

# WEIS FILLING STATION CONDITIONAL USE NO. CU202502

## Description

The Applicant is proposing a Conditional Use for a Filling Station use per Section 59.3.5.13.C to be located in the parking lot of a Weis grocery store that has been approved but not yet constructed.

COMPLETED: 12/9/2024

PLANNING BOARD HEARING DATE: 12/19/2024

MCPB ITEM NO. 9

## Planning Staff

*MAB*

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### LOCATION/ADDRESS

Parcel K on Plat 25584, Clarksburg 20871

### MASTER PLAN

1994 Clarksburg Master Plan

### ZONE

CRT-0.75, C-0.25, R-0.5, H-65T

### PROPERTY SIZE

12,000 Square Feet

### APPLICANT

CYC Retail, LC c/o Elm Street Development & Weis Markets, Inc.

### ACCEPTANCE DATE

September 9, 2024

### REVIEW BASIS

Chapter 59

### HEARING EXAMINER PUBLIC HEARING

January 23, 2025

## Summary:

- Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner for a hearing scheduled for January 23, 2025.
- The Subject Site is an existing undeveloped portion of Clarksburg Town Center. The Proposal would allow a Filling Station with up to three (3) pumps.
- The Property has a recently approved Preliminary Plan Amendment, Site Plan Amendment, and Forest Conservation Plan Amendment, which will be amended at a later date.
- Staff has not received any public correspondence as of the date of this Staff Report.

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## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### CONDITIONAL USE NO. CU202502

Staff recommends approval of Weis Filling Station, Conditional Use No. CU202502, for a Filling Station, subject to the following conditions:

1. The use is limited to an Automobile Filling Station and must meet all requirements of Section 59.3.5.13.C.
2. The Conditional Use will be limited to three fuel pumps (six positions).
3. Applicant must amend the Preliminary Plan, the Site Plan, and the Forest Conservation Plan to reflect the Conditional Use approval.
4. Hours of operation shall be limited to 6 a.m. through 12 a.m.
5. The Filling Station must dispense less than 3.6 million gallons of gas and fuel per year.

## SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

### VICINITY/NEIGHBORHOOD

The Subject Property is outlined with the red dashed line in Figure 1 below and is located at Parcel K on Plat 25584 in Clarksburg Town Center, Clarksburg, Maryland. The Property is subject to the 1994 *Clarksburg Master Plan*.

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood,” which is the area that will be most directly impacted by the proposed use. Once delineated, Staff must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defines the surrounding neighborhood as outlined in the bold yellow line in Figure 1. The surrounding neighborhood is zoned CRT-0.75, C-0.25, R-0.5, H-65T and consists of existing and planned mixed-use development including single-family detached, townhouses, multi-family, and commercial uses such as retail and restaurant uses. Staff did not locate any Special Exceptions or Conditional Uses in the neighborhood.

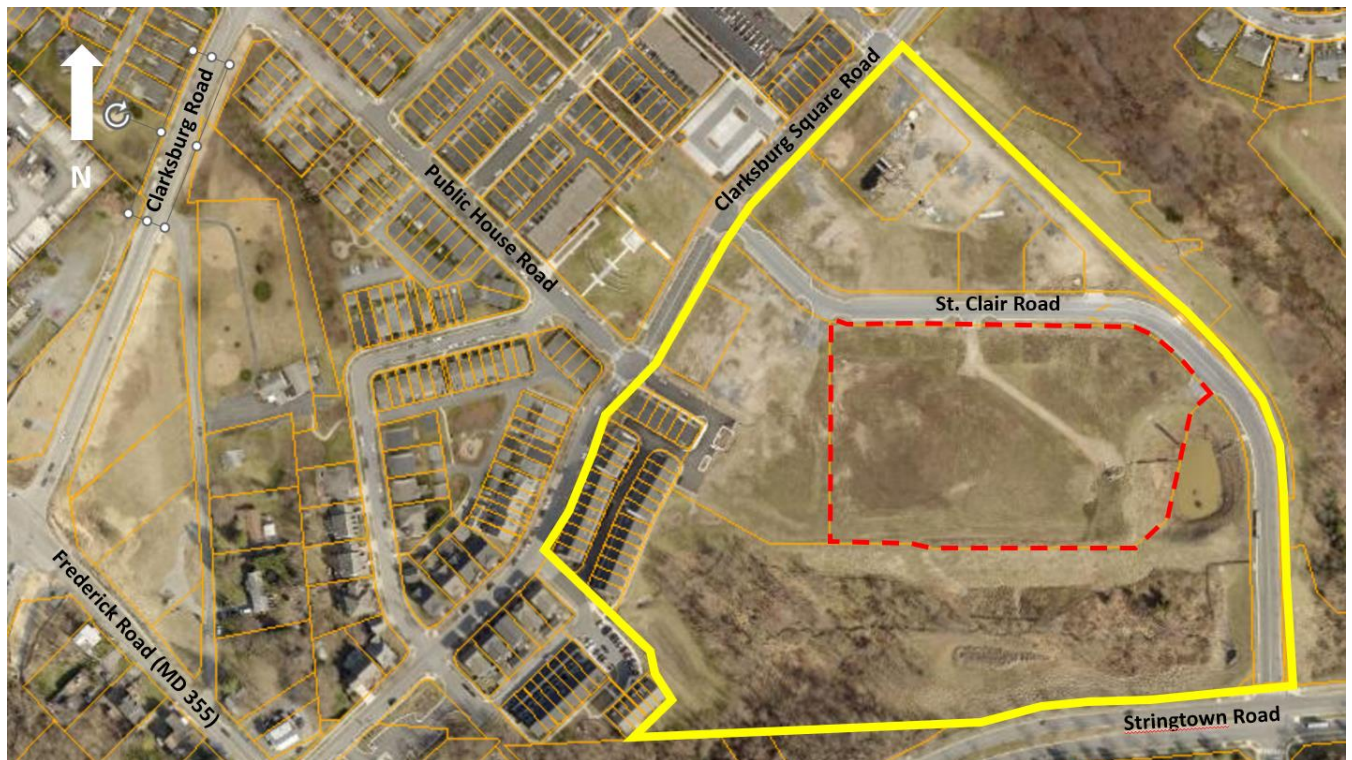


Figure 1: Vicinity Map with Staff-defined neighborhood

## PROPERTY DESCRIPTION

The Subject Property (outlined in red dashed line in Figure 2) consists of six acres known as Parcel K on recorded Plat No. 25584 (future Parcel G, Block GG and 4.5 acres). The Property is located on St. Clair Road, approximately 270 feet north of Stringtown Road in Clarksburg. The Property is an unimproved, rough graded parcel with no buildings or environmental features. The Property is part of the 14.5-acre retail and mixed-use core for the Clarksburg Town Center. The Property slopes gradually from west to east. The Property will be accessed from St. Clair Road north of the Stringtown Road intersection.

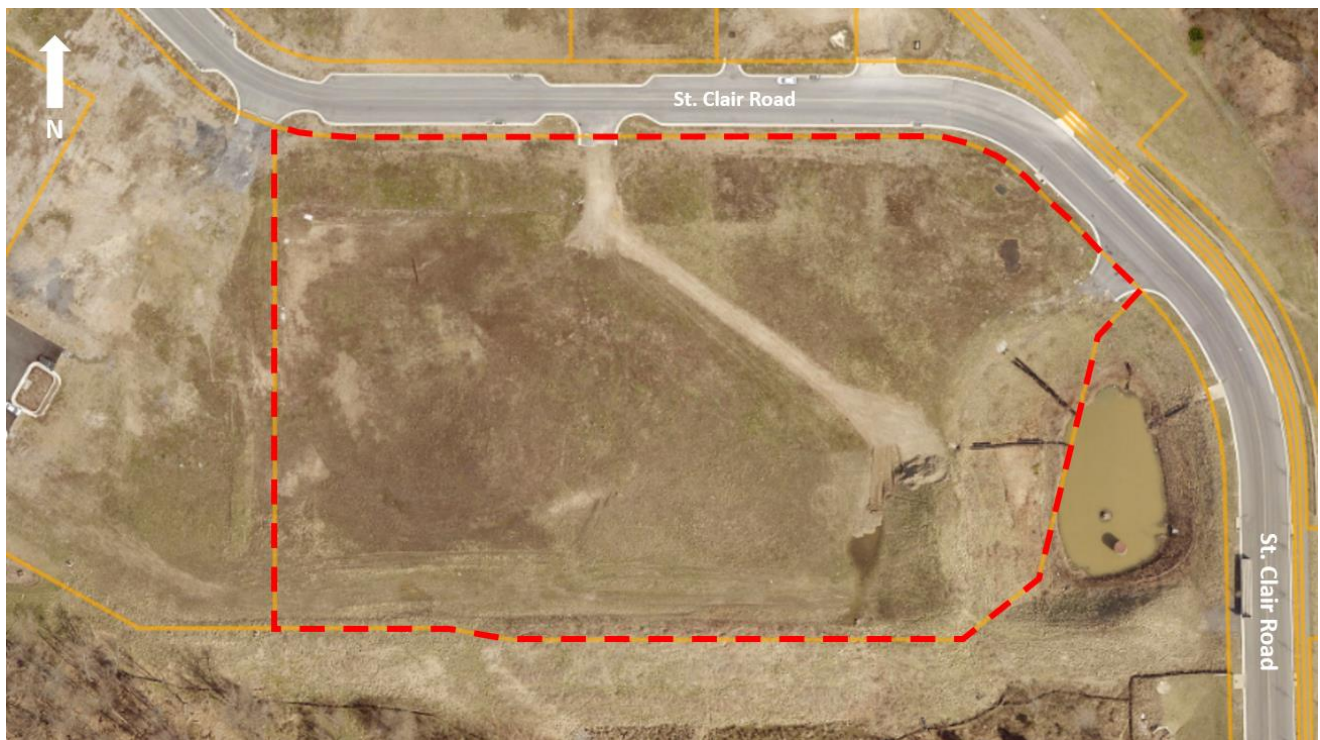


Figure 2 – Subject Property

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVALS

In 1994, the County Council approved the 1994 *Clarksburg Master Plan and Hyatt Special Study Area* (“Master Plan”). The Master Plan called for the creation of a town center alongside the Clarksburg Historic District, surrounded by residential, office, and retail uses. The plan envisioned up to 2,600 residences and 300,000 sq. ft. of commercial space.

In 1995, the Planning Board approved Project Plan No. 919940040 and Preliminary Plan No. 119950420. The approvals envisioned a neo-traditional community with 1,300 residences, 100,000 square feet of office, and 150,000 square feet of retail.

In 2005, a group of residents known as the Clarksburg Town Center Advisory Committee (CTCAC) alleged numerous violations associated with the as-built conditions, against the previous developer, NNPII Clarksburg, LLC (Newlands). To resolve the dispute, CTCAC and Newlands agreed to mediation. The mediation resulted in a Compliance Program which was approved by Planning Board resolution in June 2006.

The Compliance Program consisted of three stages. Stage I permitted the developer to proceed with the construction of certain residential units without further review by the Planning Board. Stage II required an interim review of certain residential units before construction. Stages I and II are completed.

To satisfy the requirements for Stage III, in 2008 the Planning Board approved Project and Preliminary Plan amendments along with new Site Plan No. 820070220. These approvals incorporated the necessary infrastructure and significant amenity improvements set forth in the Compliance Program.

In July 2013, the Planning Board approved Site Plan Amendment No. 82007022D to reduce residential units, increase commercial space, revise the commercial, along with park and amenity revisions. Although most Compliance Program elements were incorporated, the Board did not require all prior elements, such as parking structures in the retail core. The Board found that the amendment served the public interest by “providing significant community amenities and facilities that are comparable to the previously approved plans while responding to the aspirations and needs of today’s community.” Subsequently over the following years, the Applicant complied with the amendments and Compliance Program by substantially completing the required infrastructure and amenities.

In June 2023, the Applicant filed the subject Applications to complete the commercial core. After more than a decade, the Applicant has secured a major grocery store anchor. With this anchor’s commitment, the Applicant is in a position to attract additional commercial tenants and new residents to complete the final phase of the Clarksburg Town Center.

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## PROPOSAL

The Applicant proposes a Filling Station in the proposed parking lot of the future Weis grocery store. The Filling Station will be accessed from the shared driveway for the Weis grocery store from St. Clair

Road. The Applicant is proposing 3 gas pumps (6 fueling positions), a 500-square-foot kiosk, and a canopy with this Application. The pumps will operate from 7 a.m. to 11 p.m. seven days a week and will be monitored by one employee in the kiosk. Typical retail sales from the kiosk include motor oil, transmission fluid, and similar automotive products, soft drinks, cigarettes, lottery tickets, snack items, etc.

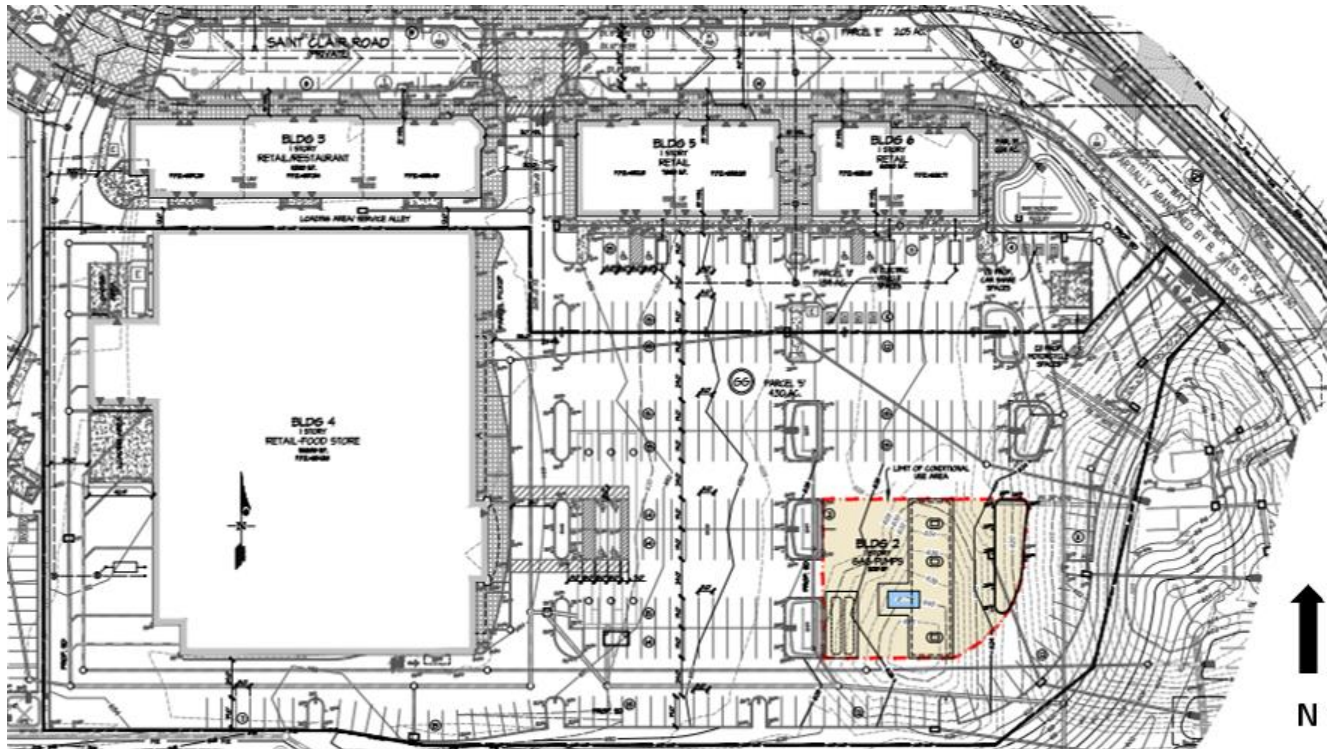


Figure 3 – Proposed Filling Station, Subject Application shown in red dashed line.



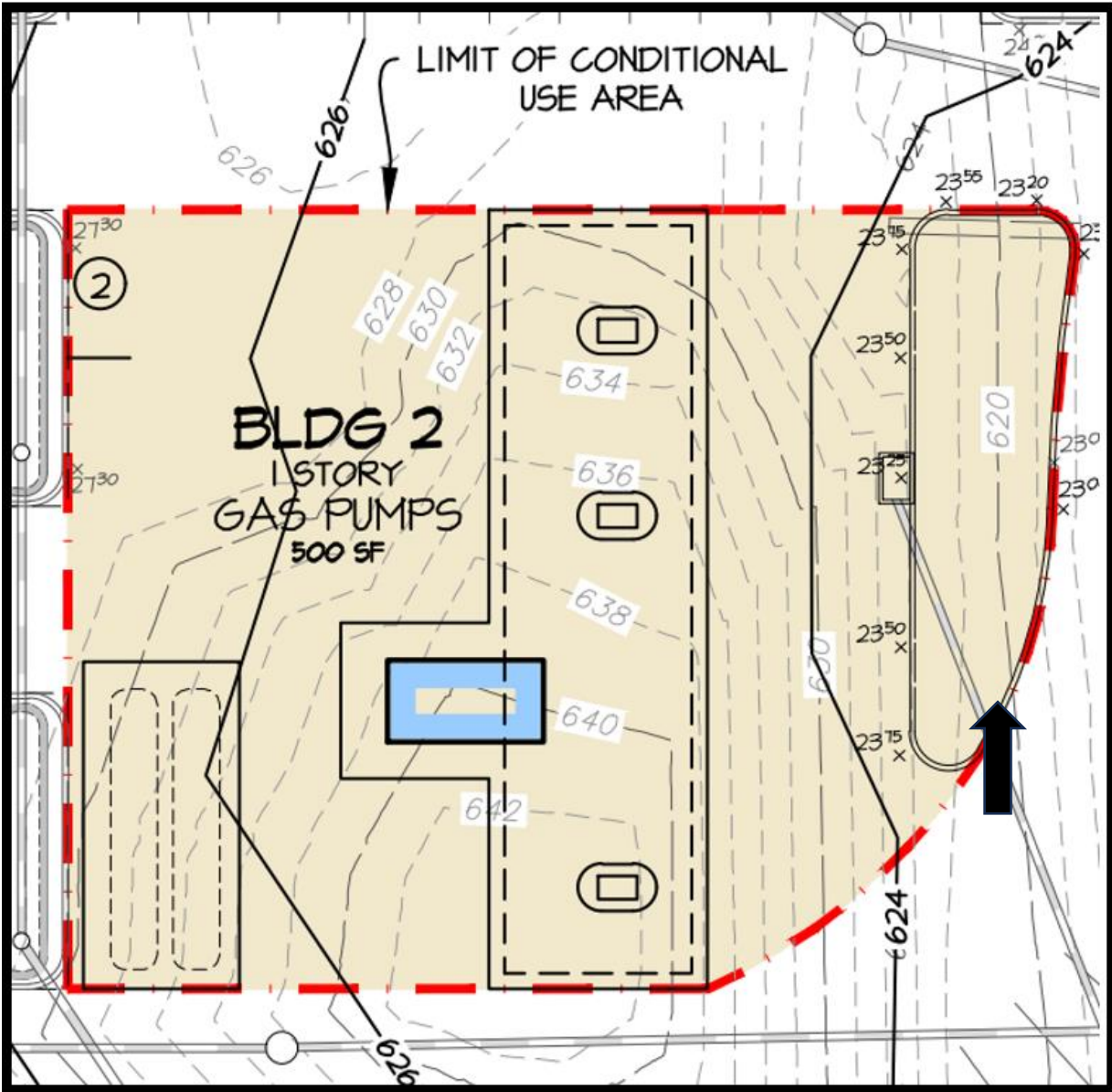
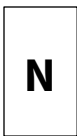


Figure 4 – Conditional Use Plan Fuel Pumps & Kiosk,

**ENVIRONMENT**

The Property has an existing approved Forest Conservation Plan, and included the area of the subject Conditional Use and no further review is required.

## SECTION 4: COMMUNITY CORRESPONDENCE

As of the date of this Staff Report, Staff has not received any letters of correspondence from the community.

## SECTION 5: FINDINGS

### CONDITIONAL USE NO. CU202502

1. ***Per Section 59.3.5.13.C.2, where a Filling Station is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:***

- a. ***Access to the site from a street with a residential classification is prohibited if:***
  - i. ***it is the only access to the Filling Station, or***
  - ii. ***it is the primary entrance to a Filling Station with more than 1 entrance.***

***The Hearing Examiner may allow a Filling Station with access on a residential street as a secondary entrance if it finds that the access will not have an adverse impact on neighboring residential houses.***

The Filling Station is accessed from the private road St. Clair Road which does not have a residential classification. The private road connects to Stringtown Road which is a Town Center Boulevard and Clarksburg Square Road which is a Town Center Street. This Section does not apply because these roads do not have a residential classification.

- b. ***Site lighting is a maximum of 0.1 footcandles at the lot line when the subject lot abuts a Residential zone. Site lighting is a maximum of 0.5 footcandles at the lot line when the subject lot abuts all other zones.***

The Applicant submitted a lighting plan with this Application. The photometric plan shows the lighting reduced to 0.0 footcandles ten feet before reaching the property line. The surrounding properties are all zoned CRT.

- c. Any Filling Station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.**

The proposed Filling Station will dispense less than 3.6 million gallons of gas or fuel per year, as conditioned, and therefore this section does not apply.

- d. Product displays, parked vehicles, and other obstructions that adversely affect visibility at intersections or to station driveways are prohibited.**

The Filling Station is located within a grocery store parking lot and therefore will not have any adverse effects on the intersection or driveway. The Filling Station and kiosk are 300 feet away from the driveway entrance to the parking lot. The Applicant is not proposing outdoor displays with this application.

- e. When such use occupies a corner lot, the driveways must be located a minimum of 20 feet from the intersection of the rights-of-way and must not exceed 30 feet in width.**

The proposed Filling Station is not located on a corner lot and therefore this Section does not apply to this Application.

- f. Each gasoline pump or other service appliance must be located on the lot a minimum of 10 feet behind the setback line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building, except for car-share space.**

The minimum side and rear setbacks for the CRT zone are 0 feet. The pumps and kiosk are proposed at 65.4 feet from the east property line and 98.7 feet from the rear lot line. These are more than 10 feet behind the setback lines for the side and rear.

- g. There must be a minimum of 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line. The Hearing Examiner may waive the perpendicular driveway requirement if the Department of Transportation deems the alternative safe.**

As established by Preliminary Plan 11995042E and Site Plan 82007022I, the two driveways for ingress/egress to the parking lot where the gas pumps are located, are

over 400 feet apart from each other and both driveways are perpendicular to the curb and street line.

***h. Vehicle parking that overhangs the public right-of-way is prohibited.***

The vehicle parking and gas pump canopy does not overhang the public right-of-way. The canopy is over 250 feet away from the public right-of-way and parking is 200 feet away.

***i. If the Filling Station facility includes a car wash, it must:***

***i. provide vehicle stacking space equivalent to 5 times the vehicle capacity of the automatic car wash and 3 times the vehicle capacity of the manual car wash bays; and***

***ii. demonstrate that the vehicles using the car wash will not queue off-site.***

The Applicant is not proposing a car wash with this Application. If the Applicant ever decides to add a car wash, the Applicant will need to amend the Conditional Use application at that time.

***j. The Hearing Examiner must find there is adequate parking for all accessory uses.***

The Applicant is not proposing any accessory uses with this application therefore this Section does not apply. The Filling Station is a proposed accessory use to the grocery store onsite and provides 558 parking spaces which includes the two parking spaces for the Filling Station. The parking for the grocery store has been approved by the Planning Board as part of Preliminary Plan No. 11995042E and Site Plan No. 82007022I.

***2. Per Section 59.7.3.1.E., to approve a conditional use application, the Hearing Examiner must find that the proposed development:***

***a) satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.***

The Site has a recently approved Preliminary Plan 11995042E, Site Plan 82007022I, and Forest Conservation Plan No. 91994994E. The previously approved plans show a potential future Filling Station at this proposed location. The Applicant will need to amend Preliminary Plan No. 11995042E, Site Plan No. 82007022I, and Forest Conservation Plan No. 91994004E if the Hearing Examiner approves this Conditional Use application.

***b) satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable***

**general requirements under Article 59-6;**

i. **Use Standards for Filling Station- Section 59.3.5.13.C**

As detailed above, the proposed Filling Station satisfies the requirements and use standards in Section 59.3.5.13.C

ii. **Development Standards**

The Subject Property is in the CRT-0.75, C-0.25, R-0.5, H-65T zone, which allows a Filling Station Use. The Project complies with all development standards of the CRT zone, as shown on the Development Standards Table below.

*Table 1: Development and Parking Standards CRT-0.75, C-0.25, R-0.5, H-65T*

<b>Development Standard Section 59.4.5.3.C</b>	<b>Permitted/ Required</b>	<b>Proposed</b>
Minimum Lot Area	N/A	N/A
Minimum Lot Width at Front Building Line	N/A	N/A
Minimum Lot Width at Front Lot Line	N/A	N/A
Maximum Density	0.75 FAR, C-0.25, R-0.5	0.05 FAR
Minimum Front Setback	0 feet	300 feet
Minimum Side Setback	0 feet	65.4 feet (east)
Minimum Sum of Side Setbacks	N/A	N/A
Minimum Rear Setback	0 feet	98.7 feet
Maximum Height	35 feet*	35 feet
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	3.5 spaces/1000 sq. ft.= 2 space	3.5 spaces/.500= 2 space

\*Maximum height per approved Site Plan 82007022I

iii. **General Requirements of 59-6 –**

**(1) Access- 59-6.1**

Access to the overall Site is unchanged from approved Preliminary Plan No. 11995042E. The proposed fueling station shares all access points with the grocery store site. The design of the drive aisles are compliant with Section 59-6.2.5.G. The proposed use will be in compliance with the recently approved Site Plan No. 2007022I.

**(2) Parking, Queuing and Loading-59-6.2**

The fueling station use requires one parking space per 1,000 square feet of gross floor area (GFA) pursuant to Section 59.6.2.4.B. The Project proposes 500

square feet of GFA which requires two additional parking space. The grocery store site proposes 558 parking spaces, to be shared by the retail uses. As approved with Site Plan No. 82007022E, 558 parking spaces exceeds the minimum number of spaces required for the proposed uses. The Filling Station parking spaces were included in the parking calculations on Site Plan No. 82007022E. It is important to note that although the Filling Station fuel pumps are located within the proposed parking lot, this space was reserved and intended for a filling station use, as shown in the Preliminary Plan and Site Plan. Approval of the filling station will not reduce the previous approved number or layout of parking spaces on the Site.

**(3) Landscaping and Outdoor Lighting- 59-6.4**

The Conditional Use area is restricted to the gas pump canopy area only. The areas around the Conditional Use contain proposed landscaping per Section 6.4. under the previously approved Site Plan 82007022I. All previously approved landscaping will not be affected by this application.

As required by Section 59-6.4.4.D, the photometric plans indicate that illumination at the lot line will not exceed 0.5 footcandles, excluding street lights within the right-of-way. The photometric plan indicates 0.0 footcandles at the property lines closest to the Filling Station.

**(4) Screening-59-6.5**

Screening is not required for this application per the Applicability Section 59.6.5.2.C. The Applicant has a landscape plan (Attachment C) for the Clarksburg Town Center Site Plan which will provide screening along with existing onsite Forest Conservation Easements.

**(5) Outdoor Display and Storage- 59.6.6**

*The Applicant is not proposing any outdoor displays or storage with this application.*

**(6) Signage-59-6.7**

The Applicant is not proposing any signage with this application. The signage will be included with the Weis Grocery Store as part of Site Plan No. 82007022I; however, if the Applicant proposes signage in the future, the Applicant will need to obtain a sign permit per Section 59.7.4.3.

**c) *substantially conforms with the recommendations of the applicable master plan;***

The Site is located within the Town Center District of the 1994 *Clarksburg Master Plan* (Master Plan). The Town Center District is planned as a central focus for the larger plan area and Clarksburg community, with a mix of residential, retail, and office uses to support an active and accessible Town Center. The gas station associated with the approved associated grocery store and adjacent retail shopping center is one element of this Town Center vision.

**d) *is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;***

The location of the proposed pumps, the topography of the site and landscaping previously approved on Site Plan No. 20070221 the proposed three pumps will be unobtrusive to the rest of the retail area. The gas pumps will be limited to a very small portion of the overall retail area (approximately 12,000square feet of a fourteen-acre retail core) and will be located in the parking lot, away from any residential uses and the street-oriented retail along Clarksburg Square Road and St. Clair Road.

**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 contained nature of these gas pumps, as part of a much larger retail/mixed-use core area, and the fact there are no conditional uses/special exception in the neighborhood, the approval of this will not affect the area adversely. There is no abutting or confronting residential detached houses with this application. Since there are no other Conditional Uses/Special Exceptions in the neighborhood, there are will not be any adverse impacts on the Master Plan.

**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, and**

A retail center up to 150,000 square feet of retail uses already has been approved under the referenced Project Plan, Preliminary Plan and Site Plan which collectively reviewed the adequacy of public facilities. The APF was reviewed at the time of the Preliminary Plan which included the future Filling Station use and no further review is required.

(1) Public safety (Police and fire protection): The entire Clarksburg Town Center area has excellent police and fire protection, and a new fire house was just opened very nearby. The addition of these gas pumps to the much larger retail center will not create any additional demand.

(2) Public Roads: The site is served by public roads, including Stringtown Road and Clarksburg Square Road, and the pumps themselves will be located on private property while the entire access and circulation system has been approved under the Preliminary Plan and Site Plan and will be reviewed again in the Preliminary Plan and Site Plan Amendment.

(3) Electrical Infrastructure: The area is currently served by extensive electric infrastructure and this retail core has been planned for a long time. Current design confirms that electric services can be provided to the gas pumps.

(4) Water and Sanitary Sewer: Once again, the site is served by public water and sewer and the construction of retail has long been planned, mains installed, and planned to serve the gas pumps in this area.

### ***Transportation***

#### ***Master-Planned Roadways and Bikeway***

The Subject Property is located along Clarksburg Square Road and St. Clair Road. Clarksburg Square Road functions as a Town Center Street with a minimum right-of-way of 70 feet by the 2024 *Master Plan of Highways and Transitways Technical Update*. There are no master planned bike facilities along Clarksburg Square Road.

St. Clair Road is a private road built to the Town Center Street public standard. St. Clair Road has a constructed master planned bicycle sidepath along the west side.

There are no other planned bike facilities along the project frontage and no additional dedication is required.

#### ***Pedestrian Facilities***



The existing pedestrian facilities along Clarksburg Road are adequate. Sidewalk and frontage zone vary in width but there is a 10-foot minimum width and a 5-foot buffer.

The sidewalk facilities along St. Clair Road exceed the eight-foot standard for width and include several connections to the existing sidepath.

Pedestrian circulation around the Site will be minimal and few pedestrian conflicts are anticipated. The gas pumps are located in the far corner of the development, away from major pedestrian and bicycle access points.

**Transit Service**

Bus service, RideOn Route 75, is provided along Stringtown Road which intersects with St. Clair Road south of the project area.

**Parking**

**Per Section 59-6.2.4.B., a 500-square-foot filling station requires one additional parking space, which can be accommodated with the existing surface parking lot.**

**Local Area Transportation Review**

The 2020-2024 *Growth and Infrastructure Policy* requires mode-specific adequacy tests for any project estimated to generate 50 or more net new peak hour person trips. This proposed development has been found to produce fewer than 50 new peak hour trips and is exempt from a full transportation impact study.

The addition of the three fuel pumps (six positions) to Preliminary Plan No. 11995042E , the subject of this analysis, still results in an overall net reduction in trips generated when comparing the 2023 Preliminary Plan No. 11995042E to Preliminary Plan No. 11995042A trip generation estimates.

*Table No. 1: Program Comparison of Subject Proposal to Previously approved Preliminary Plans 11995042A & 11995042E*

Land Use	Approved 2008 Preliminary Plan Amendment 11995042A	Approved 2023 Preliminary Plan Amendment 11995042E	Proposed Conditional Use 25-02
Condominiums	287 DU	201 DU	201 DU
Townhomes	700 DU	686 DU	686 DU
Single Family Detached	219 DU	219 DU	219 DU

Multifamily (Garden Style)	-	189 DU	189 DU
Total Residential	1,206 DU	1,295 DU	1,295 DU
Retail	194,720 SF	106,920 SF	106,920 SF
Gasoline Pumps	-	-	6 fueling positions

It is acceptable, in this case, to consider the addition of the fueling stations as an adjustment to Amendment E because the estimated overall impact is still a reduction in trips generated compared to the adequate public facilities analysis conducted as part of Plan Amendment 11995042A. It is important to note that any development within the vicinity of the Site would have been predicated on the APF analysis conducted for Plan Amendment 11995042A, which is still valid. Furthermore, the number of trips estimated generated by the addition of the pumps is likely conservative. Many of the trips to a gas pump co-located with the grocery store are likely captured trips, internal to the Site, that would further reduce the number of new peak trips generated.

Land Use	Quantity	Vehicle Trip Adjustment Factor	AM Peak Hour Vehicle Trip Total	AM Peak Hour Person Trip Total	PM Peak Hour Vehicle Trip Total	PM Peak Hour Person Trip Total
<b>Original Approval (Preliminary Plan 11995042A, 2008)</b>						
Single Family Detached	219 DU	100%	161	249.6	201	311.6
Multifamily Housing Low Rise	987 DU	100%	484	750.4	507	786
Retail	194,720 sq ft	100%	424	586.4	1694	2343
<b>Previously Approved Total</b>			<b>1,069</b>	<b>1,586</b>	<b>2,402</b>	<b>3,441</b>
<b>Approved (Preliminary Plan Amendment 11995042E, 2023 and Subject Application)</b>						
Single Family Detached	219 DU	100%	152	236	208	323
Multifamily Housing Low Rise	887 DU	100%	355	550	452	701
Multifamily Housing Mid Rise	189 DU	100%	70	109	74	115
Retail	106,920 sqft	100%	377	521	965	1335
Gasoline/Service Station*	6 Fueling Positions	100%	62	81	83	109
<b>Proposed Total</b>			<b>1,016</b>	<b>1,497</b>	<b>1782</b>	<b>2,582</b>

<b>Net New Person Trips (Proposed minus 2008 Approved)</b>	<b>-53</b>	<b>-89</b>	<b>-620</b>	<b>-859</b>
*New land use, subject of this Conditional Use.				

Source: Transportation Exemption Statement by Kimley Horn, dated July 5, 2024, as modified by staff

**(7) Schools**

The Subject Application does not propose a residential use and therefore does not have any impacts on public schools.

**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, residents, visitors, or employees.**

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use must be analyzed.

The following physical and operational characteristics are necessarily associated with (i.e., inherent to) a Filling Station:

- Customer trips: Typically trips for the Filling Station will be in conjunction with the grocery store. In other words, the gas station is not generating many new trips on its own. Instead, people patronizing the adjacent retail and grocery store are likely adding on trips to the gas station as a matter of convenience. The Filling Station is located in the parking lot so the use will not have any affects on the surrounding neighborhood.
- Canopy lighting: The photometric plan submitted with the application shows 0.0 footcandles at the property lines.
- Fuel truck deliveries: Fuel delivery trucks are likely the delivery trucks for the grocery store. Typically, the fuel delivery trucks will make deliveries during normal daylight hours, and outside of peak travel times.
- Fuel odors and fumes: The pumps will be located serval hundred feet away from houses and other commercial uses. The vapor recovery systems on today's modern pumps help to minimize odors and fumes.

Staff did not identify any non-inherent characteristics of the proposed use.

The proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects.

**3. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.**

The proposed Conditional Use is not located in a Residential Detached zone; therefore, this Section does not apply.

**4. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and is not sufficient to require conditional use approval.**

The Applicant understands even though this Application meets all the requirements for a Filling Station Conditional Use for the specific use, it does not constitute an approval.

**5. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.**

The proposed Filling Station is not an agricultural conditional use. Thus, this Section does not apply.

**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 to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:***

- a) *Filling Station;***
- b) *Light Vehicle Sales and Rental (Outdoor);***
- c) *Swimming Pool (Community); and***
- d) *the following Recreation and Entertainment Facility use: swimming pool, commercial.***

The Applicant has provided a needs analysis with this application (Attachment B). The study shows the Filling Station use is needed for the Clarksburg Town Center area. The needs analysis indicates there is a demand of 13.2 million gallons of gasoline in the Clarksburg Weis Market area and shows there is unmet demand of approximately of seven million gallons of gas for this area.

**7. *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.***

This Application is for a Filling Station. Thus, this Section does not apply.

## SECTION 6: CONCLUSION

The proposed Conditional Use complies with the findings require for approval of a Filling Station, subject to the recommended conditions of approval. The proposed use substantially conforms to the 1994 *Clarksburg Master Plan*, will not alter the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends

approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner.

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## ATTACHMENTS

Attachment A: Conditional Use Plan

Attachment B: Needs Analysis/Study

Attachment C: Planning Board Resolutions