

**The New ZTA and Costco's Latest Application for a Special Exception  
An Outline of Concerns**

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**January 2, 2013**

**What does the new ZTA which is now law, mean?** And how should it influence the conduct of the Planning Commission and the Appeals Board? We need to look at this ZTA not as a political event in a long chain of political events but as the law of Montgomery County. Has the Planning Commission formulated a legal interpretation of this ZTA? Have planning authorities developed a policy matrix for carrying out the intent of this law? Could they share it?

We have an interpretation of this law which would bar construction of the proposed mega station as a summary matter, based both on clear intent of the law and on raw numbers.

**Size matters:** The basic message of the ZTA is that size matters when it comes to gas stations. The law references one size, 3.6 million gallons + per year. It instructs zoning and planning authorities to treat larger stations differently from the typical stations of Montgomery County. The message to planning authorities is to give these larger stations much greater scrutiny, not judge them by the same standards that were applied to the 26 smaller gas stations in the neighborhood over the years, as they faced zoning hurdles.

How much does size matter? There was great uncertainty in the Council and in the Planning Board as to this question. So the Council drew a line at 3.6 MGY. They were satisfied by evidence that stations bigger than that were potential hazards to children and others nearby. They therefore used their best judgment to come to a conclusion based on the information they had seen, that regardless of a company's testimony from paid experts, any closer than 300 feet is prohibited. The applicant was denied the opportunity to argue that less than 300 feet from people was a safe distance.

Council was strongly motivated to protect schools. Council members referenced gas stations that had recently located too close to schools. The Council did not single out the Stephen Knolls School. Council members expressed the view that they could not decide a pending case. And therefore although they heard testimony on the Knolls School, they did not pass on how close a gas station should be to it. In referencing schools for special protection, the Council necessarily established its minimum protections in reference to average or typical schools and playgrounds near gas station of 3.6 million gallons. What if the school held a super-sensitive population? Clearly by establishing a minimum volume of gas sales for typical schools, the Council invited zoning and planning to add protections for atypical schools such as Stephen Knolls. Otherwise the action would make no sense.

In addition to size, **Distance matters.** Buffers are good. Council established a buffer of 300 feet, for 3.6 MGY, as a minimum protection for County owned and other schools and recreational facilities, as well as hospitals and other sensitive uses. What if the volume tripled to 12 MGY? Surely the planning agencies could triple the buffer to 900 feet, as a matter of good

science and common sense, especially when the affected population was many times as sensitive as the general population.

The Council did not have the expertise or the opportunity to rule on every case and made an effort not to rule on the instant case.

The reasoning behind the buffer is **Public Health**. Council found a public health risk to people in certain land use categories within 300 feet of a gas station a third the size of the proposed Costco. It did not make residences part of the places subject to the minimum. And with some reason. Council had very little information as to the impact of such a rule county wide, and was reluctant to pass a hard and fast limit under the circumstances. The Planning Commission provided very little information and no real advice on this point. Council's purpose in focusing on schools which have been the center of US EPA activity in this area, was not intended to say that the health effects on people in covered land uses would be any different from the health effect on people not in covered areas. Council instead relied on the common sense of the Planning Commission, to protect public health generally. Under the latest Costco plan, the station will be within 150 feet of residences, half the 300 foot buffer for other uses. It was not and could not be the intent of this law to subject people in houses to risks judged by Council to be unacceptable and intolerable to people in schools and playgrounds, except that the buffer is cut in half and the size of the facility is tripled. Similarly, the employees and shoppers of Costco will be subjected to even greater risk as a result of Costco's decision to allow no buffer between their lungs and the biggest fueling station in Montgomery County. The ZTA was not intended to cover such abuses.

Granting a Special Exception in this case will set a precedent for the Montgomery County for many years to come. Will there ever be a neighborhood as close to a mega gas station as Kensington Heights is to the Costco behemoth? Will there ever be a school or medical facility that will argue successfully for a buffer in excess of 900 feet because of the sensitivity of its population? Is the Planning Commission willing to establish such precedents? Especially in light of the clear direction of the ZTA to closely scrutinize big stations and to equal or exceed the minimal and beginning protections established by Council.

We believe a clear focus on size and distance compels to Planning Commission to recommend rejection of this application.

During the course of this struggle the EPA issued new rules for ultra fine particulates that were not in effect when Costco's experts performed their calculations. During the same time a number of new and important medical studies came out demonstrating still newer risk factors to populations near gas stations, even average gas stations, some of which studies will not be reflected in EPA rules for months or years to come. Knowledge is changing but the direction weighs against allowing a facility of this size to be squeezed into the space provided. Given the trends as well as the uncertainties, we believe the Planning Commission should come out against this proposal in the strongest terms possible.