

Case No: S.E. 4757

Applicant: Potomac Energy Holdings,  
LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,  
SITTING AS THE DISTRICT COUNCIL

ZONING ORDINANCE NO. 20 - 2015

AN ORDINANCE, approving Special Exception Application No. 4757 ("S.E. 4757"), for permission to use approximately 0.897 acre of land, for a Gas Station and Food or Beverage Store, in the I-1 (Light Industrial) Zone, located on the north side of Greenbelt Road (MD 193) at its intersection with Aerospace Road, also identified as 10000 Greenbelt Road, Lanham, Maryland, in Councilmanic District 4.

WHEREAS, the Planning Board (Exhibit 18) and its Technical Staff (Exhibit 21) recommended approval of the special exception, subject to conditions; and

WHEREAS, the special exception application was advertised and the property was posted prior to the public hearing, in accordance with law; and

WHEREAS, on June 17, 2015, the Zoning Hearing Examiner conducted a public hearing (6/17/2015, Tr.) in accordance with the requirements of the Prince George's County Code on the proposed application; and

WHEREAS, on September 4, 2015, the Zoning Hearing Examiner filed a disposition recommendation of approval of the proposed special exception application, subject to conditions; and

WHEREAS, on September 21, 2015, the District Council elected to make the final decision in the proposed special exception application; and

WHEREAS, on October 5, 2015, person of record, Ricky D. Dorsey, appealed the disposition recommendation of the Zoning Hearing Examiner to the District Council;<sup>1</sup> and

WHEREAS, on October 7, 2015, the Clerk of the County Council sent notices of oral argument hearings to all persons of record on the proposed special exception and on companion cases DPLS-415 (PGCPB No. 15-44) and DSDS-688 (PGCPB No. 15-45); and

WHEREAS, on November 9, 2015, the District Council held oral arguments on the proposed special exception application and companion cases DPLS-415 (PGCPB No. 15-44) and DSDS-688 (PGCPB No. 15-45).

### FINDINGS AND CONCLUSIONS<sup>2</sup>

- Background

The subject property is a square shaped parcel located in the northeast corner of the intersection of Greenbelt Road (MD 193) and Aerospace Road. It is currently improved with an existing Gas Station with three (3) service bays, two (2) concrete pump islands, four (4) gasoline

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<sup>1</sup> Mr. Dorsey also appealed companion cases DPLS-415 (PGCPB No. 15-44) and DSDS-688 (PGCPB No. 15-45) on July 6, 2015, for our consideration. *See* Appeal Letter, 7/6/2015. We note that Mr. Dorsey filed his appeals *pro se* but was represented by counsel at oral argument. *See* 11/9/2015, Tr. Although we held combined oral arguments on Mr. Dorsey's appeals, we dispose of his appeals in the companion cases separately. *See* Final Decisions in DPLS-415 and DSDS-688.

<sup>2</sup> Except as otherwise stated herein, the District Council adopts the findings of facts and conclusions of law within the disposition recommendation of the Zoning Hearing Examiner. *See Templeton v. County Council of Prince George's County*, 23 Md. App. 596; 329 A.2d 428 (1974) (Where the Council has delegated the duty of making findings of fact and recommendations to the Zoning Hearing Examiner, the Council may comply with the requirement of "specific written findings of basic facts and conclusions of law" by adopting the Examiner's findings and conclusions). The District Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision. *See* PGCC § 27-141. *See also* Rules of Procedure for the Prince George's County District Council: Rule 6: Oral Argument and Evidentiary Hearings: (f) The District Council may take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

pump dispensers, a canopy, three (3) underground stage tanks, a freestanding sign, twenty-one (21) surface parking spaces, and a small convenience store. The property has direct vehicular access via four driveway cuts, two each on Greenbelt Road and on Aerospace Drive.

On August 28, 1970, the subject property was rezoned to the I-1 Zone (Light Industrial). The existing Gas Station was built several years later as a permitted use in the I-1 Zone. In 1998, the District Council amended the Zoning Ordinance to require a Special Exception for a Gas Station in the I-1 Zone. *See* CB-40-1998. The existing Gas Station has remained in its current configuration since construction.

The subject property is located in Planning Area 70. The applicable Master Plan is the Approved Sector Plan and Sectional Map Amendment for the East Glenn Dale Area (portions of Planning Area 70), approved on March 28, 2006. The Sector Plan designated the site for “Mixed Use Area” future land use. The Approved Sectional Map Amendment retained the site in the I-1 Zone.

The 2002 General Plan placed the subject property within the University Boulevard Corridor, and within the Developing Tier. The Growth Policy Map in the 2013 Plan Prince George’s 2035 placed the property in the Established Communities category, and the Generalized Future Land Use Map designated it for Mixed-Use land use. The subject property is not within a Priority Preservation Area. The neighborhood of the subject property has the following boundaries:

- North and East — Northern Avenue
- South — Greenbelt Road (MD Route 193)
- West — Good Luck Road

Immediately to the north of the subject property along Aerospace Road is a Car Wash in the I-1 Zone, and immediately to the east along Greenbelt Road is a Self-Storage Plus consolidated

storage facility. To the west, across Aerospace Road, is the Glenn Dale Aerospace Center, a strip shopping center in the I-1 Zone which includes a Merchants Tire facility, a laundromat, a dry cleaner, a beer and wine store, two sub shops, a hair salon, a nail salon, a UPS store, a Labor Ready temp agency operation, and a 7-11 convenience store. Across the Greenbelt Road/Aerospace Road intersection are the Woodland Landing Apartments.

Much of the land area of the neighborhood is occupied by office uses, but with an assortment of other related and unrelated uses. Office parks include the Goddard Corporate Park (along Mission Drive, to the east of the subject site, in the M-X-T Zone (Mixed Use - Transportation Oriented)), the Maryland Corporate Center (along Executive Drive, to the east of the site, in the I-1 Zone), the Aerospace Building along Greenbelt Road in the I-1 Zone, and a collection of unnamed, security-gated office buildings in the I-1 Zone off of Hubble Drive and Good Luck Road to the north. A number of vacant, partially-demolished office buildings in the M-X-T Zone along the northern part of the loop of Aerospace Road were once known as “Greentec;” a Detailed Site Plan for the redevelopment of two of the sites as a residential component of the larger, planned Glenn Dale Commons Mixed-Use project was approved in 2008 but has not been constructed. The 2006 Conceptual Site Plan for Glenn Dale Commons also included additional vacant land in the M-X-T Zone to the east of Hubble Drive.

Other uses in the neighborhood include a furniture warehouse in the I-1 Zone on Aerospace Road, with a second Self Storage Plus consolidated storage facility behind it, a NASA Federal Credit Union on Greenbelt Road in the I-1 Zone, two churches (a Lutheran Church on Greenbelt Road in the I-1 Zone and a Baptist Church on Northern Avenue in the R-R Zone (Rural Residential)), a few single-family dwellings in the R-R Zone along Northern Avenue and Good Luck Road, the Capital Sportsplex and two contractors offices in the I-1 Zone on Good Luck Road,

and the Glenn Dale Apartments in the R-18 Zone (Multifamily Medium Density Residential) between Good Luck Road and Aerospace Road. *See* PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr.; 6/17/2015, Tr.

- Applicant's Proposal

The Applicant is proposing a major revision to the existing Gas Station. The project will entail the complete removal of all of the existing structures on the subject property and the new construction of a 3,180-square-foot Food or Beverage Store, a 1,344-square-foot Car Wash, a canopy, and six multi-product fuel pump dispensers that provide a total of 12 fueling positions. In the I-1 Zone, a special exception approval is required to construct a Gas Station and Food or Beverage Store. A Car Wash is a permitted use in the I-1 Zone. *See* PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr.; 6/17/2015, Tr.

- Appeal by Mr. Dorsey

Competition & Property Values

Mr. Dorsey raises several concerns regarding the proposed special exception application, which the Applicant has opposed. Among his concerns, Mr. Dorsey states that an addition of a carwash and its particular location on the site will devastate his two million dollar investment in the community by significantly decreasing his business and property value. At the same time, Mr. Dorsey concedes that he has no issue with competition, except that if the special exception application is granted, adjustments in the proposed site plan should be made in order to address the interest of his business. Specifically, Mr. Dorsey would like the car wash building repositioned to stand along the north border of the site parallel to his property line, behind the gas station convenience store building. *See* Mr. Dorsey's Appeal Letter, 10/5/2015, Applicant's Response to Appeal, 11/3/2015. First, we recognize that Mr. Dorsey's business *may* have more competition as

a result of the proposed carwash, but competition is not a proper element of zoning and a person whose sole interest for objecting to prevent competition with his established business is not a person aggrieved. *Lucky Stores v. Board of Appeals of Montgomery County* 270 Md. 513 (1973); *Kreatchman v. Ramsburg*, 224 Md. 209, 167 A.2d 345 (1961). Second, Mr. Dorsey failed to produce any expert testimony in the record to support his contention that the development of the proposed carwash (regardless of its position on the site) would decrease or increase the values of his business or property in the community. *See* PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr.; 6/17/2015, Tr. *See also Ray v. Mayor of Baltimore*, 430 Md. 74, 59 A.3d 545 (2013) (affirming the requirement that expert testimony is required to determine whether the value of a property will increase or decrease because of future development).

#### Preexisting Gas Station

Mr. Dorsey contends that the Examiner, in her consideration of the proposed application, erroneously placed too much weight on the preexisting nature of the gas station, and thus failed to consider all the required findings for granting a special exception. *See* Mr. Dorsey's Appeal Letter, at 1, 7/6/2015. We disagree. Based on our review of the record, the Examiner considered expert testimony from the Applicant with respect to the criteria for a special exception. Mr. Mark Ferguson, an expert land planner, testified to the criteria for approval set forth in Section 27-317(a)(5) and 27-358(d)(1) of the Zoning Ordinance. *See* 6/17/2015, Tr.; PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr. Section 27-317(a)(5) of the Zoning Ordinance requires the applicant to demonstrate the following:

—The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood

Mr. Ferguson testified at the hearing and submitted a Land Planning Analysis (Exhibit 29) in support of the application. Mr. Ferguson testified that

This planner believes that the long existence of the existing gas station indicates that the character of the service commercial component of the development has been and continues to be compatible with the surrounding office and light industrial uses, and as such will not be detrimental to the use or development of adjacent properties or the general neighborhood. *See* Exhibit 29, p. 12; 6/17/2015, Tr.

We find no evidence in the record which refutes the expert testimony or any evidence in the record to conclude that the Examiner made a factual or legal error in her recommendation. Furthermore, Section 27-358(d)(1) states:

When approving a Special Exception for a gas station, the District Council shall find that the proposed use:

—Is necessary to the public in the surrounding area

The record reflects that the Applicant's Expert Land Planning Analysis and testimony sufficiently addressed the criteria in Section 27-358(d)(1). Mr. Ferguson's testimony is as follows:

In its unreported opinion on the case of *Mohammed Anvari, et al. v. County Council of Prince George's County, et al.*, the Court of Special Appeals upheld the findings of the Zoning Hearing Examiner in Special Exception SE-4436, who in discussing how the term "necessary" should be construed, concluded that "...*the proper standard is one that addresses whether the gas station is 'convenient, useful, appropriate, suitable, proper or conducive' to the public in the surrounding area...*

The continued existence of a gas station use at the subject site which has existed since the early 1970's is ample evidence that the use has been convenient, useful, appropriate, suitable and proper. Its location in a commercial/ industrial area is suitable and appropriate, as it is convenient and useful to the substantial traffic (2014 ADT: 39,982 vehicles per day) which passes the site on Greenbelt Road.

With regards to other zoning criteria, Mr. Ferguson testified as follows:

## Section 27-102(a)

—To provide adequate light, air, and privacy

The gas station will be in harmony with this Purpose when developed in conformance with the various regulations in the Zoning Ordinance to ensure the provision of adequate light, air and privacy, both for the occupants of the subject site and for its neighbors. These principles include the provision of sufficient distance between the proposed use and neighboring uses, and conformance with height limitations in order to allow for access to light and air.

—To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development

The subject gas station would be in harmony with this Purpose when developed in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings, including conformance with the tables of permitted uses for the various zones as laid out in the Ordinance, and in conformance with the provisions of the Landscape Manual which provide for perimeter landscaping and the screening of parking and service functions.

—To protect the County from fire, flood, panic, and other dangers

The subject gas station would be in harmony with this Purpose when developed in conformance with regulations established in the body of the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the floodplain regulations, stormwater management regulations, the fire prevention code, the building code, and the tables of permitted uses for the various zones.

—To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions

The approval of the subject gas station would be in harmony with this Purpose because of several factors.

First, as noted above, the gas station is a renewal of an existing station in a developed area. The proposed use will add only 2 new MPDs, and as such will not add materially to the existing traffic on



the streets. As noted above, its approval will be in accordance with the provisions of the subdivision ordinance which assures the adequacy of local public facilities.

And finally, it will be developed in accordance with the regulations established in the body of the Zoning Ordinance (and other County ordinances) which are intended to lessen the danger and congestion of traffic on roads, such as the requirements (with the approved Departure) for the provision of adequate off-street parking, and the separation of entrances from nearby intersections. *See Exhibit 29, p. 12; 6/17/2015, Tr.;*

We disagree that the Examiner's conclusions were not supported by any facts. To the contrary, Mr. Dorsey provided no expert testimony or evidence of his own to refute the testimony and report of Mr. Ferguson. Therefore we disagree that the Examiner did not rely on facts in the record to support her conclusions.

#### Number of Gas Stations

Section 27-358(d)(2) of the Zoning Ordinance requires us to find that the gas station is necessary to the public in the surrounding area. Mr. Dorsey argues that this criterion requires that the Zoning Hearing Examiner base her conclusion on a finding that there is a need for the gas station in the neighborhood. We disagree because the Ordinance merely requires the Examiner to find that the gas station is "*convenient, useful, appropriate, suitable, proper or conducive*" to the *public in the surrounding area.*" The record reveals that the proposed redevelopment is a continuation of a 40 year old existing use in the same configuration on the site. Given that the existing use has weathered the competition of other surrounding and nearby gas stations, we find that the gas station is necessary to the public in the surrounding area. *See 6/17/2015, Tr.; PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr.*

Therefore, we conclude that the Examiner did not err.

Balance of Land in the Area

The carwash is a permitted use in the I-1 Zone and the evidence in the record demonstrates that the car wash is designed in accordance with the regulations and requirements of the Zoning Ordinance. *See* 6/17/2015, Tr.; PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr. Although the Examiner is required to find that the gas station and food and beverage store will not upset the balance of land use in the area, the car wash is a permitted use and the Examiner is not required to make such a finding for that use. Much of the land area of the neighborhood is occupied by office uses, but with an assortment of other related and unrelated uses. Office parks include the Goddard Corporate Park (along Mission Drive, to the east of the subject site, in the M-X-T Zone (Mixed Use - Transportation Oriented)), the Maryland Corporate Center (along Executive Drive, to the east of the site, in the I-1 Zone), the Aerospace Building along Greenbelt Road in the I-1 Zone, and a collection of unnamed, security-gated office buildings in the I-1 Zone off of Hubble Drive and Good Luck Road to the north. A number of vacant, partially-demolished office buildings in the M-X-T Zone along the northern part of the loop of Aerospace Road were once known as “Greentec;” a Detailed Site Plan for the redevelopment of two of the sites as a residential component of the larger, planned Glenn Dale Commons Mixed-Use project was approved in 2008 but has not been constructed. The 2006 Conceptual Site Plan for Glenn Dale Commons also included additional vacant land in the M-X-T Zone to the east of Hubble Drive.

Other uses in the neighborhood include a furniture warehouse in the I-1 Zone on Aerospace Road, with a second Self Storage Plus consolidated storage facility behind it, a NASA Federal Credit Union on Greenbelt Road in the I-1 Zone, two churches (a Lutheran Church on Greenbelt Road in the I-1 Zone and a Baptist Church on Northern Avenue in the R-R Zone (Rural Residential)), a few single-family dwellings in the R-

R Zone along Northern Avenue and Good Luck Road, the Capital Sportsplex and two contractors offices in the I-1 Zone on Good Luck Road, and the Glenn Dale Apartments in the R-18 Zone (Multifamily Medium Density Residential) between Good Luck Road and Aerospace Road.

We find that the site is currently developed with an existing gas station which has been on the site since the mid-1970s. The proposal is to redevelop the gas station to add a convenience store, car wash, and two additional gasoline dispensers. There is no vehicle repair service proposed. The property has 159 feet of frontage, direct access, and over 100 feet of right-of-way on Greenbelt Road (MD 193). The proposed two-way access from Aerospace Road is curbed and 35 feet wide, and the right-in/ right-out entrances to Greenbelt Road are 25 feet wide. The Maryland State Highway Administration (SHA) agrees to the retention of the two access points along Greenbelt Road, but is considering design changes that will make them more channelized to keep them from being used as full-movement driveways. Gasoline pumps and other service appliances are more than 25 feet away from the streetline. As required, the site plan shows the topography of the subject property as well as the abutting properties. The location of the trash enclosure is also shown. There are no vending machines proposed. The record reveals that the proposed redevelopment is a continuation of 40 year old existing use in the same configuration on the site. Given that the existing use has weathered the competition of other surrounding and nearby gas stations we find that the redevelopment of the site to include a carwash will not unduly restrict the availability of land, or upset the balance of land use in the area for other trades and commercial uses. *See* PGCPB No. 15-43; PGCPB No. 15-44; PGCPB No. 15-45; Technical Staff Report, 4/22/2015; 5/7/2015, Tr.; 6/17/2015.

WHEREAS, for the reasons stated above, we find that Mr. Dorsey's appeal is without factual or legal merit and conclude that the Applicant has met its burden for approval of the proposed special exception application; and

WHEREAS, as expressly authorized by the Regional District Act within Titles 22 and 25 of the Land Use Article of the Annotated Code of Maryland, and Subtitle 27 of the Prince George's County Code, we hereby adopt the disposition recommendation of the Zoning Hearing Examiner and conditionally approve the proposed special exception application.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1: The special exception application for permission to use approximately 0.897 acre of land for a Gas Station and Food or Beverage Store, in the I-1 (Light Industrial) Zone, is hereby conditionally APPROVED. In order to protect adjacent properties, the surrounding neighborhood, and to enhance the overall structure of the building, approval of the proposed special exception is subject to the following conditions:

1. Prior to certification of the Special Exception, a copy of an approved Stormwater Management Concept Plan and letter from the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE) shall be submitted to the Environmental Planning Section.
2. The Site Plan, Exhibit 25, shall be amended to provide the correct street frontage along Greenbelt Road (159.51 feet) and the correct distance from the nearest pump island to the street line (31.95 feet).

SECTION 2: This Ordinance shall take effect on the date of its enactment.

Enacted this 16<sup>th</sup> day of November, 2015, by the following vote:

In Favor: Council Members Franklin, Davis, Glaros, Harrison, Lehman, Patterson, Taveras,  
Toles and Turner.

Opposed:

Abstained:

Absent:

Vote: 9-0

COUNTY COUNCIL OF PRINCE GEORGE'S  
COUNTY, MARYLAND, SITTING AS THE  
DISTRICT COUNCIL FOR THAT PART OF THE  
MARYLAND-WASHINGTON REGIONAL  
DISTRICT IN PRINCE GEORGE'S COUNTY,  
MARYLAND

By: \_\_\_\_\_  
Mel Franklin, Chairman

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Clerk of the Council