees. The stand-alone amended soil panels and appurtenances should extend fifteen (15) feet in either direction from the tree and provide 500-1000 cubic feet of soil volume per tree.

* NOTE: the Public Utilities Easement is to be graded on a side slope not to exceed 4:1."

- E. The comment about installing utility lines underground is hereby deleted. In its place, the following comment is added:

"Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Traffic Engineering Design and Operations Section."

(All other items of condition 13 will remain in effect as stated).

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Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact either Mr. Sam Farhadi or me at (240) 777-2197.

Sincerely,



Gregory M. Leck, P.E., Manager
Development Review Team

Enclosures (2)

m:\subdivision\farhas01\preliminary plans\ 1-2002056A, Wendys Colesville, gml revs.doc

cc: Thomas Hughes; DavCo Restaurants, Inc.
James A. Matan; Rock Mat, LLC
David Weber; Gutschick, Little & Weber
Todd Brown; Linowes & Blocher
Debra Borden; Linowes & Blocher
Robert Kronenberg; M-NCPPC DRD
Joshua Sloan; M-NCPPC DRD
Erin Grayson; M-NCPPC DRD
Shahriar Etemadi; M-NCPPC TPD
Corren V. Giles; MSHA EAPD
Joseph Y. Cheung; DPS RWPPR
Henry Emery; DPS RWPPR
Sarah Navid; DPS RWPPR
Brett Linkletter; DOT DOHS
Khursheed Bilgrami; DOT TEO
Sam Farhadi, DOT TEO
Dewa Salihi, DOT TEO
Preliminary Plan Folder
Preliminary Plans Note Book



MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION
DEPARTMENT OF PERMITTING SERVICES

SIGHT DISTANCE EVALUATION

Facility/Subdivision Name: Wendy's Colesville Preliminary Plan Number: 1-2007056A

Street Name: Vital Way

Master Plan Road
 Classification: Business District

Posted Speed Limit: 35 mph

Street/Driveway #1 (Exit Driveway)

Street/Driveway #2 (_____)

Sight Distance (feet)	OK?
Right <u>93.5</u>	Yes <input checked="" type="checkbox"/>
Left <u>470</u>	Yes <input checked="" type="checkbox"/>

Sight Distance (feet)	OK?
Right _____	_____
Left _____	_____

Comments: Vital Way intersects with
Randolph Road 93.5 feet from the proposed
exit driveway.

Comments: _____

GUIDELINES

Classification or Posted Speed
 (use higher value)

Tertiary	-	25 mph
Secondary	-	30
Business	-	30
Primary	-	35
Arterial	-	40
		(45)
Major	-	50
		(55)

Required
 Sight Distance
 in Each Direction*

150'
200'
200'
250'
325'
400'
475'
550'

Sight distance is measured from an eye height of 3.5' at a point on the centerline of the driveway (or side street) 8' back from the face of curb or edge of traveled way of the intersecting roadway where a point 2.75' above the road surface is visible. (See attached drawing)

*Source: AASHTO

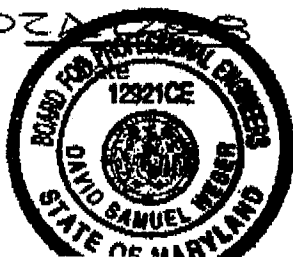
ENGINEER/ SURVEYOR CERTIFICATE

I hereby certify that this information is accurate and was collected in accordance with these guidelines.

Signature

12921

PLS/P.E. MD Reg. No.



Montgomery County Review:

☒ Approved

☐ Disapproved:

By: 6/3/09

Date: [Signature]