



District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013



By Hand Delivery

Board of Zoning Adjustment
441 - 4th Street, NW, 2nd Floor
Washington, DC 20002

Re: Application No. 17825 of 1400 Maryland Avenue Ltd Empire Leasing Inc.
ANC6A Supplemental Filing to January 06th, 2009 Submission

Dear Chairman Loud and Board Members:

On behalf of ANC6A, enclosed please find the following in supplement to our filing dated January 06th, 2009 in response to revisions to the applicant's plans the ANC received on Wednesday, July 15th.

Since our initial filing, the applicant has been required to substantially alter their site plans to minimize the extensive use of public space they initially proposed which resulted in *denial* of their initial plan at the December 18th, 2008 public space hearing. The applicant has since modified the plans (now before you) to reduce the use of public space and have secured a recommendation for **conditional approval**¹ to obtain a public space permit (on June 25th).

ANC6A acknowledges since our filing submitted on January 6th, 2009 the following conditions have changed with regards to the proposed plan that modify or render moot arguments specific to the design of the property put forth under that filing:

- The use of public space between the curb and the private property has been reduced to the use of two driveways meeting DDOT standards
- The sign has been removed from public space and placed on private property
- The proposed fuel pumps have been reduced from 8 pumps to 4 pumps
- The resulting vehicle trips (1 trip on, 1 trip off) across the property have been reduced from 2,600 per day to 1,300 per day.
- The size of the convenience store has been reduced
- The loss of on-street public parking has been limited to the spaces required for driveway installation
- The façade of the building has been modified to brick to match the residential character of Maryland Avenue
- The public space is proposed for extensive landscaping protected by a 36" wrought iron fence which also matches the character of Maryland Avenue

¹ See record of public space minutes. Notable conditions require demonstration "showing there's no removal of currently accessible parking spaces on 14th Street" and that on site circulation traffic analysis must show there will be "no stacking [of vehicles] in the public space".



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The ANC supports these changes in design should the special exception be granted with a number of additional caveats explained at the end of this filing.

The **ANC continues to oppose the use of the property** and maintains the arguments put forth in the January 6th, 2009 filing pertaining to the comprehensive plan, sign size, traffic behavior, and DC law remain relevant to the current application.

The following points expand upon arguments put forth in the original filing to clarify position, respond to testimony submitted by the applicant, or pertain to the current changed design.

GRANTING A SPECIAL EXCEPTION FOR 1400 MD WILL VIOLATE DC LAW §1-306.07 ZONING CONFORMITY

As noted in our January 06th filing on page 3, granting a special exception will violate the DC Comprehensive Plan. The 2006 comprehensive plan is more up to date and therefore more stringent than the 1958 zoning maps that have not been updated to reflect the adopted plan. Recognizing this inconsistency, the DC Council passed a law requiring the zoning maps to be brought into conformance with the Comprehensive Plan that was developed via an extensive public process. The law (§ 1-306.07 Zoning conformity) states simply:

(b) The Mayor shall within 16 months of March 8, 2007, propose amendments to the zoning regulations or maps to eliminate any inconsistency of the zoning regulations with the Land Use Element of the Comprehensive Plan.

The date for the Zoning Maps to be updated to match the Comprehensive Plan expired on July 8th, 2008.

While the government failed to update the zoning map as required by this law, the comprehensive plan provides clear direction for the board to assess the application to construct a gas station and convenience store at 1400 Maryland Avenue. The proposed zoning map (Attachment A) also shows the intent of the office of planning to update the zoning map changing the zoning for 1400 Maryland from C-3-A to moderate density residential (R-5-B) to reflect the generally consistent residential character of Maryland Avenue.

GRANTING A SPECIAL EXCEPTION FOR 1400 MD WILL VIOLATE VARIOUS ELEMENTS OF THE DC COMPREHENSIVE PLAN

(CAPITOL HILL ELEMENTS 1.1.6, GENERAL LAND USE ELEMENTS 1.1.1, 1.1.3, 1.1.4, 1.4.1, 1.4.3, 2.1, 2.4.9, URBAN DESIGN ELEMENTS 2.2.13, 2.2.B, 3.1.7, 3.1.8)

The following expands upon our original submission zoning/regulation arguments that generally still apply to the current design (pages 3-10).



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The proposed gas station/convenience store fails to meet Comp Plan Element CH 1.1.6

The applicant has essentially requested the Board take a very narrow view of the Capitol Hill Element of the Comprehensive Plan (CH-1.1.6) that directs the District Government to:

“Prevent the proliferation of fast food outlets, self-service gas stations, convenience mini-marts, and other “drive-through” businesses along Capitol Hill’s commercial corridors, recognizing that these streets are part of the historic L’Enfant Plan and shape the city’s identity and national image.”

As their only evidence their 24-hour operating gas station/convenience store will not violate CH 1.1.6, they cite statistics that ANC6A has no gas station within its small boundary and that generally within ward 6 and the District gas stations have declined over a period of recent years. These statements are true but they are misleading in the extreme with regard to the 1400 Maryland Avenue application.

The applicant failed to acknowledge 1400 Maryland Avenue lies on the extreme northern edge of Ward 6 (within 300 feet of ward 5) adjacent to Ward 5 which has the densest concentration of gas stations in the entire city (See Attachment B).

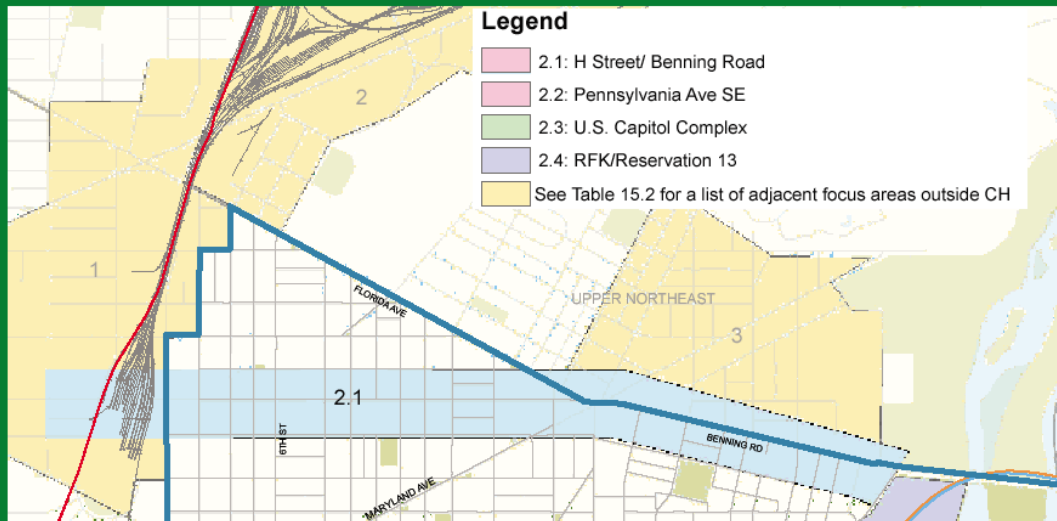
They also totally ignore the adjacent quantity of convenience stores and auto “drive thru” uses located within the immediate vicinity which policy CH1.1.6 and the H Street Overlay seek to address.

The applicant is requesting the BZA ignore the typical routes the applicant’s customers will drive to focus on greater Ward 6 to the south to purposefully obscure the context within which the gas station will be located. Bladensburg Road is essentially the District of Columbia’s auto-mile saturated with curb cuts, gas stations, used car lots, barbed wire fencing, auto-repair shops, and drive-thrus. The portion of Bladensburg Road from Maryland Avenue to Mount Olivet provides a contrary vision to that proposed for the H Street corridor which includes 1400 Maryland as shown in the Comp Plan shown below and associated H Street redevelopment policy CH 2.1.



Map 15.1:

Capitol Hill Policy Focus Areas 1510.4



Assessing the 1400 Maryland Avenue application within its true context can lead to no other conclusion than the application fails to meet CH1.1.6 as demonstrated below:

1. **Approval of this special exception will result in a proliferation of gas stations.**

Utilizing a 1-mile limit centered on 1400 MD Ave, a gas station at 1400 MD Ave would become:

- the 3rd gas station within 2 city blocks
 1. 814 Bladensburg Rd – Bladensburg Amoco (with repair shop)
 2. 1396 Florida Avenue – Casey’s Amoco
 3. 1400 Maryland Avenue – Proposed Shell
- the 11th gas station within 1-mile if approved (see exhibit B)
 1. 814 Bladensburg Rd – Bladensburg Amoco (with repair shop)
 2. 1201 Bladensburg Rd - Bladensburg Amoco (with repair shop)
 3. 1301 Bladensburg Road – Lowest Price (with repair shop)
 4. 520 Florida Avenue – Florida Avenue Hess
 5. 1396 Florida Avenue – Casey’s Amoco
 6. 1950 Benning Rd – Benning Road Amoco
 7. 2651 Benning Road – Stadium Exxon (with repair shop)
 8. 1801 West Virginia Avenue – Lowest Price
 9. 1835 West Virginia Avenue – Department of Public Works
 10. 200 Massachusetts Avenue – Congressional Exxon (with repair shop)
 11. 1400 Maryland Ave – Proposed Shell



Additionally the applicant owns a Shell Station 1.4 miles away at 3355 Benning Rd NE. The use of a 1-mile measure should be reasonable considering the applicant's citation of the 2008 Gas Station Advisory Board study (which used 1-mile).

The irony of the applicant's citation of this study is it was developed to analyze the drop in automotive services in the District owing to the rise of Jobbers (such as the applicant) who have put many locally owned service stations out of business. To remedy this DC Council is debating an update to the "Retail Service Station Amendment Act of 1976 to reduce the likelihood retailers would close their shops and to create incentives for gas station retailers to locate in underserved neighborhoods² defined as having no gas station services within 1-mile. As evidenced by the GIS analysis, the neighborhood within 1-mile of 1400 Maryland Avenue is far from underserved.

2. Approval of this application will result in the proliferation of convenience stores within the relevant influence area of the property.

The proposed convenience store whereupon a customer will have the option to buy limited foodstuffs such as soda, candy bars, chips, ice cream, and milk will not provide a missing service and will result in a significant proliferation of such sales within the adjacent community considering:

- 2 convenience stores are located on the 1400 block of Maryland Avenue
 - New York Liquors – 1449 Maryland Avenue
 - Star Grocery – 1451 Maryland Avenue
- 22 convenience stores are located within ½ mile of Maryland Avenue
 1. Rite Aid Pharmacy – 801 H Street
 2. Dollar Express – 957 H Street
 3. Super Pharmacy – 1048 H Street
 4. 1101 Convenience Store – 1101 H Street
 5. Me and My Supermarket – 1111 H Street
 6. Jumbo Liquor – 1122 H Street
 7. Northeast Liquor's – 1344 H Street
 8. Scoe Associates Depo – 1351 H Street
 9. ANM Convenience and Deli – 1363 H Street
 10. DC Supermarket – 539 8th Street
 11. Young's Market – 250 10th Street
 12. Black Supermarket – 910 13th Street
 13. Brother's Liquor/Grocery - 1140 Florida Avenue
 14. 1424 G Street Market
 15. J & K Market. 234 15th Street
 16. Old Country Deli & Liquor – 409 15th Street
 17. 7-Eleven – 801 Maryland Avenue

²"The existence of another retail service station within one mile of the station which provides equivalent service facilities." Full bill is here: http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/retail_s.pdf



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18. Safeway – 1601 Maryland Avenue (full service grocery)
19. BP Amoco snack booth - 814 Bladensburg Rd
20. Rose's Liquor – 830 Bladensburg Road
21. CVS – 845 Bladensburg Road
22. Stanton Liquor – 1044 Bladensburg Road

3. Approval of this application will result in a proliferation of “drive through” uses within the relevant influence area of the property.

The proposed gas station will result in a proliferation of automotive oriented/anti-pedestrian fast food outlets, carry outs, and/or “drive thru” type businesses which exist within a ½ mile distance of this location including:

1. Checker's fast food restaurant – 1401 Maryland Avenue
2. CVS with drive through at 845 Bladensburg Road
3. Autozone - 1207 H Street
4. H Street Connection Strip Mall – 800-1000 block of H Street, South Side
5. Metro Tire Express – 826 Bladensburg Road
6. Globe Motor Services – 920 Bladensburg Road
7. AAMCO Transmissions – 1001 Bladensburg Road
8. Tony's Carry Out – 1401 H Street
9. Northeast Transmissions – 1010 Bladensburg Road
10. Popeyes – 1226 H Street
11. Danny's Carry-Out – 1251 H Street
12. Rainbow City Carry Out – 1320 H Street
13. McDonald's – 1635 Benning Road
14. Popeyes with Drive Thru – 2301 Benning Road

4. The board of zoning should reject the implied premise to ignore DC Law §1-306.07 and the comprehensive plan to provide a “missing” service to provide services to the core of the city (LU –1.1.1)

The applicant cites Land Use Policy LU-1.1.1, which seeks to ensure services are provided within the downtown area of the city (not within the area of 1400 MD Ave). The applicant infers providing the gas station at 1400 MD will help “sustain a strong and thriving city center” going on to say rejection of their special exception will result in a loss of jobs, services, taxes, etc due “an alarming shortage” of gas stations. This statement presumes the commuter does not drive by other gas stations on their way past 1400 MD Avenue and must therefore purchase gasoline outside the District thereby reducing tax revenues, and that an alternative business here would employ fewer people than their proposal.



Rejection of the special exception will not result in a significant loss of tax revenue nor would it reduce available services to downtown commuters and area residents.

The applicant's traffic model indicates the traffic they are targeting is commuter traffic (See DAG Traffic Study, Figure 7 reproduced below). Major traffic volumes (AM commuters) are generated by westbound Benning Road/H Street traffic or southbound Bladensburg Road traffic. Both traffic streams return to the same roadways via a combination of Florida/14th/H/Maryland and therefore generally pass the same locations in the evening. Based on their traffic model, commuter traffic will pass the following gas stations during some portion of their trip:

- Westbound H Street traffic from Benning Road/I-295 passes 3 gas stations from I/295:
 1. 1950 Benning Rd – Benning Road Amoco
 2. 2651 Benning Road – Stadium Exxon (with repair shop)
 3. 3355 Benning Rd NE – Benning Road Shell
- Southbound Bladensburg Road traffic from MD Border/Route 50 passes 7 gas stations from the Maryland Border along Bladensburg Road:
 1. 814 Bladensburg Rd – Bladensburg Amoco (with repair shop)
 2. 1201 Bladensburg Rd - Bladensburg Amoco (with repair shop)
 3. 1301 Bladensburg Road – Lowest Price (with repair shop)
 4. 1925 Bladensburg Road – Exxon
 5. 2230 New York Ave – Exxon
 6. 2210 Bladensburg Rd NE – NE Amoco
 7. 3200 Bladensburg Rd - Shell
- Evening eastbound traffic will pass the stations above in addition to the following 5 gas stations:
 1. 1 Florida Avenue Exxon
 2. 45 Florida Avenue Amoco
 3. 520 Florida Avenue – Florida Avenue Hess
 4. 1396 Florida Avenue – Casey's Amoco
 5. 200 Massachusetts Avenue – Congressional Exxon (with repair shop)

Clearly, there is not a lack of gas fueling locations for the commuter. Should the commuter stop at 1400 MD, they are only likely pulling revenues from one of the other gas stations within the District, therefore they are not reducing revenue to the District, but to DAG Petroleum.

Further, local residents are provided a reasonable offering of choices by the existing 11 gas stations located within a mile of 1400 Maryland Avenue. As shown in the Gas Station Density Map, there are certainly areas of the city requiring gasoline-filling services; 1400 Maryland Avenue is not one of those locations.



Rejection of the special exception will not result in a significant loss of jobs – on the contrary approval of this application is likely to result in the loss of an opportunity to create significant jobs.

The gas station is likely to employ no more than a single attendant per shift – resulting in a maximum of 3 employees per day. The property location is ideal for a number of alternative uses that provide missing services to the community. One such use is a sit down restaurant such as the nearby Argonaut (located at 1430 Maryland Avenue) that is a similar sized site (with a smaller public space component) that employs fully 15-25 people on any given day.

Figure Depicting primary traffic routes to 1400 MD

1400 Maryland Avenue NE Gas Station Redevelopment Traffic Assessment
March 31, 2009
Page 12

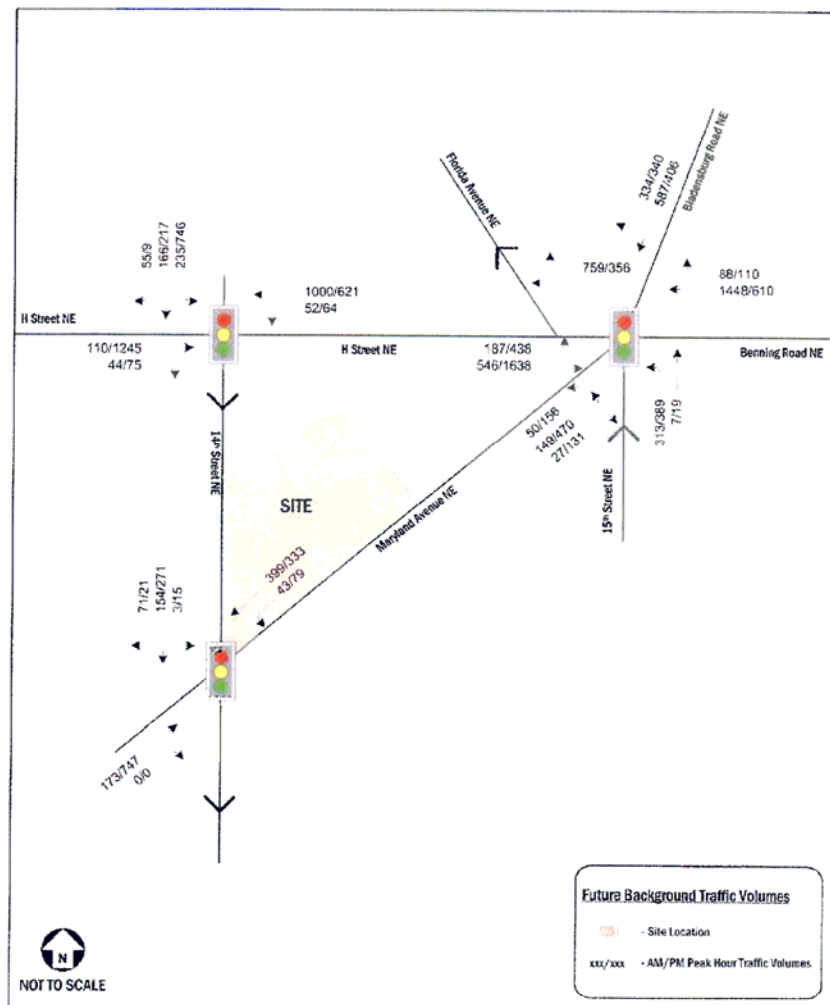


Figure 7
Future Background Weekday Peak Hour Traffic Volumes



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Finally, the District Government is clearly working with the petroleum industry to develop innovative zoning/business license arrangements to encourage development of gas stations. The applicant failed to mention their recent construction of a Shell Station at 3355 Bladensburg Road (District Border at Eastern Avenue) that is quite likely the most innovative mixed auto-oriented property use in the District.

This project follows a movement to co-locate/co-brand to increase trips to the site and reduce space typically wasted at “drive thru” establishments on parking. The applicant located fuel pumps on excessive parking adjacent to a Popeye’s drive-thru restaurant and located the convenience store within the seating area of the restaurant (reducing seating capacity). This is a logical combination as both uses are oriented to quick, drive-thru service targeted towards commuters³. The location is ideal it is not located adjacent to a pedestrian oriented main street like H Street.



Shell Station constructed within existing Popeye’s property in 2009 at 3355 Bladensburg Road

GRANTING A SPECIAL EXCEPTION FOR 1400 MD WILL FAIL THE SPECIAL EXCEPTION 706.4

The applicant proposes to permanently eliminate curbside parking to facilitate the movements of their fuel loading truck. **The parking restrictions proposed create an “objectionable traffic condition” to the ANC** and the H Street Business Community. The applicant initially proposed to restrict parking on 14th Street, owing to objections by the ANC and the Public Space Committee, the applicant has modified their plans to now restrict parking on Maryland Avenue. It would be disingenuous of the applicant to suggest to the BZA that no one has previously objected to this. No prior set of plans

³ <http://www.bizjournals.com/memphis/stories/2001/10/15/story7.html>

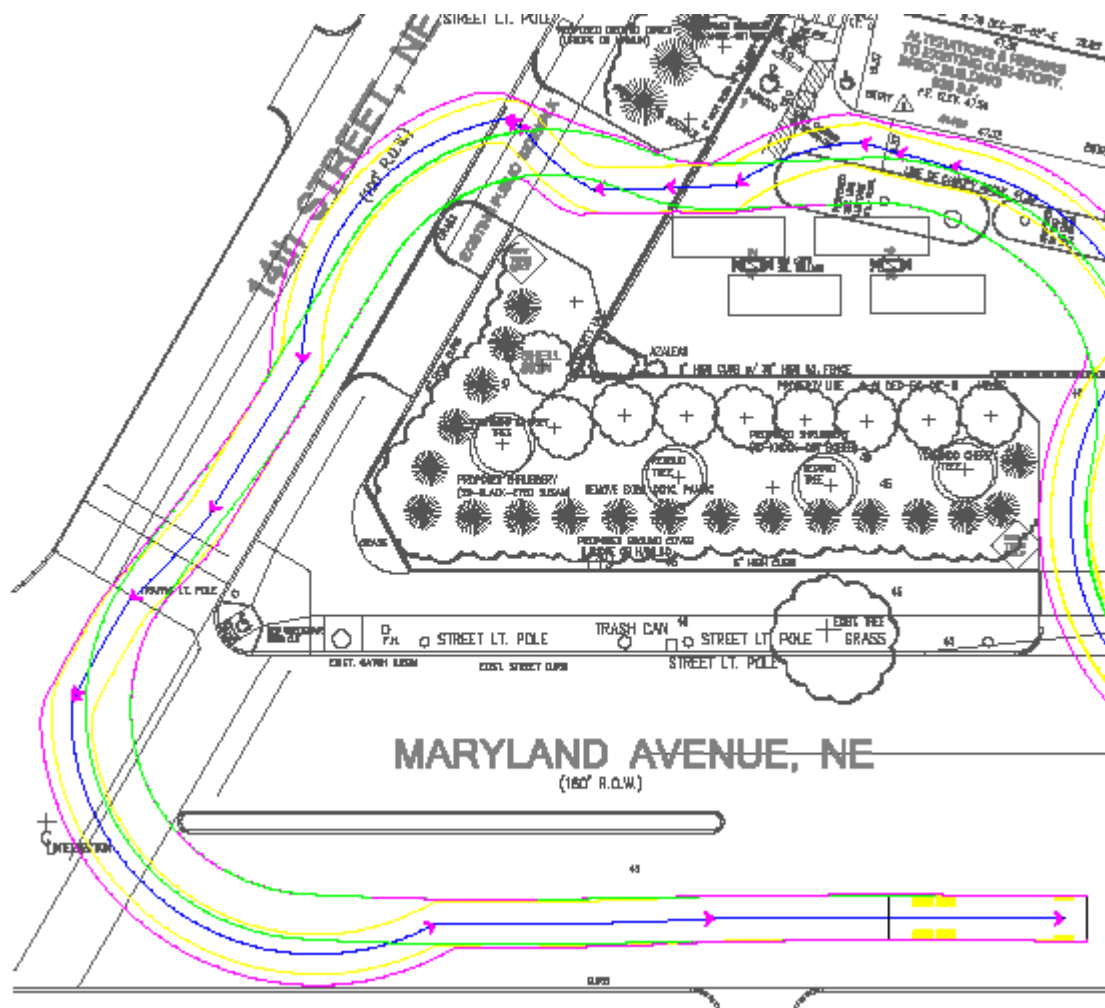


depicted this restriction therefore, it has not been commented. We object to any parking restrictions in excess of the minimum required for adjacent to the actual driveway curb cut (2 maximum spots).

While the applicant cites existing parking restrictions between their 14th Street driveway and the Maryland Avenue, there is no basis for this restriction. In fact the roadway striping indicates parking is allowed and the ANC and business community have repeatedly requested the allowance of parking full time on this street to offset shortages in the arts and entertainment district. The District Department of Transportation has a history of signing and marking its roadways inconsistently in this neighborhood.

Allowing a private property to dictate public parking policy is bad public policy and sets a terrible precedent.

Figure showing parking losses on 14th and Maryland Avenue to accommodate fuel delivery truck:





The application will result in “objectionable traffic conditions” to the ANC whereupon the project will decrease pedestrian safety, motorist safety, and bicyclist safety. The applicant’s traffic analysis does not analyze likely queuing of vehicles on the property or entering the property. The study anticipates up to 1,300 vehicular crossings of the sidewalk per day. Considering the bulk of these will happen between 7 am and 7 pm, pedestrians can expect vehicle to cross the sidewalk every 1 to 3 minutes⁴. Queued vehicles attempting to exit the property will block pedestrian sidewalks hindering the goal of creating a walkable H Street Commercial Corridor. The Maryland Avenue and 14th Street sidewalks along which this property is located are the primary connection points to the corridor from the Capitol Hill Community.

This will result in a hostile walking environment that runs contrary to the significant public investment put forth to develop a walkable H Street.

Traffic attempting to turn left onto the property from Maryland Avenue through the open median will further degrade the traffic environment. Traffic that will inevitably attempt to turn left from the property through the open median will block westbound traffic waiting for gaps in eastbound traffic. The congestion on the 1400 block of Maryland Avenue during the evening will also result in an increase of neighborhood cut-through traffic, which is objectionable to the community.

IN THE EVENT A SPECIAL EXCEPTION IS GRANTED, THE AND REQUEST THE FOLLOWING ITEMS BE REQUIRED BY THE APPLICANT PER THE AUTHORITY GRANTED TO THE BZA IN 706.5.

Should the Board decide they are not bound by the comprehensive plan, but only upon the written zoning regulations and maps the ANC request special consideration be given to the adding provisions to protect the community. As 1400 Maryland Avenue is predominantly residential in nature and is adjacent to numerous residential properties, and as Maryland Avenue traffic is predominantly commuter in nature and volume the ANC requests the following additional items be required of the applicant:

- 1. Restrict hours of operation to 6 am – 10 pm.** Late operations will only serve to disrupt adjoining residences on Maryland Avenue, G Street, and 14th Street, as there is limited traffic during the evening. The business is located within 100 feet of residences.
- 2. Require the sign illumination to be limited to the hours of operation.**
- 3. Require the elimination of bulletproof glass from the building.** The presence of bulletproof glass implies the H Street Community is not safe which undermines the revitalization of the H Street Corridor and our community. If the applicant

⁴ Calculated by using 650 vehicle trips to property per day crossing sidewalk twice. Assumes 95% of trips between 7am-7pm. Likely during rush hour to be more intense as traffic models do not provide accurate estimates of rush hour trip generation in urban areas.



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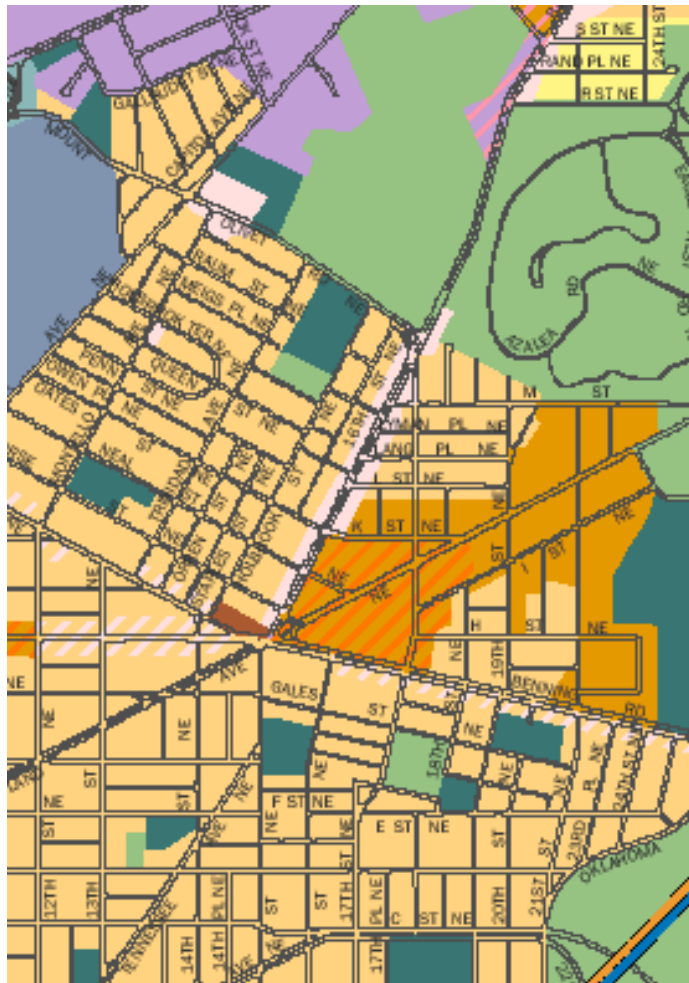
- believes their operation is not safe, than their project presents a danger to the community as a whole and should be rejected.
4. **Require the elimination of exterior sound/music.** Noise will only serve to disrupt adjoining residences on Maryland Avenue, G Street, and 14th Street.
 5. **Limit the light from the canopy to the property – no spillover to neighborhood.** Excessive light will only serve to disrupt adjoining residences on Maryland Avenue, G Street, and 14th Street.
 6. **Require the complete closure of the median on the 1400 block of Maryland Avenue.** U-turns and left turns to/from the property will result in “objectionable traffic conditions” to the ANC. Access management principles and studies have proven roadways with full medians are safer for motorists and pedestrians. The applicant has already agreed to restrict turn movements with signs, but signs alone are not sufficient to change behavior without police enforcement. Police enforcement comes at a cost to the public that should not be borne by the public owing to traffic generated by the gas station. Provision of a fully closed median will eliminate the need for police enforcement and ensure a safe environment. The adjacent Checkers is serviced from Maryland Avenue, 14th Street, and G Street – they do not require access across the median on Maryland Avenue.



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Attachment A – Office of Planning Proposed Zoning Map



**Comprehensive Plan
Future
Land Use
Map 7**

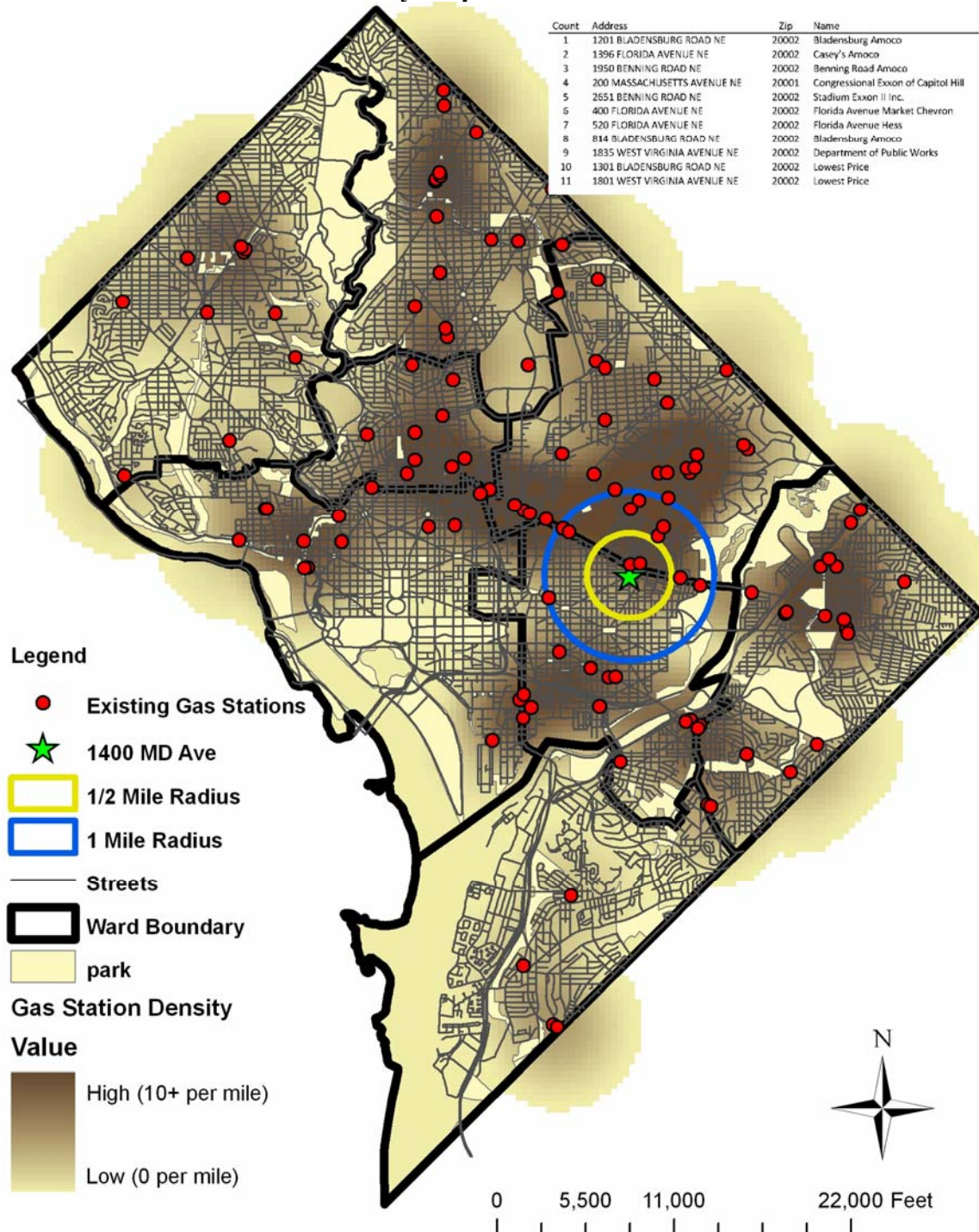
-  Low Density Residential
-  Moderate Density Residential
-  Medium Density Residential
-  High Density Residential
-  Low Density Commercial
-  Moderate Density Commercial
-  Medium Density Commercial
-  High Density Commercial
-  Production, Distribution, and Repair
-  Federal
-  Local Public Facilities
-  Institutional
-  Parks, Recreation, and Open Space
-  Mixed Land Use
-  WATER



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Attachment B - Gas Station Density Map





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Attachment C – Representative Photos

Typical Residential Character of Maryland Avenue



Typical Commercial Building – 7-Eleven at 801 Maryland Avenue





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14th Street Typical Parking Behavior (white truck and car on right are location of proposed parking restriction for fuel truck turns)



Maryland Avenue Typical Parking Behavior (red car is location of proposed parking restriction for fuel truck turns)





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Typical evening congestion extends past curb cuts in the evening on 1400 MD Ave



Typical backup on 14th due to blockage on the 1400 block of MD Ave – notice cars in one lane, not 2 or 3.





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Convenience Stores on 1400 block of Maryland Avenue (Star and NY Liquor)



McDonald's with "Drive Thru" at 1635 Benning Road





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DC Supermarket – 539 F St



CVS with Drive Thru and Convenience Store – 845 Bladensburg Road





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BP Amoco – 814 Bladensburg Road



BP Amoco – 1396 Florida Avenue as seen from proposed Shell Driveway on 14th St





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Tire Express and Rose's Dream – 826 Bladensburg Road



Lowest Price 1301 Bladensburg Road and BP Amoco – 1201 Bladensburg Road





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Maryland Avenue L'Enfant View obstructed by CVS and Checkers signs



3355 Benning Road Shell



520 Florida Avenue Hess

