

**Potomac Foods Drive-Thru Conditional Use, CU 17-03**

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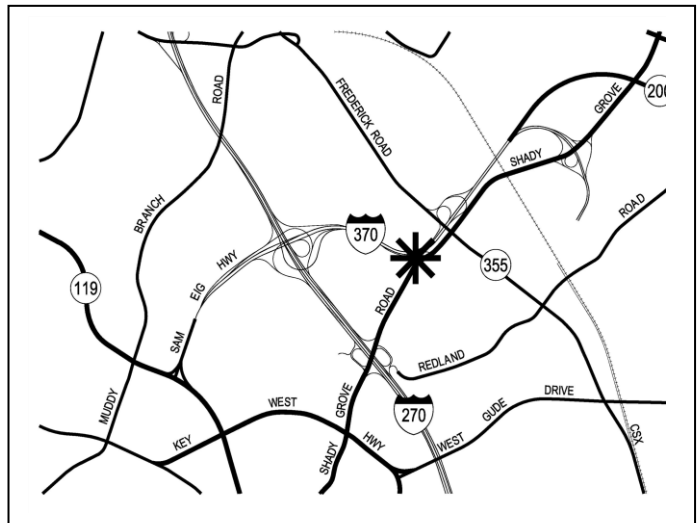
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**Completed: 6/9/17**

**Description**

- Request for a drive-thru associated with a restaurant;
- Located at 16004 Shady Grove Road, Gaithersburg;
- 1.71 acres zoned GR- 1.5 H- 45, 2010 *Great Seneca Science Corridor Master Plan*;
- Applicant: Potomac Foods Real Estate, LLC.;
- Filing Date: August 10, 2016;
- Public Hearing by the Hearing Examiner: July 7, 2017.



**Summary**

- Staff recommends **approval with conditions**.
- Restaurants are permitted uses in the GR Zone, and drive-thru windows are allowed as limited or conditional uses. The proposed drive-thru window does not meet the limited use standards under Section 3.5.14.E.2.a, so the applicant is seeking conditional use approval.
- The Application satisfies the requirements for approval under Chapter 59, the Montgomery County Zoning Ordinance.
- A Preliminary Forest Conservation Plan associated with this application was approved on July 15, 2016 (SC2016015).

## **STAFF RECOMMENDATION**

Staff recommends approval for CU 17-03 subject to the following conditions:

1. The Applicant must obtain approval of a Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
2. The Applicant must satisfy the Transportation Policy Area Review (TPAR) test by paying updated General District Transportation Impact Tax to Montgomery County Department of Permitting Services. The timing and amount of the payment will be in accordance with Chapter 52 of the Montgomery County Code, and any amendments to this chapter.
3. The Applicant must provide at least one long-term bicycle parking space consisting of a bike locker in a well-lit location or a designated secured bike room for employees.
4. Prior to release of any building permit, the existing site plan (No. 819810470) must be abandoned.

## PROJECT DESCRIPTION

### Site Description

The Property is located on the west side of Shady Grove Road in Gaithersburg, Maryland, approximately 230 feet south of Shady Grove Road's intersection with the I-370 exit-ramp. It comprises three parcels, identified as Parcels N16, N17, and N19 located on Tax Map FS562, with a total area of approximately 1.71 acres. Parcel N19 is unplatted.

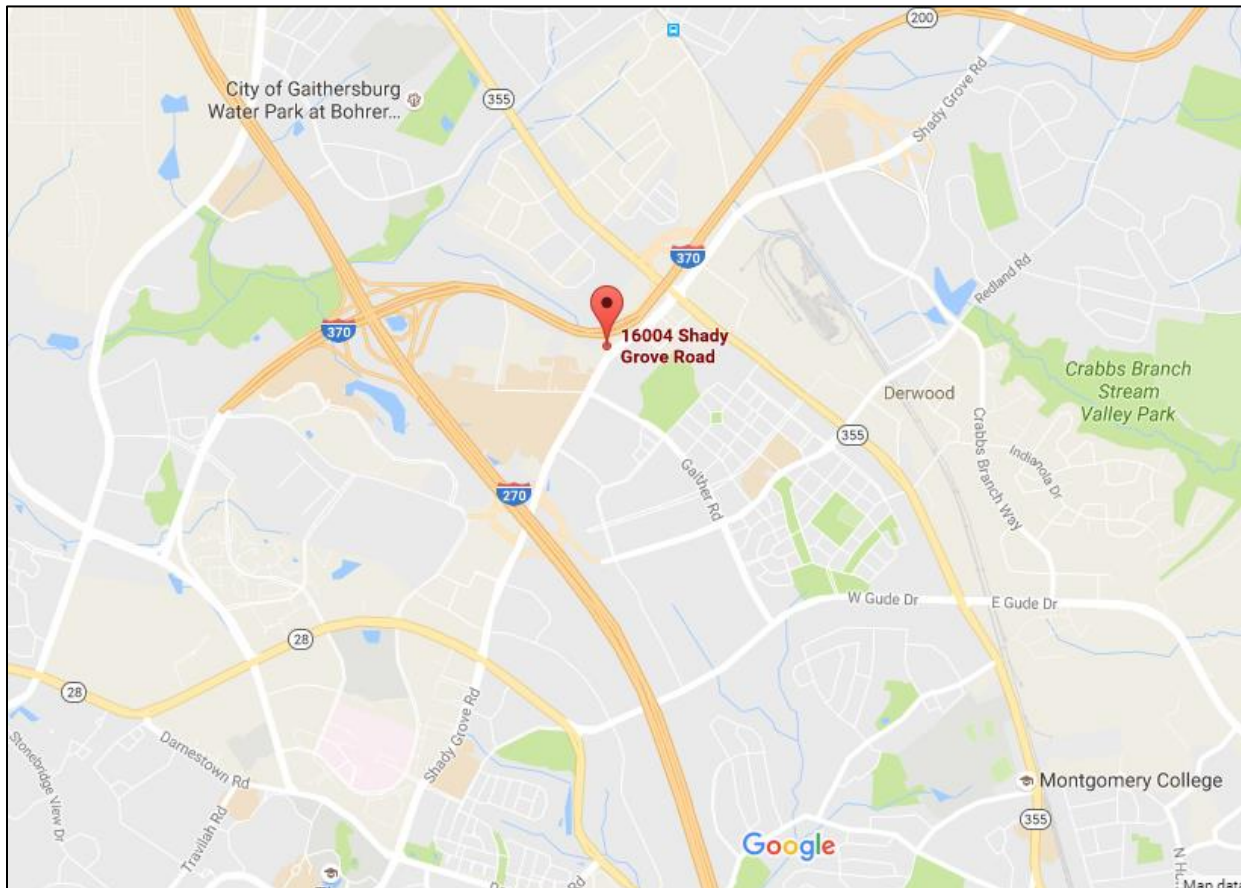


Figure 1: Vicinity Map

The Property is currently improved with a 6,589-square-foot Burger King restaurant with a drive-thru window, associated surface parking, and a small storage shed. The Property is irregular in shape with frontage on Shady Grove Road and Comprint Court. Vehicular access is available from both roads, but access from Shady Grove Road is limited to westbound right-in right-out only because of the existing raised median in the middle of Shady Grove Road. The existing driveway from Comprint Court allows full movement access. Eastbound Shady Grove Road traffic can access the site via the Shady Grove Road/Comprint Court intersection.



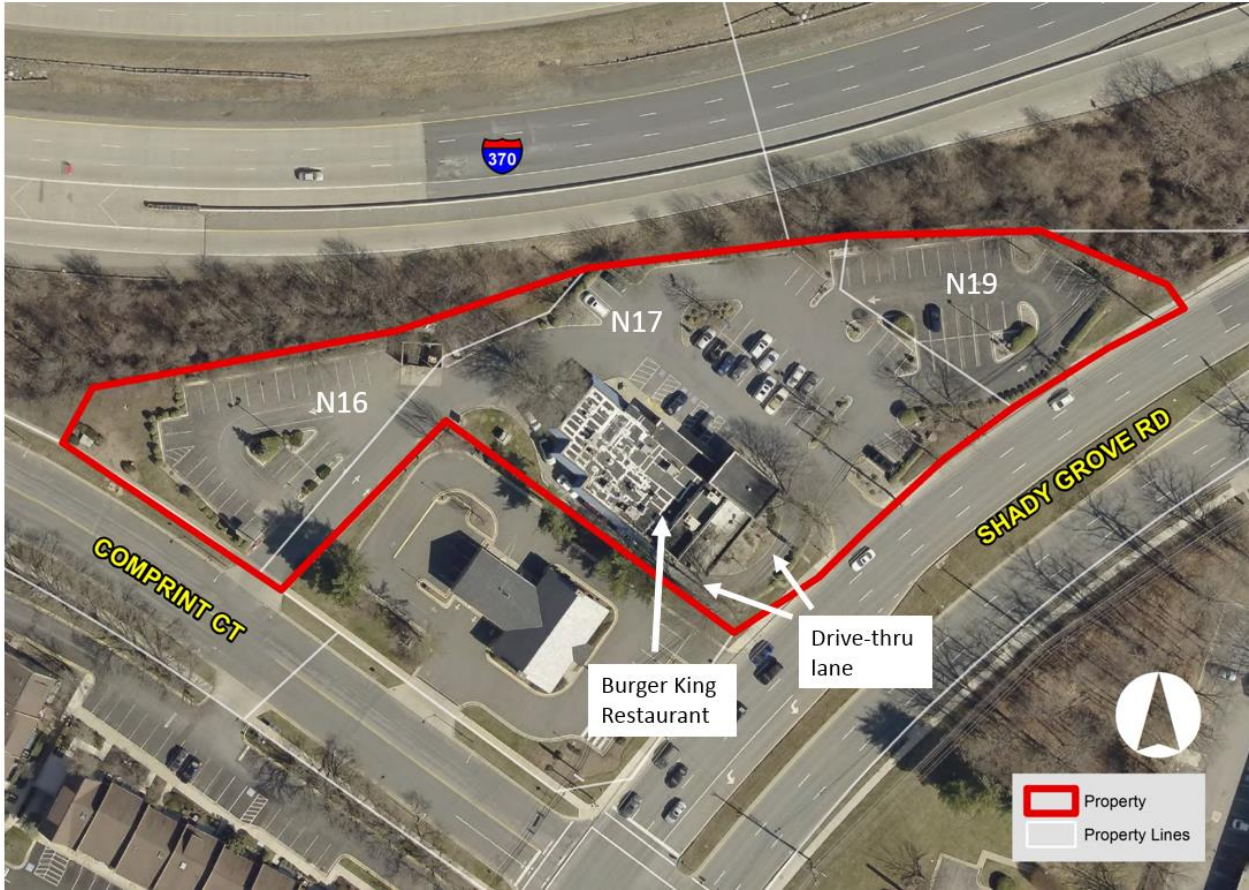


Figure 2: Aerial view with Property outlined in red and individual parcels outlined in white



Figure 3: Existing Burger King (from Shady Grove Road facing northeast)



## Neighborhood Description

The Staff defined Neighborhood is generally bound by the I-370 right-of-way, Comprint Court, Shady Grove Road and Pleasant Road to the north, Tournament Drive to the west, Gaither Road to the south, and various lot lines to the east (Figure 4). The subject Property abuts the City of Gaithersburg, and the City of Rockville is across Shady Grove Road. Most of the properties in the eastern portion of the Neighborhood are within the City of Rockville, and properties in the northwest corner are within the City of Gaithersburg. The Neighborhood consists entirely of commercial development including offices, a motel, a drive-thru bank, and various retail/service uses. The Neighborhood does not contain any existing conditional uses.

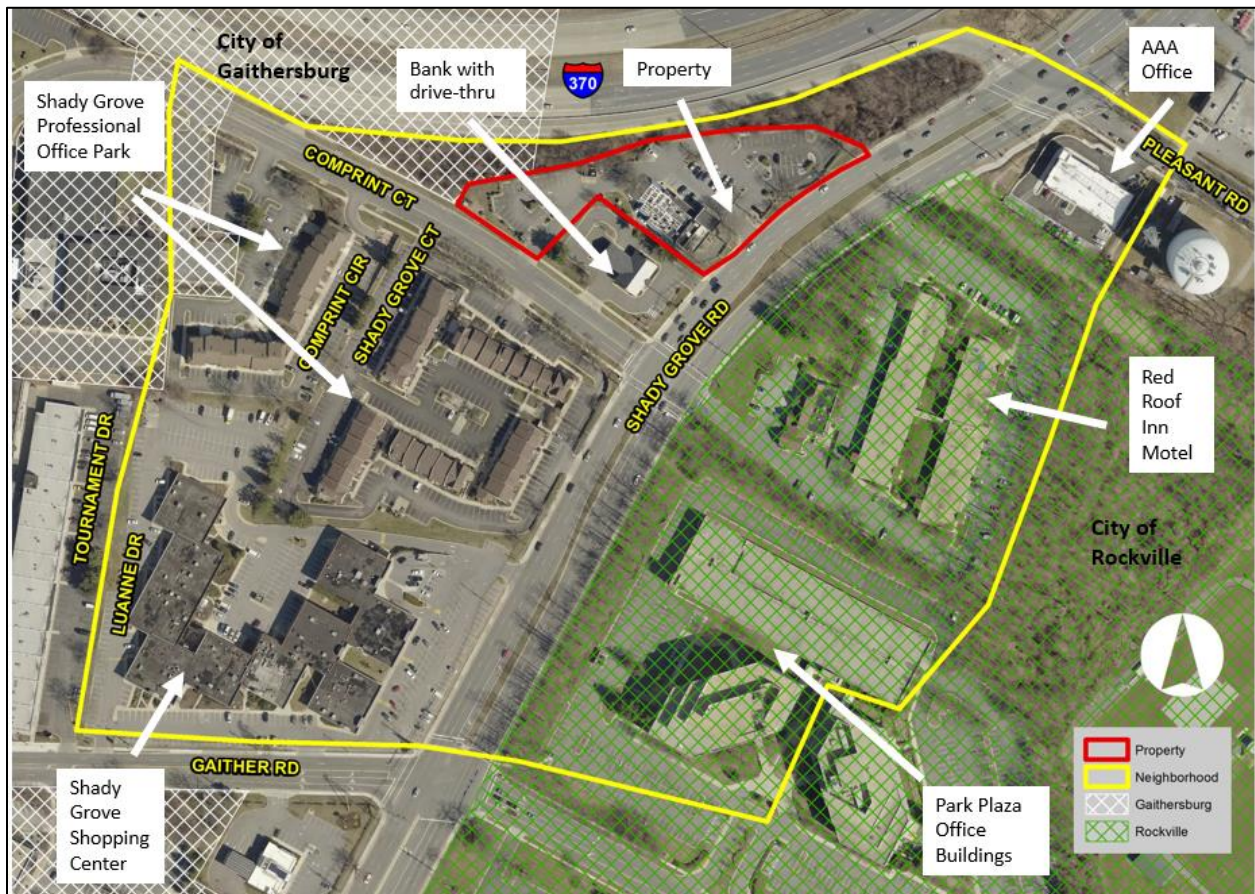


Figure 4: Neighborhood Map (Neighborhood outlined in yellow)

## Zoning

The 2010 *Great Seneca Science Corridor Plan* retained the Property's C-3 (Highway Commercial) zoning. In 2014, the Property was rezoned to GR- 1.5 H-45 Zone (General Retail) by District Map Amendment G-956.

## Proposed Use

The Applicant proposes to expand the existing restaurant by 1,500 square feet to create a building with a total area of 8,100 square feet. Four food service providers, including Burger King, will be located

within the expanded restaurant (Figure 5). Burger King will operate the proposed drive-thru, and will occupy 1,980 square feet of the expanded building. The building will also include a 4,356-square-foot dining court. The Applicant anticipates that the other food providers within the proposed building will be a 681-square-foot “coffee concept” shop, a 683-square-foot sandwich shop, and a 400-square-foot salad shop. Restaurants are permitted uses in the GR Zone, and drive-thru windows are allowed as limited or conditional uses. The proposed drive-thru window does not meet the limited use standards under Section 3.5.14.E.2.a, so the applicant is seeking conditional use approval.

The applicant is proposing a double drive-thru (two order windows) and a single window for payment and food delivery. Burger King and the associated drive-thru will be open from 6:00 a.m. until 1:00 am and will offer full breakfast, lunch, and dinner menus. The restaurant will employ up to 40 people; up to 12 employees will work during the busiest shift from 11:00 a.m. to 2:00 p.m. The Applicant indicated that the Burger King is typically busiest during lunch and dinnertime.



Figure 5: Rendered Conditional Use Plan

### Landscaping, Lighting, Signage

Proposed landscape plantings include shrubs and trees between the parking lot/drive-thru lane and both road frontages. New microbioretention areas will also be added to the parking lot (Attachment 2). Open spaces are distributed around the Property (Figure 6), and the Photometric Plans indicate that 13 luminaires will illuminate the building and parking lot.



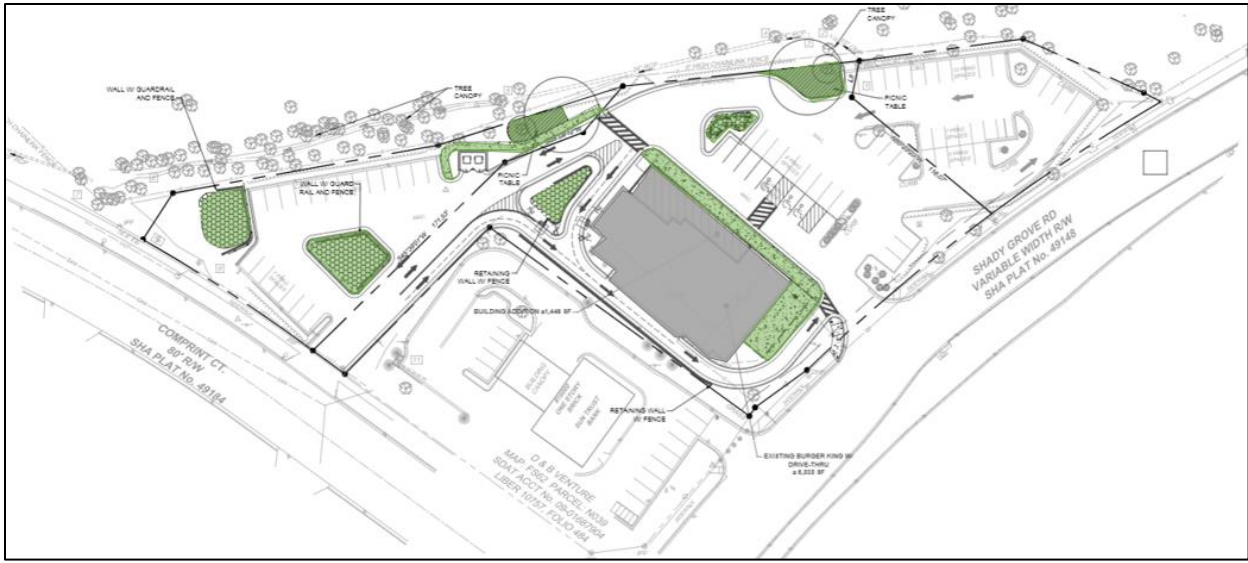


Figure 6: Amenity Open Space Plan (designated amenity open space is green)

The Applicant plans to retain the existing Burger King sign on Shady Grove Road (Figure 7), which directs vehicles to turn right at Comprint Court to access the drive-thru, although cars will also be able to access the drive-thru from the Shady Grove Road entrance. The Applicant also proposes wayfinding signage to facilitate internal circulation.



Figure 7: Existing Burger King Sign

## **ANALYSIS**

### **Master Plan**

The Property is within the boundary of the 2010 *Great Seneca Science Corridor Master Plan*, which designates the Property as part of the Washingtonian Light Industrial Park (page 72). The Master Plan recognizes the retail/commercial nature of the existing Burger King on the Property, but provides no specific recommendations beyond retention of the existing C-3 Zone (pages 73-4). The Master Plan makes general recommendations to reduce imperviousness, improve stormwater management, and implement other green building techniques, if there is redevelopment. The proposed drive-thru is consistent with the auto-centric commercial development typically found in the C-3 (and GR) zones. The Applicant will upgrade the stormwater management facilities to comply with current regulations, and Environmental Site Design (ESD) techniques will be used to the maximum extent practicable in the redevelopment of the Property. The proposed development is therefore in substantial conformance with the Master Plan.

### **Transportation**

#### Site Location and Vehicular Site Access Points

The Property is located in the northwest quadrant of the Shady Grove Road and Comprint Court intersection. It will retain the two existing vehicular access points from both roadways. The access from Shady Grove Road is limited to westbound right-in and right-out turns because of the existing raised median in Shady Grove Road. The existing driveway from Comprint Court is a full movement access where eastbound Shady Grove Road traffic can access the site via the Shady Grove Road/Comprint Court intersection.

#### On-Site Vehicular Circulation

In conformance with Section 6.2.7.A.1 of the Zoning Ordinance, a restaurant must have a minimum of five queuing spaces for the drive-thru lane. There are adequate vehicular stacking distances between the entry into the drive-thru lane and the order board, and between the order board and pick-up window. In addition, the internal design must minimize vehicular and pedestrian conflicts especially for the motorists traveling to and from the drive-thru window. Additional pavement markings and signs are needed to warn motorists of pedestrian conflicts and guide pedestrians at vehicular crossings within the site -- especially to delineate movements through the short distance between the Shady Grove Road curb cut into the north-south drive aisle in front of the proposed restaurants and the drive-thru lane exit/east-west drive aisle. The proposed internal driveways are designed such that there is no adverse impact by overflow traffic onto Shady Grove Road or Comprint Court.

#### Master-Planned Roadways and Bikeway

In accordance with the 2010 *Great Seneca Science Corridor Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan*, the master-planned designated roadways and bikeway are as follows along the property frontage:



1. Shady Grove Road is designated as a six-lane major highway, M-42, with a recommended 150-foot-wide right-of-way, and dual bikeway (bike lanes and shared-use path), DB-15. The *Countywide Bikeways Functional Master Plan* recommends a dual bikeway, DB-15, with bike lanes and shared-use path on the south side. The existing right-of-way ranges from 95 to 110 feet from the opposite right-of-way line along the Shady Grove Road frontage. If reviewed as a Preliminary Plan of subdivision, the Applicant would have to dedicate approximately 15 more feet of right-of-way for a total of 75 feet from the centerline along Shady Grove Road frontage.
2. For I-370 and its off ramp at Shady Grove Road, I-370 is designated as a six-lane divided freeway, F-9, with a 300-foot wide right-of-way and no bikeway. The existing right-of-way ranges from 244 to 545 feet along the I-370 frontage.

Comprint Court is not listed in the Master Plan but is a functional four-lane industrial road, with an 80-foot-wide right-of-way and no bikeway. The existing right-of-way is 80 feet along the Comprint Court frontage.

#### Transportation Demand Management

The site is located within the boundary of the Greater Shady Grove Transportation Management District (TMD). If reviewed as a preliminary plan of subdivision, the Applicant would have to enter into a traffic mitigation agreement to participate in the Greater Shady Grove TMD to assist in achieving its transit ridership goal of 12.5% for employees of the TMD area.

#### Public Transit Service

Along Shady Grove Road, Ride On route 43 operates between the Trville Transit Center and the Shady Grove Metrorail Station with 20-minute headways on weekdays and 30-minute headways on Saturdays. The nearest bus stop is located at the intersection of Shady Grove Road and Comprint Court.

Approximately 715 feet to the west, at the intersection of Shady Grove Road and Gaither Road, Ride On route 63 operates between the Rockville Metrorail Station and the Shady Grove Metrorail Station with 30-minute headways on weekdays.

Approximately 1,820 feet to the east of the Property, at the intersection of Shady Grove Road and Frederick Road (MD 355), the following three Ride On routes operate:

1. Route 55 between the Germantown Transit Center and the Rockville Metrorail Station
2. Route 59 between Montgomery Village and the Rockville Metrorail Station, and
3. Route 67 between the Trville Transit Center and the Shady Grove Metrorail Station.

#### Pedestrian and Bicycle Facilities

Currently a substandard eight-foot wide sidewalk with no green panel exists along the Site's Shady Grove Road frontage, and an acceptable five-foot wide sidewalk with a nine-foot wide green panel exists

along Comprint Court frontage. At the nearest intersection of Shady Grove Road and Comprint Court, crosswalks and handicap ramps exist at all four approaches and corners.

The Applicant must provide one bicycle parking space for every 10,000 gross square feet of restaurant space, or one long-term bicycle parking space consisting of a bike locker in a well-lit location, or a designated secured bike “room” for employees.

Transportation Adequate Public Facilities (APF) Test

As a Conditional Use application filed before January 1, 2017, the APF test is being reviewed under the current 2012-2016 Subdivision Staging Policy.

Local Area Transportation Review

The Applicant submitted a revised traffic statement dated March 6, 2017, that compared the number of projected site-generated trips by the existing fast food restaurant with the proposed four fast food restaurants, while retaining a drive-thru window. For the proposed redevelopment, the net change in the number of peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.) is as follows:

Land Use	Square Feet			Weekday Peak-Hour	
	Restaurant Area	Patron Area	Total Area	Morning New (Total)	Evening New (Total)
Existing Fastfood Restaurant (Burger King)					
Fastfood with a Drive-Thru			6,589	153 (299)	107 (215)
Four Proposed Fastfood Restaurants with one Drive-Thru Widow					
Fastfood with a Drive-Thru	1,980	2,309	4,284	91 (178)	65 (130)
Sandwich Shop	683	784	1,467		
Coffee Shop	681	784	1,465		
Salad Space	400	479	879		
Fastfood - no Drive-Thru	1,764	2,047	3,811	77 (150)	45 (90)
<b>Total</b>	<b>3,744</b>	<b>4,356</b>	<b>8,095</b>	<b>168 (328)</b>	<b>110 (220)</b>
Net Change			1,506	+15 (29)	+3 (5)

In the table above, the number of vehicular trips was calculated using the trip generation rates in the Institute of Transportation Engineers’ (ITE) *Trip Generation* report for fast food restaurants. The total trips include new, diverted, and pass-by trips. Diverted and pass-by trips are already on the road and stop to patronize the restaurants between travel to other origins and destinations. A conservative value of ITE’s internal capture percentage was used for individuals selecting different fast food restaurants on the site but arriving/leaving in the same vehicle.

The use and occupancy certificate for the approved land uses was released at least 12 years ago as the existing fast food restaurant with a drive-thru window was built in 1977. The 2012-2016 Subdivision Staging Policy states: "if use and occupancy certificates for 75% of the originally approved development were issued more than 12 years ago... the traffic study must be based on the increased number of peak-hour trips rather than the total number of peak-hour trips."

A traffic study is not required to satisfy the LATR test because the proposed redevelopment will generate fewer than 30 additional trips within the weekday morning and evening peak periods.

#### Policy Area Review

Under the 2012-2016 Subdivision Staging Policy, the subject site is located within the Derwood Policy Area for the Transportation Policy Area Review (TPAR) test. For developments located in the Derwood Policy Area, the roadway test portion of the TPAR test is adequate, but the transit test is inadequate. Since the building permit will be filed after March 1, 2017, the Applicant must pay the development impact tax in lieu of the TPAR payment to Montgomery County Department of Permitting Services.

#### **Environment**

##### Environmental Guidelines

On January 29, 2016, staff approved a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) for this site (NRI/FSD No. 420160950). The site contains no streams or their buffers, wetlands or their buffers, steep slopes, 100-year floodplains, or known habitats of rare, threatened, and endangered species. This plan is in compliance with the *Environmental Guidelines*.

##### Preliminary Forest Conservation Plan

This application is in compliance with the requirements of Chapter 22A, Forest Conservation. There is no forest on the site. A Preliminary Forest Conservation Plan was approved for this site on July 15, 2016 (PFCP No. SC2016015). The land use, zoning and net tract area yield an afforestation requirement of 0.26 acres of forest planting. Approval of a Final Forest Conservation Plan is required prior to any clearing, grading, or demolition on the site.

#### **Community Outreach**

The Applicant has complied with signage requirements along the Shady Grove Road and Comprint Court frontages. Staff has received no correspondence about this application.



## FINDINGS

### Conditions for Granting a Conditional Use

#### Section 7.3.1.E Necessary Findings<sup>1</sup>

*To approve a conditional use application, the Hearing Examiner must find that the proposed development:*

**Section 7.3.1.E.1.a.** *satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

The Property has an existing site plan approval for a Burger King with a drive-thru (No. 819810470) that the Applicant will need to abandon prior to construction of the proposed development.

**Section 7.3.1.E.1.b.** *satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds it necessary to ensure compatibility, meets applicable general requirements under Article 59-6;*

#### Use Standards for a Drive-Thru under Article 59-3

A Drive-Thru is allowed as a Limited or Conditional Use in the GR Zone. Since the proposed drive-thru does not satisfy the limited use standards under Section 3.5.14.E.2.a, the Applicant has applied for conditional use approval under Section 3.5.14.E.2.b. and must satisfy the following use standards:

- i. *The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads and intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic patterns from such buildings or cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity.*

The proposed development will retain the Property's existing access points from Shady Grove Road and Comprint Court. The proposed drive-thru is designed to prevent traffic hazards or nuisances on Shady Grove Road and Comprint Court because ample queuing space is provided. The abutting property, located on the corner of Comprint Court and Shady Grove Road, has a bank with a drive-thru window, but turning movements at the proposed drive-thru will not impact the bank drive-thru because the bank has separate access points from the adjacent roads. The Property is located in an auto dominated area with little pedestrian traffic, so conflicts between vehicles using the proposed drive-thru and pedestrians using public sidewalks will be minimal.

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<sup>1</sup> Section 7.3.1.E.2 thru Section 7.3.1.E.5 are not applicable to this application and are not included in this report.

- ii. *The use of the proposed location will not preempt frontage on any highway or public road in a way that reduces the visibility and accessibility of an interior commercial area zoned or proposed for commercial use that is oriented to the same highway or public road.*

Only one building is proposed and the Property has no interior commercial area that would be blocked by the proposed drive-thru. The proposed drive-thru will not impact the visibility or accessibility of the bank on the abutting property.

- iii. *Product displays, parked vehicles, and other obstructions that adversely affect visibility at intersections, or at entrances and exits to and from the Drive-Thru are prohibited.*

The Applicant does not propose product displays, vehicle parking, or other obstructions that would adversely affect visibility at the Property’s ingress and egress driveways. Parked vehicles will be separated from the proposed drive-thru entrances and exits by a drive aisle or physical barrier, allowing appropriate visibility of the drive-thru lane.

- iv. *When a Drive-Thru occupies a corner lot, the ingress or egress driveways must be located a minimum of 20 feet from the intersection of the rights-of-way, and such driveways must not exceed 25 feet in width. In areas where no master plan of highways has been adopted, the street line must be considered to be a minimum of 60 feet from the centerline of any abutting street or highway.*

The Property does not occupy a corner lot, so this finding is not applicable.

**Development Standards under Article 59-4**

**Section 4.6.3.C. GR Zone, Standard Method Development Standards (General Building)**

	<b>Required / Allowed</b>	<b>Proposed</b>
<b>1. Site</b>		
Amenity open space (min)	10% (7,449 sf)	14.58% (10,861 sf)
<b>2. Lot and Density</b>		
Lot area (min)	n/a	1.71 ac
Density (max FAR)	1.5	0.11
<b>3. Placement<sup>1</sup></b>		
Front setback (min)	0’	0’
Side setback (min)	0’	0’
Rear setback (min)	0’	0’
<b>4. Height</b>		
	45’	21’

<sup>1</sup> The development standards table on the conditional use plan indicates that all proposed setbacks will be 0’, but the drawing shows buildings setback greater than 0’.

General Development Requirements under Article 59-6

The following Divisions apply to the proposed conditional use: Division 6.2 Parking, Queuing and Loading; Division 6.3 Open Space and Recreation; and Division 6.7 Signs. Unless otherwise noted, any sub-sections not listed were considered not applicable to the Application.

**Division 6.2. Parking, Loading, and Queuing**

	<b>Required</b>	<b>Provided</b>	<b>Reference</b>
Vehicle Parking, including:	33 spaces	72 spaces	Section 6.2.4.B
<ul style="list-style-type: none"> <li>Handicapped</li> </ul>	<ul style="list-style-type: none"> <li>2 spaces + 1 van accessible space</li> </ul>	<ul style="list-style-type: none"> <li>3 van accessible spaces</li> </ul>	Section 6.2.3.B
<ul style="list-style-type: none"> <li>Car-share spaces</li> </ul>	<ul style="list-style-type: none"> <li>1 space</li> </ul>	<ul style="list-style-type: none"> <li>1 space</li> </ul>	Section 6.2.3.D
Motorcycle Parking	2 spaces	2 spaces	Section 6.2.3.C
Bicycle Parking	1 space (long term)	1 space (long-term)	Section 6.2.4.C
Queuing Spaces	5 per drive-thru lane (105' per lane)	166' - 218' per drive-thru lane	Section 6.2.7
<b>Parking Lot Landscaping</b>			
<ul style="list-style-type: none"> <li>Landscaped Area</li> </ul>	5% of parking lot area: 1,860 sf	5,605 sf	Section 6.2.9.C.1
<ul style="list-style-type: none"> <li>Tree Canopy</li> </ul>	25% coverage: 9,298 sf canopy area	13,091 sf	Section 6.2.9.C.2
<ul style="list-style-type: none"> <li>Perimeter Planting</li> </ul>	<ul style="list-style-type: none"> <li>6 ft wide</li> <li>Hedge 3 ft high</li> <li>Canopy trees 30' on center</li> </ul>	Satisfied except where the proximity of utilities precludes the planting of canopy trees	Section 6.2.9.C.3

*Section 6.2.4. Parking Requirements*

The Applicant proposes to provide more than the required number of parking spaces. For vehicle parking, four parking spaces per 1,000 sf of GFA, or 33 spaces, are required. The Applicant is proposing 72 spaces, including one car-share space and three van accessible handicapped spaces. In addition to vehicle parking, the Applicant will provide two motorcycle parking spaces, and one long-term bicycle parking space.



*Section 6.2.5. Vehicle Parking Design Standards*

Based on the submitted site plan, the Proposal satisfies the applicable general vehicle parking design standards under Section 6.2.5.

*Section 6.2.6. Bicycle Parking Design Standards*

A condition of approval requires that the Applicant install bike parking as specified in the Zoning Ordinance.

*Section 6.2.7. Queuing Design Standards*

The proposed drive-thru lane accessed from Comprint Court has 218 feet of queuing space, measured from the drive-thru lane entrance to the order pick-up window, enough space for approximately 10 cars to queue. The drive-thru lane accessed from Shady Grove Road has queuing space for approximately four additional cars.

Vehicles using the drive-thru lanes will not encroach or interfere with the public use of Shady Grove Road or Comprint Court, or the abutting sidewalks. The queuing areas will be marked or physically separated from driveway aisles, parking spaces and pedestrian walkways.

*Section 6.2.9. Parking Lot Landscaping and Outdoor Lighting*

The landscape plan shows that the perimeter of the parking area along Comprint Court and Shady Grove Road will be planted with a mixed evergreen hedge and canopy trees.

**Division 6.3. Open Space and Recreation**

The Applicant proposes several areas of amenity open space distributed around the Property. Two of the proposed open space areas will include picnic benches for use by employees or restaurant patrons.

**Division 6.7. Signs**

The Applicant plans to retain the existing Burger King sign on Shady Grove Road, and add internal wayfinding signage. All signage for the Property must satisfy Division 6.7.

**Section 7.3.1.E.1.c.** *substantially conforms with the recommendations of the applicable master plan;*

As described on page 8 of this report, the Application substantially conforms with the recommendations of the 2010 *Great Seneca Science Corridor Master Plan*.

**Section 7.3.1.E.1.d.** *is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*

As described on page 8 of this report, the proposed drive-thru is consistent with the recommendations of the Master Plan. The auto-centric nature of the proposed use is compatible with the similarly auto-centric development in the surrounding neighborhood.

**Section 7.3.1.E.1.e.** *will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

The Property is not located near any Residential Detached zones, nor are there any existing and approved conditional uses within the staff defined Neighborhood. As described on page 8 of this report, the conditional use substantially conforms with the recommendations of the Master Plan, and thus does not alter the nature of the area.

**Section 7.3.1.E.1.f.** *will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*

- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*
- ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

A preliminary plan is not required for the proposed development, so the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities. The proposed development will have no impact on schools. Montgomery County Fire Station #32 is 2.1 miles from the Property, and the Montgomery County police station in Derwood is 2.3 miles away. The Property is served by public water (Water Category W-1) and sewer (Sewer Category S-1). As described on pages 8-11 of this report, the public roads are adequate to serve the proposed development. The Department of Permitting Services (DPS) approved a Stormwater Management Concept Plan on May 18, 2017 that confirms the adequacy of storm drainage.

**Section 7.3.1.E.1.g.** *will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

A 2012 Hearing Examiner's report for a drive-thru McDonald's (Board of Appeals Case No. S-786-B, OZAH Case No. 11-43) identified the following physical and operational characteristics necessarily associated with a drive-thru restaurant: (1) the building housing the restaurant, (2) parking facilities, (3) lighting, (4) noise generated by vehicles using the drive-in, (5) vehicular trips to and from the site by patrons and employees, and (6) long hours of operation.

Non-inherent adverse effects may result from a situation unique to the physical location, operation, or size of a proposed use. Staff has not identified any non-inherent adverse impacts from the proposed use. There is no expected undue harm to the neighborhood because of any non-inherent adverse effect, or a combination of inherent or non-inherent adverse effects.

The proposed drive-thru will not disturb the use, peaceful enjoyment, economic value, or development potential of abutting and confronting properties or the general neighborhood. The proposed development is consistent with the auto-centric nature of the abutting and confronting properties and the general neighborhood.

The proposed drive-thru will not cause undue harm to the neighborhood due to traffic, noise, odors, dust, illumination, or a lack of parking. As described on pages 8-11 of this report, traffic will be accommodated by the existing road network. The noise, odor, dust, and illumination associated with the drive-thru will be comparable to similar facilities. Noise generated by vehicles visiting the drive-thru will be barely perceptible above the traffic noise from adjacent I-370 and Shady Grove Road. The dumpster, and any associated odors, will be located on the north side of the Property, largely hidden from view of abutting and confronting commercial properties. The illumination for the Property will be appropriate for a drive-thru restaurant facility that abuts a major highway, and parking will be provided in excess of minimum Zoning Ordinance requirements.

There will be no undue harm to the health, safety, or welfare of neighboring residents, visitors, or employees because the proposed Conditional Use meets all applicable development standards, and has adequate and safe circulation in and around the site.

**Section 7.3.1.E.6.** *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:*

- a. Funeral Home; Undertaker;*
- b. Hotel, Motel;*
- c. Shooting Range (Outdoor);*



- d. *Drive-Thru*
- e. *Landfill, Incinerator, or Transfer Station; and*
- f. *a Public Use Helipad, Heliport or a Public Use Helistop.*

The Applicant submitted a Need Study, dated March 2017, produced by Thomas Point Associates, Inc. The study explains that demographic, economic, and traffic factors suggest a favorable environment for a quick-service restaurant with a drive-thru at this location. Further, the Applicant does not propose to add a new drive-thru to the neighborhood, but rather to renovate an existing, successful drive-thru establishment to better serve the existing customer base. The drive-thru use at the proposed location will not result in an oversaturation of similar uses in the neighborhood.

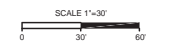
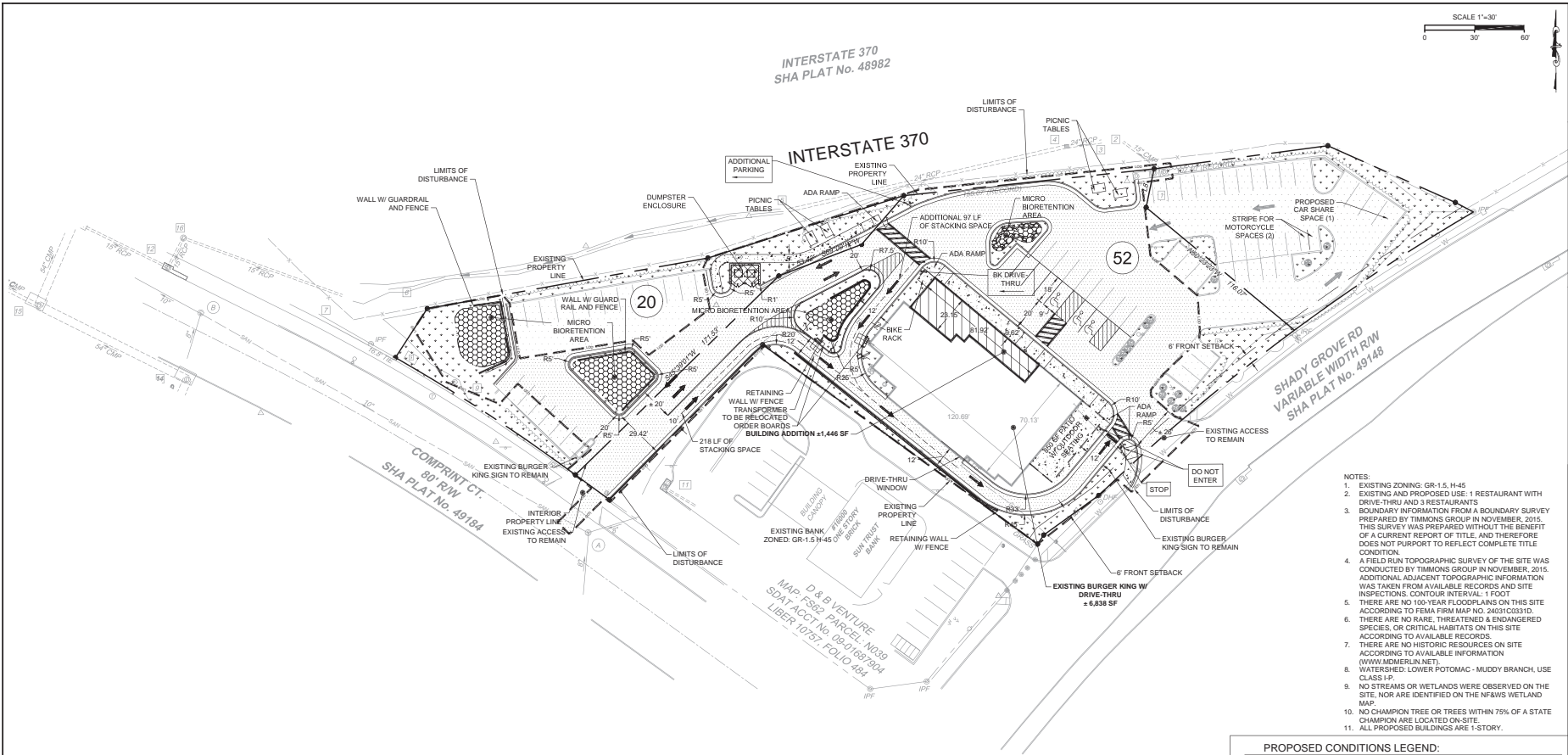
## **CONCLUSION**

The proposed drive-thru complies with the general conditions and standards for a conditional use. The proposed use is consistent with the goals and recommendations of the 2010 *Great Seneca Science Corridor Master Plan*, and it will not alter the character of the surrounding neighborhood. Further, it will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval with conditions.

## **ATTACHMENTS**

1. Conditional use plan
2. Landscape plan
3. Preliminary Forest Conservation Plan Approval Letter
4. Stormwater Management Concept Approval Letter

# ATTACHMENT 1



PROFESSIONAL CERTIFICATION:  
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL ENGINEER UNDER THE PROFESSIONAL ENGINEERING AND SURVEYING ACT OF THE STATE OF MARYLAND.  
EXPIRATION DATE: 12/31/2017

THIS DRAWING RELEASED AT THE DISCRETION OF THE ENGINEER.  
NORTHERN VIRGINIA OFFICE  
10000 WOODLAND DRIVE, SUITE 100  
RESTON, VA 20191  
TEL: 703.252.1342 FAX: 703.252.1345 www.timmonsgrp.com

DATE: 3/16/2017  
DRAWN BY: BP  
DESIGNED BY: LTF  
CHECKED BY: LTF  
SCALE: SEE SHEET

**TIMMONS GROUP**  
SHADY GROVE RESTAURANT REDEVELOPMENT  
MONTGOMERY COUNTY - MARYLAND  
SITE LAYOUT  
JOB NO. 37155  
SHEET NO. C2.0

- NOTES:
- EXISTING ZONING: GR-1.5, H-45
  - EXISTING AND PROPOSED USE: 1 RESTAURANT WITH DRIVE-THRU AND 3 RESTAURANTS
  - BOUNDARY INFORMATION FROM A BOUNDARY SURVEY PREPARED BY TIMMONS GROUP IN NOVEMBER, 2015. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT REPORT OF TITLE AND THEREFORE DOES NOT PURPORT TO REFLECT COMPLETE TITLE CONDITION.
  - A FIELD RUN TOPOGRAPHIC SURVEY OF THE SITE WAS CONDUCTED BY TIMMONS GROUP IN NOVEMBER, 2015. ADDITIONAL ADJACENT TOPOGRAPHIC INFORMATION WAS TAKEN FROM AVAILABLE RECORDS AND SITE INSPECTIONS. CONTOUR INTERVAL: 1 FOOT
  - THERE ARE NO 100-YEAR FLOODPLAINS ON THIS SITE ACCORDING TO FEMA FIRM MAP NO. 24031C031D.
  - THERE ARE NO RARE, THREATENED & ENDANGERED SPECIES OR CRITICAL HABITATS ON THIS SITE ACCORDING TO AVAILABLE RECORDS.
  - THERE ARE NO HISTORIC RESOURCES ON SITE ACCORDING TO AVAILABLE INFORMATION (WWW.MDMERLIN.NET).
  - WATERHEED: LOWER POTOMAC - MUDDY BRANCH, USE CLASS I-P.
  - NO STREAMS OR WETLANDS WERE OBSERVED ON THE SITE. NONE ARE IDENTIFIED ON THE MARVIN WETLAND MAP.
  - NO CHAMPION TREE OR TREES WITHIN 75% OF A STATE CHAMPION ARE LOCATED ON-SITE.
  - ALL PROPOSED BUILDINGS ARE 1-STORY.

General Retail (GR) Zoning Data Table		
	Permitted / Required	Provided
Maximum FAR - Sec 4.6.2 (A)	1.5	0.11
Maximum Building Height - Sec 4.6.2 (A)	45'	21'
Minimum Amenity Open Space >10,000 SF - Sec 4.6.3 (C)	10% (7449 SF)	14.58% (10861.06) SF
Lot Size	N/A	-
Lot Coverage	N/A	-
Minimum Principal Building Setback - Front	0'	0'
Minimum Principal Building Setback - Side	0'	0'
Minimum Principal Building Setback - Rear	0'	0'
Queuing Length per Drive-Thru Aisle	105'	166' - 218'

Parking and Loading Required per Section 6.2.4B, Restaurant:  
 = 4 spaces / 1000 SF  
 Total Parking Required: 33 Spaces  
 Total Parking Provided: 72 Spaces

Handicapped Parking Spaces Required:  
 Total Handicapped Parking Required: 2 + 1 (Van) Spaces  
 Total Handicapped Parking Provided: 3 (Van) Spaces

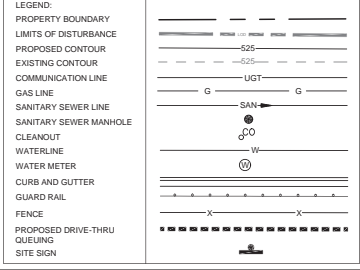
Bicycle Parking Spaces Required:  
 = 1 Bike Space (10 max) / 10,000 SF, 15% Long Term  
 Total Bike Spaces Required: 1 Bike Space (1 Long Term)  
 Total Bike Spaces Provided: 1 Bike Space (1 Long Term)

Motorcycle Spaces Required:  
 = 2% of Total Parking Provided or 10 Maximum  
 Total Motorcycle Spaces Required: 2 Motorcycle Spaces  
 Total Motorcycle Spaces Provided: 2 Motorcycle Spaces

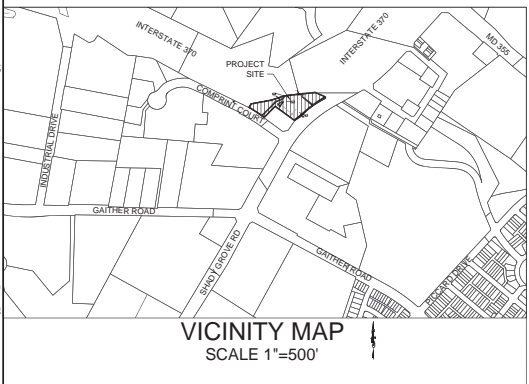
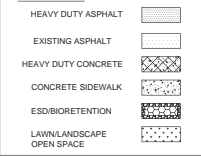
Car Share Spaces Required:  
 Total Car Share Spaces Required: 1 Car Share Space  
 Total Car Share Spaces Provided: 1 Car Share Space

Property Information	
Subject	Parcel N016/N017/N019
	16004 Shady Grove Road
	Bethesda, MD 20814-4101
	L-7765, F-789
Property Owner	Comprint Court Joint Venture
Existing Parcel Area	0.39/1.05/0.27, Total = 1.71
Zoning	GR-1.5, H-45
Classification	
Tax ID Number	2716134/1782294/2714651
Existing Use	Commercial
Proposed Use	Commercial
District	9
Account NO.	1782294/2714651/2716134

### PROPOSED CONDITIONS LEGEND:

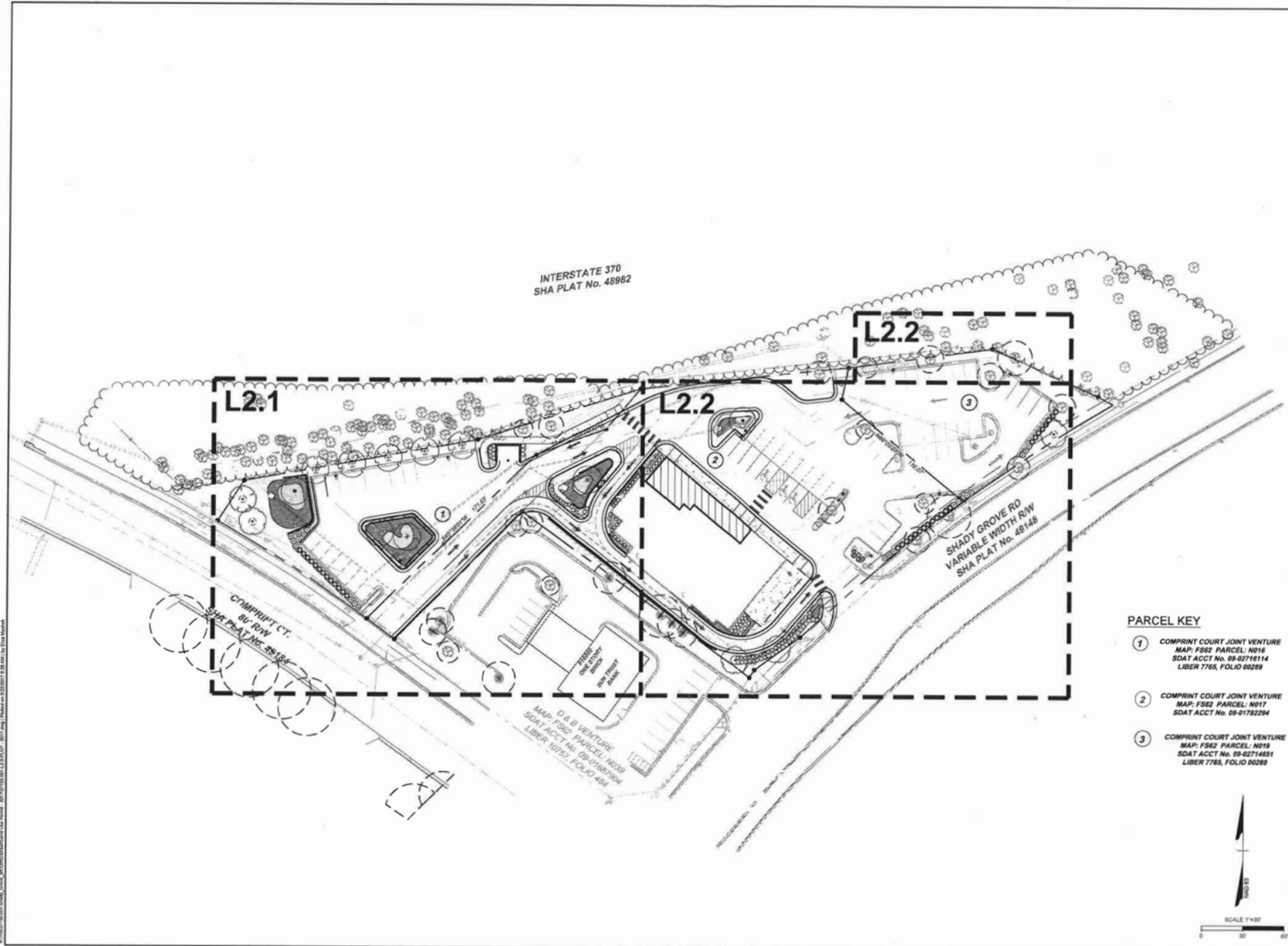


### HATCH LEGEND:



VICINITY MAP  
SCALE 1"=500'

# ATTACHMENT 2



INTERSTATE 370  
SHA PLAT No. 48962

L2.1

L2.2

L2.2

SHADY GROVE RD  
VARIABLE WIDTH R/W  
SHA PLAT No. 48148

COMPRINT CT.  
SHA PLAT No. 35114

D & B VENTURE  
MAP: F562 PARCEL: N019  
SDAT ACCT No. 09-01782294  
LIBER 10191, FOLIO 484

**PARCEL KEY**

- ① COMPRINT COURT JOINT VENTURE  
MAP: F562 PARCEL: N016  
SDAT ACCT No. 09-02716114  
LIBER 7765, FOLIO 00289
- ② COMPRINT COURT JOINT VENTURE  
MAP: F562 PARCEL: N017  
SDAT ACCT No. 09-01782294
- ③ COMPRINT COURT JOINT VENTURE  
MAP: F562 PARCEL: N019  
SDAT ACCT No. 09-02714651  
LIBER 7765, FOLIO 00289



THIS DRAWING PREPARED AT THE  
1201 Builders Parkway, Suite 300 | Elkridge, VA 22025  
TEL: 804.398.6509 FAX: 804.583.0115 www.timmons.com

YOUR VISION. ACHIEVED THROUGH OURS.

DATE	PROJECT DESCRIPTION
5/13/2016	SHADY GROVE RESTAURANT REDEVELOPMENT
5/13/2016	DRAWN BY T. BUCKLEY
	DESIGNED BY T. BUCKLEY
	CHECKED BY L. LANGER
	SCALE 1"=60'

**TIMMONS GROUP**

SHADY GROVE RESTAURANT REDEVELOPMENT  
MONTGOMERY COUNTY - MARYLAND  
OVERALL LANDSCAPE PLAN

JOB NO.  
37155  
SHEET NO.  
L2.0

C:\Users\jrb\OneDrive\Documents\37155\37155-01-L2.0\37155-01-L2.0.dwg | Plot Date: 5/13/2016 10:28:11 AM | Plot Scale: 1"=60'







THIS DRAWING PREPARED AT THE  
 COMPANY OFFICE OF THE  
 DESIGNER  
 1001 Madison Park Road, VA 22025  
 TEL: 804.309.6500 FAX: 804.561.0118 www.timmons.com

YOUR VISION ACHIEVED THROUGH OURS.  
 DATE: 07/13/2016  
 PROJECT: MONTGOMERY COUNTY COURTHOUSE

DESIGNED BY: T. BUCKLEY  
 CHECKED BY: L. LANZER

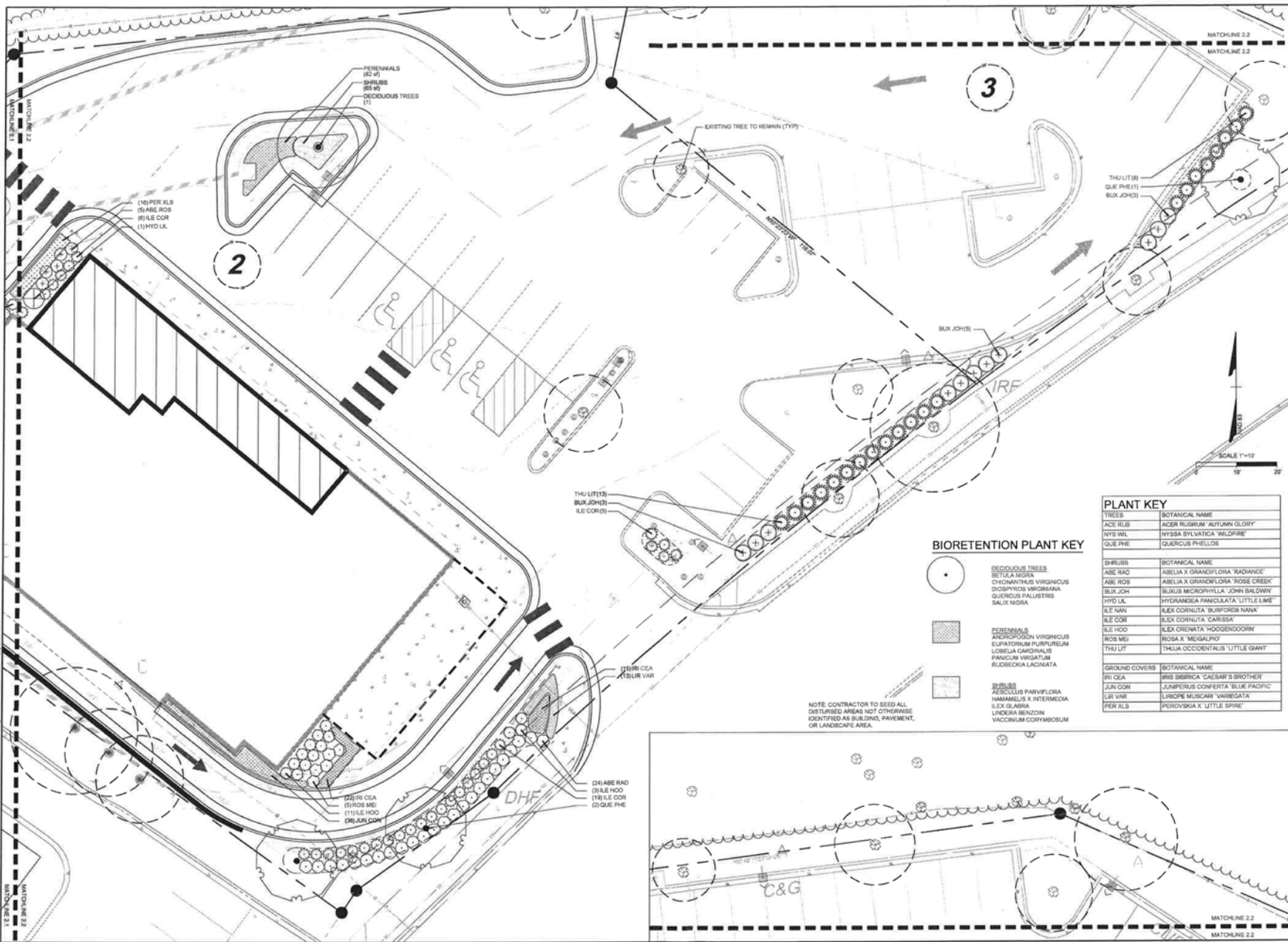
SCALE: 1"=10'



# TIMMONS GROUP

SHADY GROVE RESTAURANT REDEVELOPMENT  
 MONTGOMERY COUNTY - MARYLAND  
 DETAIL LANDSCAPE PLAN

JOB NO.: 37155  
 SHEET NO.: L2.2



### BIORETENTION PLANT KEY

- TREES**
  - ACE RUB: ACER RUBRUM 'AUTUMN GLORY'
  - NYB WL: NYSSA SYLVATICA 'WOLFPIRE'
  - QUE PHE: QUERCUS PHELLOS
- SHRUBS**
  - ABE RAD: ABELIA X GRANDIFLORA 'RADANCE'
  - ABE ROS: ABELIA X GRANDIFLORA 'ROSE CREEK'
  - BUX JOH: BUXUS MICROPHYLLA 'JOHN SAELOWY'
  - HYD UL: HYDRANGEA PANICULATA 'LITTLE LIME'
  - IEX NAN: ILEX CORNUTA 'BURFORDS NANA'
  - IEX COR: ILEX CORNUTA 'CARISSA'
  - IEX HOO: ILEX ORENATA 'HOOGENDOORN'
  - ROS MEI: ROSA X 'MEIGALPPO'
  - THU LIT: THUJA OCCIDENTALIS 'LITTLE GIANT'
- PERENNIALS**
  - ANDRO VIR: ANDROPOGON VIRGINICUS
  - EUP PUR: EUPATORIUM PURPUREUM
  - LOB CAR: LOBELIA CARDINALIS
  - PAN VES: PANICUM VESICATUM
  - RUB LAC: RUDBECKIA LACINATA
- GRASSES**
  - AMM INT: AMMELIS X INTERMEDIA
  - ILX GA: ILEX GAUBIA
  - LIN BEN: LINDEA BENZONI
  - VAC COB: VACCINIUM COCCYBOSUM

### PLANT KEY

- TREES**
  - ACE RUB: ACER RUBRUM 'AUTUMN GLORY'
  - NYB WL: NYSSA SYLVATICA 'WOLFPIRE'
  - QUE PHE: QUERCUS PHELLOS
- SHRUBS**
  - ABE RAD: ABELIA X GRANDIFLORA 'RADANCE'
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- GRASSES**
  - AMM INT: AMMELIS X INTERMEDIA
  - ILX GA: ILEX GAUBIA
  - LIN BEN: LINDEA BENZONI
  - VAC COB: VACCINIUM COCCYBOSUM

NOTE: CONTRACTOR TO SEED ALL DISTURBED AREAS NOT OTHERWISE IDENTIFIED AS BUILDING, PAVEMENT, OR LANDSCAPE AREA.

14 E. SHADY GROVE RESTAURANT, MONTGOMERY COUNTY, MARYLAND  
 301.707.1880 (LOCAL) 301.707.1881 (TOLL FREE) 301.707.1882 (FAX)  
 14 E. SHADY GROVE RESTAURANT, MONTGOMERY COUNTY, MARYLAND  
 301.707.1880 (LOCAL) 301.707.1881 (TOLL FREE) 301.707.1882 (FAX)

# ATTACHMENT 3



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

July 15, 2016

Mr. Mark James  
Potomac Foods Group  
7611 N. Rickenbacker Drive  
Gaithersburg, MD 20879

Re: Preliminary Forest Conservation Plan  
Shady Grove Restaurant Redevelopment  
Plan Number: SC2016015  
Tract size/Net Tract Size: 1.70 acres/1.70 acres  
Zone/Land use Category: GR-1.5, H-45

Dear Mr. James:

Based on the review by Planning staff of the Montgomery County Planning Department, the Preliminary Forest Conservation Plan SC2016015 submitted to M-NCPPC for the plan identified above, is *conditionally approved* with the following conditions:

1. Compliance with the conditions of approval for the Preliminary Forest Conservation Plan (PFCP) SC2016015 stamped received by M-NCPPC on May 27, 2016. The applicant must meet all conditions prior to MCDPS issuance of sediment and erosion control permit(s), as appropriate, including
  - a. Approval of Final Forest Conservation Plan consistent with the approved Preliminary Forest Conservation Plan prior to any clearing, grading or demolition on the site.
  - b. Mitigation for the loss of three specimen trees (#2, #3, and #4) to be provided by planting 28.5 caliper-inches of native canopy trees on site, using planting stock of no less than 3 inches caliper. The proposed mitigation must be included on the Final Forest Conservation Plan. This requirement is in addition to the 0.26 acres of afforestation required for the PFCP.
  - c. Final Sediment Control Plan must be consistent with final limit of disturbance as approved by the M-NCPPC staff.

### Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) was approved for this site on January 29, 2016. The site contains no streams or their buffers, wetlands or their buffers, steep slopes, 100-year floodplains, or known habitats of rare, threatened, and endangered species. This plan is in compliance with the *Environmental Guidelines*.

### Preliminary Forest Conservation Plan

There is no forest on the site. The land use, zoning and net tract area yield an afforestation requirement of 0.26 acres of forest planting. The applicant proposes to fulfill the planting requirement on site through the use of tree cover, as permitted in Forest Conservation Regulations Section 22A.00.01.08(G)(3).



### Forest Conservation Variance

Section 22A-12(b) (3) of County code identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone (CRZ) requires a variance. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County code. The code requires no impact to trees that: measure 30 inches or greater, dbh; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

### Variance Request

The applicant submitted a variance request on May 27, 2016 because the plan would create an impact to the CRZ of three trees that are considered high priority for retention under Section 22A-12(b) of the County code. These three trees are to be removed. A copy of the variance request letter, specifying the amount of critical root zone disturbance for the trees to be saved, is appended to this letter (Attachment 1).

The site is currently developed with a Burger King restaurant surrounded by drive aisles and surface parking. The three specimen trees are growing in small landscape islands in the parking lot and drive aisles in the center of the developed portion of the property. The site cannot be redeveloped without significant disturbance to the Critical Root Zones of these trees. Denying the variance would prohibit any reasonable redevelopment of the site. Staff therefore believes that denial of the variance would constitute a hardship to the applicant. This finding must be met when determining whether or not to consider a variance for the project. Based on this finding, staff finds that a variance can be considered.

Section 22A-21 of the County code sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations, as the Director's designee, that granting the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

All three specimen trees being impacted are in the middle of the developed area of the site, and development is consistent with the zoning. Staff has determined that the impacts to the trees subject to the variance requirement cannot be avoided. Therefore, staff finds that the granting of this variance is not a special privilege that would be denied to other applicants.



2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the applicant, but on environmental, engineering and site constraints.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is not a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The trees being removed will be mitigated by the planting of replacement trees that will, in time, replace the lost water quality functions of the removed trees. Therefore, the project will not violate State water quality standards or cause a measurable degradation in water quality.

#### County Arborist's Recommendation on the Variance

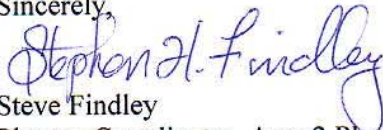
In accordance with Montgomery County Code Section 22A-21(c), the Planning Department referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. On July 15, 2016, the County Arborist issued her recommendations on the variance request and recommended the variance be approved with mitigation (Attachment 2).

#### Variance Recommendation

Staff recommends approval of the variance.

If you have any questions regarding these actions, please feel free to contact me at (301) 495-4727.

Sincerely,



Steve Findley  
Planner Coordinator, Area 2 Planning Division

Cc: LuGay Lanier  
Laura Miller, MCDEP



May 13, 2016

Mr. Steve Findley  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Forest Conservation Tree Variance Request (Potomac Foods Group); NRI/FSD No.  
420160950

Dear Mr. Findley:

On behalf of our client, Potomac Foods Group, we are submitting this Tree Variance Request to comply with Natural Resources, Title 5, Section 5-1607 of the Maryland Annotated Code requiring an applicant to file for a variance to remove trees that have a diameter at breast height (DBH) of 30 inches or greater or are 75% of the diameter of the County champion for that species.

**PROJECT DESCRIPTION**

The project concerns an application for a restaurant redevelopment at 16004 Shady Grove Road in Montgomery County (Property Tax Map FS62 Parcels N016, N017, and N019). This tree variance request is accompanying the review of the Conditional Use Permit application for this project and in anticipation of future Preliminary Plans. As shown on the NRI/FSD and the Preliminary Forest Conservation Plan, a total of three (3) trees with 30 inches DBH or greater will be impacted by the redevelopment of the subject property. The subject site is 1.70 acres in size and is zoned GR-1.5 H-45. The subject restaurant redevelopments are allowed in the zone as a Conditional Use and is the subject of the pending Condition Use Permit application. The subject site consists primarily of existing parking lot, buildings, and lawn. There is no forest cover within the project boundary (0 acres), but there are trees interspersed across the site

including five (5) trees of 24" or greater DBH, three of which are specimen trees. Four (4) of the five (5) trees are located on parcel N017; tree #5 is located just off the property along Shady Grove Rd. No threatened or endangered species were located during the NRI/FSD process. No county champion trees, state champion trees, or trees champion sized exist within the site.

Of the significant trees on the site, all three (3) trees have to be removed to accommodate the planned development. Table 1 lists the specimen trees as they are identified in the Forest Conservation Plan and provides the respective proposed impacts:

TABLE 1

Tree No.	Species	Diameter	Field Condition	Disposition	CRZ Area (SF)	CRZ Impacts (SF)	CRZ Impacts (%)
2	Willow oak	36"	Fair	Quality specimen	9,161	4,388	48%
3	Willow oak	42"	Good	Quality specimen, limited root zone	12,469	11,585	93%
4	Willow oak	36"	Fair	Okay form, pruned to avoid overhead power lines	9,161	6,827	75%

The assessment was performed by Timmons Group at the time of the field work for the NRI as a visual, at grade level inspection with no invasive, below grade or aerial inspections performed at the time. The critical root zone area was estimated at a rate of one-and-a-half (1.5) feet per one (1) inch of diameter at breast height (DBH). Decay or weakness may be hidden out of sight for large trees.



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#### **TREE NO. 2**

Tree #2 is a Willow oak, 36" diameter at breast height (DBH) in fair condition. This tree is intended to be removed as a part of the development which is necessary to achieve the programmatic elements of the site in an orderly fashion. This tree is located in close proximity to where the new drive-thru lane for the new Burger King will be located, making removal necessary. The critical root zone (CRZ) extends out 54' ± from the base of the tree for a total critical root zone area of 9,161 SF around the tree. Forty-eight (48) percent of the critical root zone area will be impacted with development.

#### **TREE NO. 3**

Tree #3 is a Willow oak, 42" diameter at breast height (DBH) in good condition. This tree is intended to be removed as a part of the development which is necessary to achieve the programmatic elements of the site in an orderly fashion. This tree is located between proposed drive aisles where a micro-bioretenion stormwater management feature will be located, making removal necessary. The critical root zone (CRZ) extends out 63' ± from the base of the tree for a total critical root zone area of 12,469 SF around the tree, despite its location in a landscape island. Ninety-three (93) percent of the critical root zone area will be impacted with development.

#### **TREE NO. 4**

Tree #4 is a Willow oak, 36" diameter at breast height (DBH) in good condition. This tree is intended to be removed as a part of the development which is necessary to achieve the programmatic elements of the site in an orderly fashion. This tree is located in close proximity to

---

where a new drive-thru lane and curb will be located, making removal necessary. This tree has been moderately pruned in the past due to its proximity to overhead power lines. The critical root zone (CRZ) extends out fifty-four 54'± from the base of the tree for a total critical root zone area of 9,161 SF around the tree. Seventy-five (75) percent of the critical root zone area will be impacted with development.

#### **JUSTIFICATION OF VARIANCE/NARRATIVE FOR TREE DISTURBANCE**

The proposed restaurant redevelopment will provide room for additional businesses on a previously developed site with only one business (Burger King). It will consist of two buildings housing four restaurants within the footprints shown in the Conditional Use application. The project is allowed through the Conditional Use process in the subject zone. As shown on the Conditional Use plan for the property, the development addresses the challenges of the site which includes a limited area to place the parking and stormwater management features required for the development, as well as required setbacks from Shady Grove Road.

To grant the requested variance, the Planning Board must find that the request:

1. Describes the special conditions peculiar to the property which would cause the unwarranted hardship;
2. Describes how enforcement of these rules will deprive the land owner of rights commonly enjoyed by others in similar areas;
3. Verifies that state water quality standards will not be violated or that a measureable degradation in water quality will not occur as a result of the granting of the variance;
4. Provides any other information appropriate to support the request.

We submit the following rationale in support of the request for a Forest Conservation Tree Variance.

1. The requested tree variance is necessary for implementation of this project which has an approved NRI and is proceeding through the Conditional Use approval process. This site is zoned GR-1.5 H-45 and this development is consistent with the uses permitted in this type of zone. The Conditional Use application includes data to show a need for this type of development in this area. The subject trees must be removed for a proposed drive-thru lane wrapping the Burger King building and an adjacent micro-bioretenion feature required to meet state requirements. The location of the drive-thru lane is necessary to accommodate required parking, access, stormwater management and landscaped areas. The subject trees are not part of a forest nor do they have any particular environmental significance other than shade and local habitat. Once redeveloped, the property will be planted with appropriate landscaping for the next generation, consistent with its long term use.
2. Conditions related to this request are neither unique nor special to this project and instead are unavoidable consequences of the development of the property. The requested variance is based on plans being developed under the allowable Conditional Use for this zone. There is no existing forest on site. The majority of trees within the existing property are native shade trees planted as part of the Landscape Plan for the existing development.
3. The Concept Stormwater Management Plan submitted with the Conditional Use Permit incorporates Environmental Site Design to the maximum extent practical able, according to the latest revision to Chapter 5 of the MDE Stormwater Management



Design Manual. Water quality treatment will be provided by three (3) micro bio-retention areas and a Contech® StormFilter® located in strategic areas of the property. The proposed ESD measures will treat a targeted rainfall of 2.0" that will return the developed site runoff characteristics back to woods in good condition. Therefore the removal of the specimen trees will not adversely affect water quality in any measurable way.

4. We believe the information provided above supports the granting of the tree variance request.

Sincerely,



Lu Gay Lanier, PLA

cc: Mark James



## DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett  
County Executive

Lisa Feldt  
Director

July 15, 2016

Casey Anderson, Chair  
Montgomery County Planning Board  
Maryland National Capital Park & Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

RE: Shady Grove Restaurant Redevelopment, SC 2016015, NRI/FSD application accepted on 12/18/2015

Dear Mr. Anderson:

All applications for a variance from the requirements of Chapter 22A of the County Code submitted after October 1, 2009 are subject to Section 22A-12(b)(3). Accordingly, given that the application for the above referenced request was submitted after that date and must comply with Chapter 22A, and the Montgomery County Planning Department ("Planning Department") has completed all review required under applicable law, I am providing the following recommendation pertaining to this request for a variance.

Section 22A-21(d) of the Forest Conservation Law states that a variance must not be granted if granting the request:

1. Will confer on the applicant a special privilege that would be denied to other applicants;
2. Is based on conditions or circumstances which are the result of the actions by the applicant;
3. Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
4. Will violate State water quality standards or cause measurable degradation in water quality.

Applying the above conditions to the plan submitted by the applicant, I make the following findings as the result of my review:

1. The granting of a variance in this case would not confer a special privilege on this applicant that would be denied other applicants as long as the same criteria are applied in each case. Therefore, the variance can be granted under this criterion.
2. Based on a discussion on March 19, 2010 between representatives of the County, the Planning Department, and the Maryland Department of Natural Resources Forest Service, the disturbance of trees, or other vegetation, as a result of development activity is not, in and of itself, interpreted as a condition or circumstance that is the result of the actions by the applicant. Therefore, the

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variance can be granted under this criterion, as long as appropriate mitigation is provided for the resources disturbed.

3. The disturbance of trees, or other vegetation, by the applicant does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property. Therefore, the variance can be granted under this criterion.
4. The disturbance of trees, or other vegetation, by the applicant will not result in a violation of State water quality standards or cause measurable degradation in water quality. Therefore, the variance can be granted under this criterion.

Therefore, I recommend a finding by the Planning Board that this applicant qualifies for a variance conditioned upon the applicant mitigating for the loss of resources due to removal or disturbance to trees, and other vegetation, subject to the law based on the limits of disturbance (LOD) recommended during the review by the Planning Department. In the case of removal, the entire area of the critical root zone (CRZ) should be included in mitigation calculations regardless of the location of the CRZ (i.e., even that portion of the CRZ located on an adjacent property). When trees are disturbed, any area within the CRZ where the roots are severed, compacted, etc., such that the roots are not functioning as they were before the disturbance must be mitigated. Exceptions should not be allowed for trees in poor or hazardous condition because the loss of CRZ eliminates the future potential of the area to support a tree or provide stormwater management. Tree protection techniques implemented according to industry standards, such as trimming branches or installing temporary mulch mats to limit soil compaction during construction without permanently reducing the critical root zone, are acceptable mitigation to limit disturbance. Techniques such as root pruning should be used to improve survival rates of impacted trees but they should not be considered mitigation for the permanent loss of critical root zone. I recommend requiring mitigation based on the number of square feet of the critical root zone lost or disturbed. The mitigation can be met using any currently acceptable method under Chapter 22A of the Montgomery County Code.

In the event that minor revisions to the impacts to trees subject to variance provisions are approved by the Planning Department, the mitigation requirements outlined above should apply to the removal or disturbance to the CRZ of all trees subject to the law as a result of the revised LOD.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



Laura Miller  
County Arborist

cc: Steve Findley, Planner Coordinator

# ATTACHMENT 4



## DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett  
County Executive

Diane R. Schwartz Jones  
Director

May 18, 2017

Mr. Luke Fetcho  
Timmons Group  
20110 Ashbrook Place, Suite 100  
Ashburn, VA 20147

Re: Revision to **COMBINED STORMWATER  
MANAGEMENT CONCEPT/SITE  
DEVELOPMENT STORMWATER  
MANAGEMENT PLAN** for  
Shady Grove Restaurant Redevelopment  
Preliminary Plan #: n/a  
SM File #: 281948  
Tract Size/Zone: 1.7 ac. GR 1.5, H-45  
Total Concept Area: 1.71 ac  
Lots/Block: N/A  
Parcel(s): N016, N017, N019  
Watershed: Potomac Direct

Dear Mr. Fetcho:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept proposes to meet required stormwater management goals via four micro-bioretenention facilities. This approval supersedes the prior approval letter dated August 24, 2016.

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

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.
3. All filtration media for manufactured best management practices, whether for new development or redevelopment must consist of MDE approved materials.
4. Landscaping associate with the facilities will be reviewed at the time of details plan review if of the Sediment Control/Stormwater Management plans by the Montgomery County Department of Permitting Services, Water Resources Section.
5. Provide easements and covenants for all stormwater structures and practices.
6. The concept proposes an outfall adjacent to the right-of-way of Interstate 370 which is under the jurisdiction of the Maryland State Highway Administration (MSHA.) The applicant must provide documentation of MSHA's approval of the outfall condition including safe conveyance and adequate downstream capacity prior to the approval of the Sediment Control and Stormwater Management Plan.



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[www.montgomerycountymd.gov/permittingservices](http://www.montgomerycountymd.gov/permittingservices)

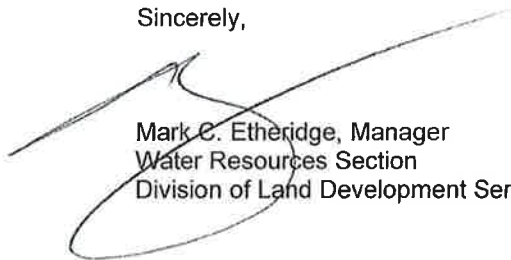
Luke Fetcho, PE, LEEP AP  
May 18, 2017  
Page 2 of 2

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

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

If you have any questions regarding these actions, please feel free to contact Mary Fertig at 240-777-6202 or at [mary.fertig@montgomerycountymd.gov](mailto:mary.fertig@montgomerycountymd.gov).

Sincerely,



Mark C. Etheridge, Manager  
Water Resources Section  
Division of Land Development Services

MCE: MMF

cc: C. Conlon  
SM File # 281948

ESD Acres:	1.7
STRUCTURAL Acres:	0.0
WAIVED Acres:	0.0