

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION**

**4768**

**VARIANCE**

**4768**

**DECISION**

Application:	Gas Station
Applicant:	Paul Barham
Opposition:	None
Hearing Date:	May 24, 2017
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4768 is a request for permission to expand an existing Gas Station and Auto Repair Facility on approximately 0.8079 acres of land, in the C-S-C (Commercial Shopping Center) and M-I-O (Military Installation Overlay) Zones, located on the south side of Marlboro Pike, approximately 100 feet west of Kirtland Avenue, also identified as 7303 Marlboro Pike, District Heights, Maryland. The Applicant also seeks a Variance for the driveway width, a Departure to waive 14 parking spaces and one loading space, and Alternative Compliance from the Landscape Manual along the western property line.
- (2) The Planning Board (Exhibit 19) and the Technical Staff (Exhibit 15) recommended approval of the instant Application.
- (3) The Planning Board approved Departure from Parking and Loading Standards (DPLS) 426 for the waiver of fourteen parking spaces and one loading space on September 8, 2016. (Exhibit 28(a))
- (4) At the conclusion of the evidentiary hearing the record was left open for the inclusion into the record of several documents. Upon the receipt of the documents the record was closed on July 5, 2017.

## FINDINGS OF FACT

### Subject Property

(1) The subject property is a trapezoid-shaped configuration of Parcels 174 and 175 and Lots 5, 6 and 7, and is improved with an existing Gas Station and Auto Repair Service with eight bays. Additional structures on the site include a main building with a business office, a detached frame and metal structure adjacent to the main building with two service bays, a storage shed, two three-pump concrete islands for six gasoline pump dispensers, a canopy, underground storage tanks, and ten surface parking spaces. The property is surrounded by a six-foot-high sight-tight fence along the southern and western property lines. A freestanding sign is located at the western property line. The property has direct vehicular access to Marlboro Pike.

### Zoning History

(2) The property has been developed as a Gas Station since 1956. SE 3448 was approved by the Prince George's County District Council on October 20, 1983 for the existing Gas Station on the subject site. SE 3525 was approved by the District Council on September 26, 1984 for a Car Wash on the subject property, which was never built and is not proposed at this time. The current owner purchased the property in 1986.

### Master Plan and Sectional Map Amendment

(3) The Plan Prince George's 2035 Approved General Plan (Plan Prince George's 2035) designates the area in the Established Communities Growth Policy area. The vision for Established Communities is a context-sensitive infill and low-to medium-density development. This instant Application is consistent with the Established Communities Growth Policy in Plan Prince George's 2035.

(4) Parcel 174 and Lots 5, 6 and 7 of the subject property were retained in the C-S-C Zone by the 2009 Approved Marlboro Pike Sector Plan and Sectional Map Amendment (Marlboro Pike Sector Plan and Sectional Map Amendment). Parcel 175 was rezoned from the R-55 (One Family Detached Residential) to the C-S-C Zone.

### Surrounding Property/Neighborhood

(5) The subject property is located within the Marlboro Pike Corridor. The neighborhood is the same as that accepted by the Zoning Hearing Examiner in SE 3448. The general neighborhood is bounded by Marlboro Pike on the north, Forestville Road on the east, Pennsylvania Avenue on the south and Donnell Drive on the west. The interior of the neighborhood is single family residential. The periphery is diversely developed. The Penn Mar Shopping Center is to the west of the subject site. Other commercial uses are interspersed with residences along Marlboro Pike and Forestville

Road.

(6) The uses immediately surrounding the subject property are as follows:

- West and East - Developed property with commercial uses (Penn Mar Shopping Center and an animal hospital) zoned C-S-C.
- North - Public right-of-way of Marlboro Pike and commercial uses (an abandoned car wash) zoned C-S-C.
- South - Single family detached residences in the R-55 Zone.

### **Applicant's Request**

(7) The Applicant is seeking validation of existing site conditions, including an existing addition containing two repair bays, to the Gas Station as approved by SE 3448 and SE 3825, and to add the rezoned area of Parcel 175 into the existing Special Exception area. No new construction is proposed.

(8) The Applicant has also requested a Departure from Parking and Loading Standards (DPLS-426) from Section 27-588 of the Prince George's County Zoning Ordinance to allow for a decrease in the required parking spaces by 14 parking spaces and for the elimination of the loading space requirement, which was approved by the Planning Board. (Exhibit 28(a))

(9) The Applicant is requesting a Variance from Section 27-358(a)(5) of the Zoning Ordinance for a reduction in the provided driveway width. This Variance is necessary because the existing eastern driveway width is only 25 feet and the Zoning Ordinance requires the width to be a minimum of 30 feet.

(10) The Applicant is also requesting Alternative Compliance from Section 4.7, Buffering Incompatible Uses, of the 2010 Prince George's County Landscape Manual along the southern and southeastern property lines. The Application is subject to Section 4.7 because there is a change of use from a lower to a higher intensity use category.

### **LAW APPLICABLE**

(1) A Special Exception for a Gas Station in the C-S-C/M-I-O Zone is permitted pursuant to §27-461(b)(1)(B) in accordance with §27-358 of the Zoning Ordinance. All Special Exceptions must be found to comply with the general criteria of §27-317.

(2) Section 27-317 states:

- (a) A Special Exception may be approved if:
- (1) The proposed use and Site Plan are in harmony with the purpose of this Subtitle;
  - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
  - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
  - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
  - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
  - (6) The proposed Site Plan is in conformance with an approved Tree Conservation Plan.
  - (7) The proposed Site Plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b) (5).

(3) Section 27-358 states:

- (a) A Gas Station may be permitted, subject to the following:
- (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;
  - (2) The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located;
  - (3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417;
  - (4) The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;
  - (5) Access driveways shall be not less than thirty (30) feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Public Works and Transportation, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than twenty (20) feet from the point of curvature (PC) of the curb return or the point of curvature of the edge of paving at an intersection without curb and gutter. A driveway may begin or end at a point not less than twelve (12) feet from the side or rear lot line of any adjoining lot;
  - (6) Access driveways shall be defined by curbing;
  - (7) A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic;
  - (8) Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;
  - (9) Repair service shall be completed within forty-eight (48) hours after the vehicle is left for service. Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for the storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and

placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.

(10) Details on architectural elements such as elevation depictions of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development.

(b) In addition to what is required by Section 27-296(c), the Site Plan shall show the following:

(1) The topography of the subject lot and abutting lots (for a depth of at least fifty (50) feet);

(2) The location and type of trash enclosures; and

(3) The location of exterior vending machines or vending area.

(c) Upon the abandonment of a Gas Station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the owner of the property. For the purpose of this Subsection, the term "abandonment" shall mean nonoperation as a Gas Station for a period of fourteen (14) months after the retail services cease.

(d) When approving a Special Exception for a Gas Station, the District Council shall find that the proposed use:

(1) Is necessary to the public in the surrounding area; and

(2) Will not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

(4) The request must also satisfy the general purposes of Commercial Zones (§27-446) and the specific purposes of the C-S-C Zone (§27-454).

(5) §27-446(a) states:

(a) The purposes of Commercial zones are:

(1) To implement the general purposes of this Subtitle;

(2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;

(3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;

(4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;

(5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;

(6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;

(7) To increase the stability of commercial areas;

(8) To protect the character of desirable development in each area;

(9) To conserve the aggregate value of land and improvements in the County; and

(10) To enhance the economic base of the County.

(6) §27-454(a)(1) provides:

- (1) The purposes of the C-S-C Zone are:
- (A) To provide locations for predominantly retail commercial shopping facilities;
  - (B) To provide locations for compatible institutional, recreational, and service uses;
  - (C) To exclude uses incompatible with general retail shopping centers and institutions; and
  - (D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

### **Necessity**

(7) The Zoning Ordinance and the County Code do not define the term “necessary”. However, undefined words or phrases shall be construed according to common usage, while those that have acquired a particular meaning in the law shall be construed in accordance with that meaning. (Prince George’s County Code, Section 27-108.01(a)) Webster’s New World Dictionary (2<sup>nd</sup> College Edition) defines it as “essential” and “indispensable”. In Brandywine Enterprises, Inc. v. County Council, 117 Md. App. 525,540 (1997), the Court of Special Appeals addressed the definition of “necessary” in the County’s Zoning Ordinance as it relates to rubble fills and noted that “necessary’ ... means necessary rather than reasonably convenient or useful.” The Court went on to note that the best method for determining need for a rubble fill would be to assess whether there would be an actual deficit of capacity. In a case involving liquor licenses, Baltimore County License Beverage Association, Inc. v. Kwon, 135 Md. App. 178, 194 (2000), the Court of Special Appeals held that the meaning is dependent upon the context in which “necessary” is used. The Court then found that “necessary,’ in this instance, means that the transfer of the liquor license to the transfer site will be ‘convenient, useful, appropriate, suitable, proper, or conducive’ to the public in that area.” Thus, the proper standard to apply in the review of the instant request is whether the Gas Station will be “convenient, useful, appropriate, etc.” given the nature of the use.

### **Variance**

(8) A variance may be granted if the request satisfies the provisions of Section 27-230(a) of the Zoning Ordinance, which provides as follows:

- (a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:
- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
  - (2) The strict Application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and

(3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

(9) Court cases have held that a variance should not be granted unless the need to justify the request is substantial, and not merely for the Applicant's convenience. Belvoir Farms Homeowners Association v. North, 355 Md. 259, 734 A.2d 227 (1999); Mills v. Godlove, 200 Md. App. 213, 26 A. 3d 1034 (2011).

(10) "Practical difficulties" has been defined in Carney v. Baltimore, 201 Md. 130, 137 (1952), as follows:

The expression "practical difficulties or unnecessary hardship" means difficulties or hardships which are peculiar to the situation of the Applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the Applicant. Exceptions on the ground of "practical difficulties or unnecessary hardships" should not be made except where the burden of the general rule upon the individual property would not, because of its unique circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwanted invasion of the basic right of private property.

(11) An area variance (such as the one requested herein) need only satisfy the "practical difficulties" standard. See, Richard Roeser Professional Builder, Inc. v. Anne Arundel County, 368 Md. 294, 793 A.2d 545 (2001)

### **Special Exceptions**

(12) The Court of Appeals provided the standard to be applied in the review of a special exception Application in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981):

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements; he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material....But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an Application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals “no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan”. It would, therefore, be proper to grant the request, once the variances are granted and the conditions addressed below are satisfied.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### General Requirements

(1) §27-317(a)(1) requires that the proposed Use and Site Plan be in harmony with the general purposes of the Zoning Ordinance, §27-102(a), the general purposes of the Commercial Zones, §27-446(a), and the specific purposes of the C-S-C Zone, §27-454(a)(1).

(2) The general purposes of the Zoning Ordinance are listed in §27-102(a). The instant Application is in harmony with the general purposes of the Zoning Ordinance as follows:

*(1) To protect and promote the health, safety, orals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The long-existing Gas Station at the subject site will promote the health and safety of the present and future inhabitants of the County by continuing to provide for a safe and convenient accommodation of the driving public at a site which is being upgraded to meet the modern requirements of the Landscape Manual.

*(2) To implement the General Plan, Area Master Plans, and Functional Master Plans;*

The relevant Plans which apply to this site are the 2014 General Plan, the 2009 Approved Marlboro Pike Sector Plan and Sectional Map Amendment, and a number of Functional Master Plans, including the Green Infrastructure Plan, the County Master Plan of Transportation, the Public Safety Facilities Master Plan, The Historic Sites and Districts Plan, and the Water Resources Functional Master Plan.

### General Plan

The General Plan classified the subject site in its Growth Policy Map<sup>1</sup> in the Established Communities category, and the Generalized Future Land Use Map<sup>2</sup> designated it for Commercial land use.

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<sup>1</sup> M-NCP&PC, *Plan Prince George's 2035 – Approved General Plan* (May, 2014), p. 107.

<sup>2</sup> *General Plan*, p. 101.

“Established Communities” are described by the General Plan as making “up the County’s heart – its established neighborhoods, municipalities, and unincorporated areas outside designated centers,”<sup>3</sup> and, “existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers.... Established communities are most appropriate for context-sensitive infill and low- to medium-density development.”<sup>4</sup>

“Commercial” land use is described by the General Plan as, “Retail and business areas, including employment uses such as office and service uses. A range of services are provided at the neighborhood to regional level. New commercial areas have access to multimodal transportation options.”<sup>5</sup> It is noted that ordinarily the Generalized Future Land Use Map replicates the recommendations of the Master Plan or Sector Plan in force at the time of the approval of the General Plan; in this case, however, the Generalized Future Land Use Map’s recommendation of “Commercial” land use is not the same as the Approved Marlboro Pike Sector Plan’s recommendation of “Mixed Use” land use. This difference, while unusual and unexplained, is not relevant to the subject application: The General Plan’s note under the Generalized Future Land Use Map directs the reader that, “by definition, this map should be interpreted broadly and is intended to provide a countywide perspective of future land use patterns. To identify the future land use designation for a specific property, please refer to the property’s relevant approved sector or master plan.”<sup>6</sup>

As the approval of the subject revision will not constitute a new land use, require the expansion of existing water and sewer systems, or involve a change in zoning, none of the thirteen enumerated Policies of the General Plan’s Land Use Element are directly applicable to the instant Application. Policy 9, however, which is to, “limit the expansion of new commercial zoning outside of the Regional Transit Districts and Local Centers to encourage reinvestment and growth in designated centers and in existing commercial areas”<sup>7</sup> will be furthered by the approval of this revision as it represents reinvestment in an existing commercial area.

## **Master Plan**

The applicable Master Plan is the Approved Marlboro Pike Sector Plan and Sectional Map Amendment, approved on November 17, 2009. The subject site is also within the limits of the subsequent Approved Subregion 4 Master Plan and Endorsed Sectional Map Amendment, approved on June 1, 2010; the text of the Marlboro Pike Sector Plan, however, states that, “The adoption of the Subregion 4 plan will not alter the legal status of the Marlboro Pike plan as the guiding policy for the area. The Plans mirror each other, and in certain locations, the Subregion 4 plan will expand upon land use concepts recommended in the Marlboro Pike Plan.”<sup>8</sup>

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<sup>3</sup> *Ibid.*, p. 106.

<sup>4</sup> *Ibid.*, p. 20.

<sup>5</sup> *Ibid.*, p. 100.

<sup>6</sup> *Ibid.*, p. 101.

<sup>7</sup> *Ibid.*, p. 116.

<sup>8</sup> M-NCP&PC, *Approved Marlboro Pike Sector Plan and Sectional Map Amendment* (November, 2009), p. 3.

The Goal for the “Community Development” element of the Sector Plan is to, “encourage place-making strategies, enhancement measures, accessibility improvements, and other initiatives to promote corridorwide investment that benefits and stabilizes area communities.”<sup>9</sup> To implement this goal, the Sector Plan established its first Policy as, “Redevelop Marlboro Pike by focusing redevelopment within seven priority areas, supporting these areas primarily with in-fill residential land use, and retaining the flexibility to accommodate mixed-use development based on demand.”<sup>10</sup> The Sector Plan places the subject site within the limits of “Priority Area 6: Donnell Drive Retail and Restaurant Hub.” As well as an “activity node” which expands beyond the limits of the priority area.

The Plan’s short-term vision for this area is focused on infill of the underused areas of parking lot behind the Penn-Mar center’s main strip and redevelopment of the intersection of Marlboro Pike with Boone’s lane. The subject property, while specifically included within the limits of the priority area together with the adjacent veterinary hospital and pet spa, does not form a part of the suggested redevelopment proposal; as such, as a supporting land use, the approval of the subject application is in harmony with the Sector Plan’s recommendation.

Other Sector Plan policies which the subject redevelopment will implement include fulfilling the recommendation for landscape buffers to parking areas,<sup>11</sup> and tree planting, including a minimum of ten percent tree cover (which predated adoption of the County’s Tree Canopy Coverage legislation) .<sup>12</sup>

### **Other Applicable Functional Master Plans**

This Application conforms to the Green Infrastructure Plan as there are no Regulated Areas (or even Evaluation Areas) of the County’s Green Infrastructure Network which will be affected by the subject project.

With regard to the Historic Sites and Districts Plan, no historic sites, resources or districts are located in the vicinity of the subject site.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the subject application.

No proposed sites for Public Safety facilities are in the area affected by the instant Application.

The Countywide Master Plan of Transportation classifies this segment of Marlboro Pike as a

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<sup>9</sup> *Sector Plan.*, p. 25.

<sup>10</sup> *Ibid.*

<sup>11</sup>*Ibid.*, pp. 61 & 116.

<sup>12</sup>*Ibid.*, p. 77.

collector roadway, with a variable right-of-way within a range of 80' - 100'. The plan's intent is for the road to be from two to four; the number of existing lanes (four through lanes plus a central left-turn lane) is commensurate with the Master Plan of Transportation's recommendation. Finally, the depiction of the planned right-of-way extent on the County's GIS site is less than the existing right-of-way in the vicinity of the subject site.

In conclusion, because the subject Gas Station is not in conflict with the General Plan, the Sector Plan or the applicable Functional Master Plans, approval of the instant Application will be in harmony with the Ordinance's purpose of implementing those Plans.

- (3) ***To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;***

As this Application proposes the validation of a long-existing use on a roadway with sufficient right-of-way, approval of it would be in harmony with this Purpose of promoting the conservation of a community which will be developed with adequate public facilities.

- (4) ***To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;***

Approval of the subject Application would recognize the needs of the County's workers by validating an existing use in a developed area, and so would abet the orderly growth and development of the County, making the subject Application in harmony with this Purpose of the Ordinance.

- (5) ***To provide adequate light, air, and privacy;***

With the approval of the Alternative Compliance proposed with the instant Applications, the approval of the subject Gas Station will be in harmony with this Purpose when improved in conformance with the various regulations in the Zoning Ordinance and the Landscape Manual 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, landscaped buffers, and conformance with height limitations in order to allow for access to light and air.

- (6) ***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 improved 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.

**(7) *To protect the County from fire, flood, panic, and other dangers;***

The subject Gas Station would be in harmony with this Purpose as it has been 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.

**(8) *To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;***

Because the proposed use is commercial in nature, this Purpose is not directly applicable to this Application.

**(9) *To encourage economic development activities that provide desirable employment and a broad, protected tax base;***

The validation of the subject Gas Station would be in harmony with this Purpose because it would be able to continue its contribution to the tax base of the County directly and through the employment provided to its workers.

**(10) *To prevent the overcrowding of land;***

The proposed Gas Station is in harmony with this Purpose as it has been constructed in accordance with various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that provides for the compatibility of uses, height limits, and setbacks.

**(11) *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. The Gas Station is a validation of an existing station in a developed area. The proposed Site Plan would serve to validate two vehicle service bay additions, as well as the use of Parcel 175 for storage of vehicles awaiting service (or pickup after its completion); as such, the validation of the service bays will not add to the existing traffic on the streets. 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.

**(12) To insure the social and economic stability of all parts of the County;**

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose. Additionally, the subject Gas Station will promote the economic and social stability of the County by continuing to contribute to the tax base, and by continuing to provide a useful and convenient service to the surrounding community.

**(13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;**

As the instant Gas Station is a validation of an existing Gas Station, approval of the subject Application will have no impact to the natural features in the County: It will not itself generate noise pollution, and the use will be in compliance with the County's Woodland Conservation policies by virtue of its exemption from the requirement for Tree Conservation Plan because no woodland exists on the site. No steep slopes or scenic vistas will be affected. By conformance to these principles and regulations, the approval of this application would be in harmony with this Purpose.

The final two Purposes,

**(14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and**

**(15) To protect and conserve the agricultural industry and natural resources.**

are not directly applicable to the approval of this Gas Station. §27-317(a)(1)

(3) The instant Application is also in harmony with the general Purposes of the Commercial Zones, §27-446(a), as follows:

**(1) To implement the general purposes of this Subtitle; The subject proposal will implement the general purposes of the Zoning Ordinance.**

**(2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;**

The approval of this facility at this location will allow the Gas Station to continue to provide a useful and convenient site for a needed service.

- (3) ***To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;***

Because the proposed Gas Station renewal involves the validation of a compatible service commercial use in the immediate vicinity of a commercial/mixed-use area, this Purpose is not directly applicable to the subject Application.

- (4) ***To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;***

The validation of the existing Gas Station would implement this Purpose by providing planting and fencing which address buffering between it and its residential neighbors.

- (5) ***To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;***

The approval of the subject Application will not affect traffic efficiency, but its location in a concentration of complementary uses will allow for efficiency of use of the street network through combination of vehicle trips.

- (6) ***To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;***

As the subject Gas Station will meet the intent of the land use provided for in the Master Plan, it will fulfill this Purpose for Commercial Zones.

- (7) ***To increase the stability of commercial areas;***

By allowing for the validation of a complementary service commercial use which will appropriately supplement the general retail character of the neighboring commercial uses, approval of this Application will increase the stability and viability of the developing commercial area.

- (8) ***To protect the character of desirable development in each area;***

As the subject Gas Station will be operated in accordance with the provisions specifically provided in the Ordinance to promote the safe and orderly layout and operation of Gas Stations the approval of this Application will fulfill this Purpose.

The final two Purposes,

- (9) ***To conserve the aggregate value of land and improvements in the County; and***  
(10) ***To enhance the economic base of the County.***

are fulfilled by allowing for the validation of an existing commercial use that will enhance the tax base and provide additional employment for residents of the County. §27-317(a)(1)

(4) The instant Application is also in harmony with the specific Purposes of the C-S-C Zone, §27-454(a)(1), as follows:

**(A) To provide locations for predominantly retail commercial shopping facilities;**

While the instant Application proposes the renewal of a service commercial use, it is not in conflict with this Purpose. The validation of the service extensions to this station will complement the broad varieties of retail uses which are found in the neighborhood along Marlboro Pike.

**(B) To provide locations for compatible institutional, recreational, and service uses;**

The subject use, as it has been developed in accordance with the provisions of the Ordinance that promote a safe and orderly operation, fulfills this Purpose by being a compatible service use.

**(C) To exclude uses incompatible with general retail shopping centers and institutions;  
and**

As the instant use is compatible with general retail uses, it fulfills this Purpose.

**(D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.**

This Purpose is not applicable to the subject Application. §27-317(a)(1)

(5) The instant Application is also in harmony with the Purposes of the M-I-O Zone, §27-548.51, as follows:

The Purposes of the Military Installation Overlay Zone are to regulate the development and use of structures and property in order to promote land uses compatible with operations at Joint Base Andrews; to protect the safety and welfare of individuals in the area from the adverse impacts associated with high levels of noise from flight operations and the potential for aircraft accidents associated with proximity to Joint Base Andrews operations. The intent of the regulations is to recognize the rights of individual property owners while reducing interference with the military operations at Joint Base Andrews.

Part 10C includes three Impact Maps which establish the boundaries of the M-I-O Zone. Figure A establishes the area subject to restrictions related to height, Figure B establishes the area subject to restrictions related to noise, and Figure C establishes the area subject to the restrictions related to Accident Potential/Clear Zones North and South.

Based upon a review of the Impact Maps, the subject site is included within the boundaries of the Impact Map on Figure A, which establishes the area subject to restrictions related to height, but is

not within the boundaries established by any other Impact Map.

(6) Requirements for maximum permissible structure height in the M-I-O Zone are found in Section 27-548.54. The subject site is located under the limits of both Surface E (Conical Surface), and Surface G (Transitional Surface 7:1), and as such is subject to the height restrictions.

The northeast corner of the site within the limits of Surface G will provide the controlling height limit at the subject site; as such, the provisions of §27-548.54(e)(2)(E) apply as follows: (1) The distance between Surface A and a line perpendicular to the runway which intersects the northeast corner of the site is 8,542 feet; 8,542 divided by 50 = 171 feet. (2) The distance between Surface B and the northeast corner of the property is 451 feet; 451 divided by 7 = 64 feet. (3) Subtotals (1) and (2) added together are  $171 + 64 = 235$  feet. §27-548.54(e)(2) then requires that the difference between the highest elevation on the subject property (273) and the height of the runway surface (274), or one foot, be added to the 235-foot result to yield a highest permissible structure of 236 feet.

Given the very high permissible limit, the provisions of the M-I-O Zone will not affect the existing structures on the subject site, and because the development at the site is not affected by the noise or use restrictions of the M-I-O Zone and is within the height restriction, the approval of the subject Application will be in harmony with the purposes of the M-I-O Zone. §27-317(a)(1)

(7) Special Exception commercial uses such as Gas Stations are presumed compatible with other commercial uses provided the established setbacks, lot coverage, landscaping, minimum acreage, traffic and parking improvements, and all other regulations can be met. The proposed redevelopment of the subject property will bring the subject property into conformance with current requirements and development standards. The Planning Board has approved a Departure from Parking and Loading Standards (DPLS-426)(Exhibit 20(a)). With the approved Departure, the Amended Site and Landscape Plans (Exhibits 30 and 31), and the recommended conditions of approval, the proposed uses will be in conformance with all of the applicable requirements and regulations of the Zoning Ordinance. §27-317(a)(2)

(8) The instant Application is in harmony with the Purposes of the Zoning Ordinance generally to implement the General and Master Plans and to provide for the efficient and desirable use of land in accordance with those Plans. And given its harmony, the approval of this use will not impair the integrity of either the approved Sector Plan or the County's General Plan. §27-317(a)(3)

(9) Conformance of the subject Application with the principles laid out in the Purposes of the Zoning Ordinance, its compliance with the provisions of the Zoning Ordinance, its compliance with the provisions of other State and County regulations for environmental protection and building construction, and its long existence at the subject site represent a high level of protection against adverse effects to the public health, safety and welfare. Furthermore, the provision of new landscaping to bring the site up to date with current landscaping requirements will enhance the

appearance of the site and thereby contribute to the public welfare. §27-317(a)(4)

(10) 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 commercial uses, and as such will not be detrimental to the use or development of adjacent properties or the general neighborhood. §27-317(a)(5)

(11) The Amended Site and Landscape Plans (Exhibits 30 and 31) are in conformance with the approved Standard Letter of Exemption (S-35-16) (which expires on February 2, 2018) from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance. Because the site is less than 40,000 square feet in size and has no previous approved Tree Conservation Plans, a Standard Exemption Letter was issued by the Environmental Planning Section. (Exhibit 9) No other environmental issues relate to the Applicant's proposal. §27-317(a)(6)

(12) There are no regulated environmental features on the subject property that would require preservation and/or restoration. §27-317(a)(7)

### **Gas Station**

(13) Marlboro Pike has a right-of-way width exceeding seventy feet, and the site has direct vehicular access to it. The subject site has 186.23 feet of frontage on Marlboro Pike. §27-358(a)(1)

(14) No lots containing schools, hospitals or outdoor playgrounds exist within 300 feet of the subject site. The nearest such facility appears to be Longfields Elementary School, located approximately 950 feet away as the crow flies. §27-358(a)(2)

(15) The display or rental of any vehicles is prohibited and is not proposed at the subject site. (Exhibit 31, Note 22) §27-358(a)(3)

(16) The storage or junking of any vehicle is prohibited and is not proposed at the subject site. (Exhibit 31, Note 23) §27-358(a)(4)

(17) The Special Exception Amended Site Plan (Exhibit 31) indicates that one of the proposed access driveways will all be at least 30 feet wide (33.3feet), while the other is to be one-way-in driveways as approved by the DPIE. The subject site is not a corner lot; the existing driveways are in the locations approved by Special Exceptions 3448 and 3525. At that time, the requirement was that the driveways begin or end at a point not less than seven feet from the side line of any adjoining lot. §27-358(a)(5)

(18) The Special Exception Amended Site Plan indicates that the access driveways are defined by curbing. (Exhibit 31) §27-358(a)(6)

(19) A 4 foot sidewalk currently exists along Marlboro Pike; the Special Exception Amended Site

Plan provides that it will be replaced with 5 foot wide sidewalk. (Exhibit 31) §27-358(a)(7)

(20) The Amended Site Plan indicates the closest pump setback from Marlboro Pike is 36 feet. (Exhibit 31) §27-358(a)(8)

(21) Repair service shall be completed within 48 hours after the vehicle is left for service. (Exhibit 31, Note 24) Automotive replacement parts and accessories shall be stored either inside the main structure or the wholly enclosed, fenced and landscape accessory building used solely for storage. (Exhibits 30 and 31) §27-358(a)(9)

(22) The Amended Site Plan, Exhibit 31, depicts the topography of the subject property and fifty feet into the abutting streets and lots. §27-358(b)(1)

(23) The Amended Site Plan, Exhibit 31, depicts the location of the dumpster within the limits of the enclosed vehicle storage area at the rear of the subject property. §27-358(b)(2)

(24) The Amended Site Plan states that no vending machines are proposed. (Exhibit 31, Note 26) §27-358(b)(3)

(25) A note will be added to the Amended Site Plan, Exhibit 31, which details the requirements of §27-358(c).

(26) The approval of Special Exception 4768 for a Gas Station is in accordance with the District Council's legislative intent that the "necessary to the public in the surrounding area" provision in §27-358(d)(1) is tantamount to a finding that a proposed Gas Station is "convenient, useful, appropriate, suitable, proper, or conducive" to providing fuel to the motoring public. Thus the Zoning Ordinance requires a standard less strict than that expressed in Brandywine Enterprises, Inc. v. County Council, 117 Md. App. 525, 700 A2d 1216 (1997) and more stringent than that expressed in Baltimore County Licenses Beverage Assoc., Inc. v. Kwon, 135 Md. App. 178, 761, A2d 1027 (2000). The continued existence of a Gas Station use at the subject site which has existed since the early 1950'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 which passes the site on Marlboro Pike. §27-358(d)(1)

(27) §27-358(d)(2) requires that, "the District Council shall find that the proposed use... Will not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses." As the proposed use is renewal of a use which has existed at the site since the early 1950's because it is in the midst of a group of compatible commercial and industrial uses which has grown up around the subject site and its historic use, because it will be (re)constructed to a high standard of site planning, and because it is modest in scale, these facts all support a conclusion that the proposal will not upset the balance of land use, or restrict the availability of land for other trades and commercial uses.

### **Alternative Compliance**

(28) Alternative Compliance is sought for the provisions of Section 4.7 for Buffering Incompatible uses.

Section 1.3a of the Landscape Manual provides that, ‘Requests for alternative compliance may be approved for any Application to which the requirements of this manual apply, when one or more of the following conditions are present:

- “(1) Topography, soil, vegetation, or other site conditions are such that full compliance with the requirements of this manual is impossible or impractical; or improved environmental quality would result from the alternative compliance.
- “(2) Space limitations, unusually shaped lots, prevailing practices in the surrounding neighborhood, in-fill sites, and for improvements and redevelopment in older communities.
- “(3) Change of use on an existing site increases the buffer required by Section 4.7, Buffering Incompatible Uses, of this manual, more than it is feasible to provide.
- “(4) Safety considerations make alternative compliance necessary.
- “(5) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the design criteria in Section 3, Landscape Elements and Design Criteria, of this manual.”

Section 1.3b further provides that, “A proposed alternative compliance measure must be equally effective than normal compliance in terms of quality, durability, hardiness, and ability to fulfill the design criteria in Section 3.”

In this case, the Condition which applies to the approval of Alternative Compliance is provision (2), namely that the proposal at the subject site constitutes redevelopment in an older community.

In the matter of compliance with Section 4.7, the Planning Staff found that Alternative Compliance in the form of a reduction in the width of the planted yard is appropriate because:

- The aggregate number of planting units provided will exceed the requirement of the Manual with the provision of a sight-tight fence.
- The planting of the buffer on the adjoining property (owned by the Applicant) will be secured by the recordation of a landscaped easement.

(29) The Alternative Compliance Committee recommended approval of AC-16001 from the requirements of Section 4.7, Buffering Incompatible Uses, of the 2010 Prince George's County Landscape Manual, along the southeastern and southern property lines for Parcel 175 subject to conditions. (Exhibit 15, Bates Stamp 44) The Amended Site and Landscape Plans, Exhibits 30 and 31, incorporate all of these Conditions with the exception of that of a recorded easement which is included in the conditions of approval of the instant Application.

### **Variance**

(30) The Applicant has requested a Variance from Section 27-358(a)(5) of the Zoning Ordinance because the western access driveway does not meet the requirement that access driveways shall not be less than 30 feet wide. The Variance is supported as a one-way entrance with appropriate signage. The existing two-way entrance on the west side of the site is 25 feet wide. The Applicant testified that the Gas Station entrances have existed since beginning operation in 1956 and since the reconfiguration of Marlboro Pike which occurred sometime between 1965 and 1977. The Applicant used this to demonstrate that the property has exceptional narrowness, shallowness, shape, or exceptional topographical conditions or other exceptional topographical situations or condition. As a means of supporting the variance request, Transportation Staff recommends consideration to making the western entrance one-way. The Applicant will install a "Do Not Enter" sign to force vehicles to use the eastern two-way entrance to exit the site. The strict application of the Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property in the form of an extensive financial burden, when no other construction on site is proposed.

### **DISPOSITION**

Special Exception 4768 and VSE 4768 are Approved subject to the following Conditions:

1. Prior to signature approval of the Site and Landscape Plans, the Site Plan shall reflect the liber and folio of a 20-foot wide landscape easement upon the area shown on the Landscape Plan as being located within Tax Map 81, Parcel 176, with the specific easement area upon that parcel shown as dashed and labeled "20' Bufferyard."
2. Add a Note on the Amended Site Plan which details the requirements of §27-358(c).
3. 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 shall be submitted to the Environmental Planning Section.

AC-16001 is Approved.

The Approved Site and Landscape Plans are Exhibits 30 and 31.