

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed NCFFR-8, El Rancho/ Taco Bell requesting minor revisions to a certified nonconforming use in accordance with Subtitle 27 of the Prince George's County Code; and

WHEREAS, after consideration of the evidence presented at the public hearing on June 2, 2011, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The subject property is located in the northwestern quadrant of the intersection of Livingston Road and Oxon Hill Road (MD 414), approximately 200 feet west of Livingston Road. The site is comprised of approximately 13,577 square feet (0.31 acre) of land in the Commercial Shopping Center (C-S-C) Zone. The entire site is paved and is developed with a one-story Taco Bell fast-food restaurant and its associated parking lot with 12 parking spaces. The property has frontage on the north side of Oxon Hill Road. Access to the site is via two driveways, one of which is approximately 34 feet wide and the other is approximately 19 feet wide on Oxon Hill Road. There is also an internal driveway entrance, approximately 45 feet wide, along the northern property line.

During the field inspection, it was noted that the site has an existing concrete swale along the western property line. The property also has some existing landscaping along the Oxon Hill Road right-of-way and on the south and east sides of the building. Some additional plantings also exist on the northern side of the building near the menu board and order confirmation board. The asphalt paving of the existing internal drive aisle near the entrance to the site from Oxon Hill Road and near the ordering board is in poor condition and the pavement is crumbling, while the other parking lot areas are in good condition. The eastern property line has two large unscreened trash dumpsters while the northeast corner of the site has existing screened dumpsters. The screening of the existing trash enclosure is constructed with a cyclone fence with vinyl slats running between the gaps in the chain-link fence. All dumpsters should be adequately screened in accordance with *Prince George's County Landscape Manual* screening requirements.

- B. **Development Data Summary:**

	EXISTING	APPROVED
Zone	C-S-C	Unchanged
Acreage	0.31	Unchanged
Use	Fast food restaurant	Unchanged

- C. **History:** The property was zoned Rural Residential (R-R) by the Comprehensive Map Adoption dated November 29, 1949. The District Council approved the General Commercial, Existing (C-2) Zone for 0.32 acre of the subject site on September 10, 1969, upon approval of Zoning Map Amendment A-8038. The Jack-in-the-Box restaurant was established on the site on

August 27, 1970 as a permitted use in the C-2 Zone. With the enactment of County Council Bill CB-27-1978, the use required a special exception to operate a fast-food restaurant in the C-2 Zone, thereby placing the subject property in a nonconforming status. In 1981, the restaurant was acquired by Taco Bell and was certified as a nonconforming use by Permit No. 4151-81-U. With the adoption of the 1984 Approved Subregion VII Sectional Map Amendment, the zoning of the subject property was changed from C-2 to C-S-C.

- D. **Master Plan Recommendation:** The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* recommends commercial shopping center use for the site. The sectional map amendment (SMA) retained the subject property in the C-S-C Zone. The site is in the Developed Tier according to the 2002 *Prince George's County Approved General Plan*.
- E. **Request:** The applicant is requesting a minor revision to a certified nonconforming use to add a 142-square-foot cooler box and modify the existing trash enclosure to add a recycling container.
- F. **Neighborhood and surrounding uses:** The immediate area surrounding the site is generally characterized by commercial uses, such as retail uses in the C-S-C Zone. The property abuts an integrated shopping center to the north, east, and west in the C-S-C Zone. The subject property is surrounded by the following uses:
- | | |
|--------|--|
| East— | Property abutting the existing site is improved with various retail establishments (i.e. liquor store, dry cleaners, and Dunkin Donuts) in the C-S-C Zone. |
| West— | Levi's restaurant, which is part of the Oxon Hill Plaza Shopping Center in the C-S-C Zone. |
| North— | Oxon Hill Plaza Shopping Center and its parking lot development, including grocery stores, drug stores, and a variety number of small retail establishments in the C-S-C Zone. |
| South— | Across Oxon Hill Road, opposite the subject site is the Oxon Hill Shopping Center and a post office in the C-S-C Zone. West of the post office is the John Hanson school property in the I-3 Zone. |
- G. **Specific Requirements:** Pursuant to Section 27-242 (b)(4)(A) of the Zoning Ordinance, the following modifications of a certified nonconforming drive-in or fast-food restaurant may be permitted by the Planning Board without a special exception (Section 27-384):
- (i) **The addition, relocation, or modification of a freezer on the sides or rear of the restaurant building;**

The proposed modification consists of the addition of a new 142-square-foot cooler box equipment in the rear of the restaurant building which will include a new concrete foundation, footing, and

slab. The applicant's statement of justification indicates that the restrooms in the restaurant are proposed to be redesigned in order to comply with American with Disabilities Act (ADA) requirements. The dining room and customer service area are also proposed to be modified to improve accessibility within the restaurant. The modification of these areas greatly decreases the space in the kitchen area, forcing the cooler to be located in the back of the restaurant. The Planning Board asked that the photograph of the existing building be provided together with elevation drawings for the cooler enclosure, and an elevation be made as to the visual compatibility of the proposed enclosure with the existing building.

Since the applicant is proposing to replace all exterior walls of the existing building and the roof without expanding the square footage of the original building footprint, photographs of both existing and proposed building elevations are provided by the applicant. The newly renovated building and the elevation drawing for the cooler enclosure appears to be visually compatible.

(ii) The addition, relocation, or modification of gross floor area in order to provide rest rooms to serve the physically handicapped;

As mentioned above, the applicant is proposing to modify the existing bathrooms so that the restaurant will be brought into compliance with current ADA requirements. The Planning Board agrees that the proposed modification of the bathrooms is a necessary measure that needs to be taken in order to bring the 42-year-old restaurant into compliance with current zoning and building codes.

(iii) The addition, relocation, or modification of vestibules above and around points of access to the restaurant building; or

The applicant is not proposing to modify anything that is applicable to this requirement.

(iv) The addition, relocation, or modification of a fence, storage area, or trash enclosure.

The applicant is proposing to modify the existing trash enclosure to add a six-foot by four-foot, six-inch moveable recycling container located within the general vicinity of its current location along the eastern property line. Currently, the trash enclosure is constructed using a cyclone fence with vinyl slats running between the gaps in the chain-link fence to create an obstructed view of the interior of the trash enclosure. The applicant proposes to improve the trash enclosure by removing the old fence and installing a new one in accordance with Landscape Manual screening requirements. The trash enclosure proposed by the applicant is a sight-tight fence made of non-wood, non-white, durable, composite material.

It is important to recognize that some of the modifications proposed by the applicant are expressly permitted by this section of the Zoning Ordinance while other revisions are truly minor in nature and will serve to improve both the aesthetic and functional aspect of the site design. The addition of the recycling container is necessary to promote a cleaner environment and to reduce landfill wastes.

- H. **Parking Requirements**—The proposed use requires 11 parking spaces. The applicant has correctly noted 11 parking spaces on the plan.
- I. **Sign Requirements**—The applicant is proposing to replace one existing building sign on the front elevation and proposing two new building signs on the drive-through elevation and rear elevation. An additional overhead clearance bar at the drive-through entrance is also proposed. All of the building signs and regulatory signs for the use appear to be in conformance with the Zoning Ordinance.
- J. **Commercial Shopping Center (C-S-C) Zone**—The site plan meets the requirements and development regulations for the C-S-C Zone.
- K. **Other Issues:**
1. **Prince George's County Landscape Manual**—The site is only subject to Sections 4.4 and 4.9 of the *Prince George's County Landscape Manual* because the cooler enclosure addition increases the gross floor area (GFA) as stated in Section 1.1.d.
- a. Section 4.4, Screening Requirements, requires that the trash enclosure be a sight-tight fence or wall. Fences should be non-wood, non-white, low-sheen, durable material or the enclosure should be made of a similar material to the building. The applicant should be required to provide a color detail for the enclosure, with materials clearly labeled.
- b. Invasive species, if they exist, should be removed from the site in accordance with Section 4.9, Sustainable Landscaping Requirements.
- c. While the applicant is not subject to Section 4.3 of the Landscape Manual, the Urban Design Section recommends that the gravel be replaced with landscaping (utilizing native species exclusively) on the concrete parking lot islands. Likewise, the Planning Board recommends that the damaged asphalt area in the northwest corner of the site be replaced by additional landscaping. All new planting should be native species.

The applicant has revised the site plan to address all of the urban design concerns. In addition, during the review process, staff and the applicant conferred on a number of desirable changes to the site, such as, renovating and replacing the exterior walls and the roof of the existing building; replacing the existing building signs with new building signs on the front, drive through, and rear elevations; removing two existing concrete islands within the existing parking lot; replacing three existing light poles with three new light poles and light fixtures; moving an existing light pole within the parking lot to the perimeter of the site; providing additional landscaping along the northwest corner and the northern and eastern property lines; and providing a more defined one-way internal drive

aisle around the main bay of parking spaces on the site to promote a more efficient and safer traffic circulation. All of these changes are expressly permitted by right. The overall effect will be to provide a much more aesthetically pleasing site.

L. Further Planning Board Findings and Comments from Other Entities:

1. **Transportation Planning**—The Transportation Planning Section reviewed the application and made the following comments from the standpoint of transportation concerning the right-of-way along Oxon Hill Road. The plan presents this right-of-way as 120 feet. This was correct at one time, but was revised with the approval of the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*. The master plan recommends a right-of-way of 146 to 154 feet “to allow four-lane divided facility, pedestrian amenities, and location of an at-grade light rail transit facility.” Toward the goal of properly identifying the location of the ultimate right-of-way adjacent to this site, the following is noted:
 - The existing right-of-way along the frontage of the site is about 90 feet.
 - The underlying record plat dedicated 30 feet along Oxon Hill Road, for a total of 60 feet from baseline along Oxon Hill Road toward the ultimate right-of-way. Any needed right-of-way to complete the 120 feet must come from the south side of the baseline.
 - The master plan designates a range for the right-of-way width. The size of the right-of-way varies with the size of the pedestrian amenity area along the street. It is interpreted that the upper end of the right-of-way width would apply within the core area, as defined on Map 22 within the master plan document. Given the location of the subject site outside of the core area, the lower end of the right-of-way width (146 feet) is applicable.
 - The additional right-of-way width recommended in the master plan is 26 feet. That additional right-of-way should be measured on each side of the baseline of Oxon Hill Road.

It is determined that the ultimate right-of-way line for 146 feet is 13 feet behind the existing right-of-way line. The plan should be modified to indicate this ultimate right-of-way and to show Oxon Hill Road (MD 414) as having an ultimate right-of-way of 146 feet. The revised site plan shows the additional 13-foot ultimate right-of-way line behind the existing right-of-way.

The current application proposes no new structures within the master plan right-of-way. The plan proposes repaving and remarking existing parking spaces, but this is viewed as routine maintenance of the existing structures rather than expansion or new construction. For that reason, beyond making a finding of fact regarding the ultimate right-of-way for

Oxon Hill Road, there are no transportation-related issues that should prevent this application from moving forward.

2. **Historic Preservation**—The Historic Preservation Section offered no comments on the subject application.
3. **Maryland State Highway Administration (SHA)**—SHA offered no comments on the subject application.
4. **Subdivision Review**—The Subdivision Section stated that the site plan is consistent with the record plat of subdivision.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the above-noted application.

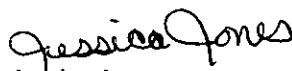
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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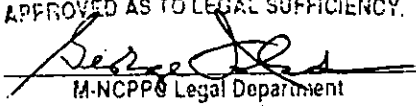
This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Clark, seconded by Commissioner Vaughns, with Commissioners Clark, Vaughns, Cavitt, Squire and Parker voting in favor of the motion at its regular meeting held on Thursday, June 2, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 30th day of June 2011.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Planning Board Administrator

PCB:JJ:TA:rpg

APPROVED AS TO LEGAL SUFFICIENCY.

M-NCPPA Legal Department
Date 6/9/11