



**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

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PGCPB No. 11-56

File No. ROSP-1733/03

RESOLUTION

WHEREAS, the Prince George's County Planning Board has reviewed ROSP-1733/03, Lowest Price Gas Station requesting a revision of the site plan to enclose an existing canopy, relocate parking and loading spaces, relocate the trash enclosure, and remove interior fencing, four gasoline dispensers, and a freestanding sign 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 situated within Planning Area 75A within the Capitol Heights community. The site is located along the northern side of Marlboro Pike at its intersection with Brooks Drive. The property is a small, rectangular parcel developed with a 2,362-square-foot, full-service gas station with two service bays. Access is gained via driveways along both road frontages. The station has two canopies, one of which covers four gasoline dispensers. The other, perpendicular to Brooks Drive, is to be enclosed for the purposes of enlarging the interior storage and vending area for enhanced employee and customer convenience.

B. **Development Data Summary:**

	EXISTING	APPROVED
Zone(s)	C-S-C	C-S-C
Use(s)	Auto Filling Station	Auto Filling Station
Acreage	0.601	0.601
Square Footage/GFA	2,362	3,701 (1,339 New)

C. **History:**

**December 12, 1968**—Special Exception SE-1733 was approved by the District Council for an auto filling station in the General Commercial (C-2) Zone (Zoning Resolution No. 563 1968).

**March 12, 1992**—Special Exception ROSP-SE-1733 was approved by the Planning Board authorizing the installation of an eight-foot-high chain-link fence on the subject property, subject to the approval of a variance from the Board of Zoning Appeals.

**July 23, 1992**—Appeal No. 11695 was approved by the Board of Zoning Appeals to waive the fence height and setback requirements contained in Section 27-447(a) of the Zoning Ordinance in order to construct an eight-foot-high fence on the subject property.

**September 27, 2004**—Special Exception ROSP-SE-1733/02 was remanded by the District Council to the Planning Board. This application proposed the addition of a shed and the expansion of the existing

building to add the new use of a vehicle parts or tire store to the existing auto filling station use. The applicant did not pursue the application further, and a final decision was never rendered on the case.

- D. **Master Plan and General Plan Recommendations:** This property is located within the Developed Tier. The vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods.

The 2009 *Marlboro Pike Sector Plan and Sectional Map Amendment* envisions multilevel, mixed commercial buildings three to four stories high with retail on the ground floor and office space above at this location.

The sectional map amendment for the Marlboro Pike Sector Plan retained the subject property within the Commercial Shopping Center (C-S-C) Zone.

- E. **Request:** The applicant seeks the approval of a minor revision of the approved site plan in order to enclose an existing canopy for the new construction of a 1,339-square-foot building addition for increased storage and vending area space for employees and customers. In order to accommodate the land area needed for the proposed building addition, four existing gasoline dispensers are proposed to be removed from the site. Also proposed is the restriping of the existing parking compound, the installation of required landscaping, the removal of interior fencing, and the removal of the existing freestanding sign which no longer complies with current setback requirements.

- F. **Neighborhood and Surrounding Uses:** The neighborhood is primarily dominated by commercial land uses along the street frontage of Marlboro Pike and multifamily buildings and detached single-family dwellings to the rear. The neighborhood is defined by the following boundaries that were accepted by the Zoning Hearing Examiner (ZHE) for the prior Special Exception Application, ROSP-SE-1733/02:

North—	Brooks Road
East—	Walker Mill Road and Rollins Avenue
South—	Pennsylvania Avenue (MD 4)
West—	Pacific Avenue and Capitol Heights Boulevard

The subject property is surrounded on all sides by other parcels in the C-S-C Zone. A liquor store abuts the property along the northwest property line, and beyond is a small shopping center located in the C-S-C Zone. An undeveloped parcel in the C-S-C Zone abuts the subject property along the northern and northeastern property lines, and beyond is a multifamily residential development in the R-18 Zone. The submitted site plan indicates that the undeveloped parcel that abuts the subject property to the north and northeast is also under the ownership of the applicant. To the southeast, the site abuts Brooks Drive, a designated arterial roadway, and beyond is a fast-food restaurant (Popeye's) in the C-S-C Zone. To the southwest, the property abuts Marlboro Pike, a designated collector roadway, and beyond is a church or similar place of worship in the C-S-C Zone.

G. **Minor Change Provisions:** Section 27-325 of the Zoning Ordinance, which governs minor revisions to special exception site plans, provides that:

**(b) Minor changes, Planning Board.**

**(1) The Planning Board is authorized to approve the following minor changes:**

- (A) An increase of no more than fifteen percent (15%) in the gross floor area of a building;**
- (B) An increase of no more than fifteen percent (15%) in the land area covered by a structure other than a building;**
- (C) The redesign of parking or loading areas; or**
- (D) The redesign of a landscape plan.**

On September 27, 2004, the District Council remanded ROSP SE-1733/02 to the Planning Board, who initially elected not to hear the application. However, the applicant never pursued the required Planning Board hearing and, therefore, the prior special exception application was never approved. The applicant now proposes a similar building addition to what was proposed during the prior 02 special exception revision, as well as the relocation of required parking and loading spaces, the removal of interior fencing, pump islands, and the existing freestanding sign, and the installation of required landscaping. The proposed 1,339-square-foot building addition will provide a storage and vending area as permitted in Section 27-325(f).

**(f) Changes of gas station site plans.**

**(1) Changes of a site plan for an approved gas station may be permitted under the site plan amendment procedures in Section 27-324. The Planning Board and Planning Director may permit the following modifications under the procedures in this Subsection and in (a) and (c) above:**

- (A) The enlargement or relocation of pump islands;**
- (B) The addition of one (1) pump island;**
- (C) The addition, relocation, or modification of a fence, kiosk, island shelter, island canopy, storage area, trash enclosure, vending area, or lavatory facility;**
- (D) The addition, relocation, or modification of an accessory building used solely for the storage of automotive replacement parts or accessories. The accessory building shall be wholly enclosed. The**

**building shall either be constructed of brick (or another building material similar in appearance to that of 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 approved as a part of the minor change;**

**(E) Any amendment described in (b) above.**

The applicant argues that there are no limitations imposed by Section 27-325(f)(1) that requires the proposed building addition for a storage and vending area to remain below a 15 percent increase in the GFA of the building. Within the revised statement of justification, the applicant stated the following:

“If one were to assume that Section 27-325(b)(1) and (2) were required to only be read together, then there is no purpose or meaning in Section 27-325(f)(1)(E) and would render such language a nullity. Therefore, the only logical and meaningful way to interpret Sections 27-325(b)(2) and 27-325(f) is to conclude that the Planning Board has been given authority to amend Special Exception site plans for the addition of storage areas and vending areas without the 15% gross floor area restriction set forth in Section 27-325(b)(1).”

The Planning Board agrees that the Zoning Section is consistent with the applicant’s position, in that there are no limitations on the amount of GFA that can be constructed for those changes specifically listed in Section 27-325(f)(1)(A) through (E) of the Zoning Ordinance.

**(a) Minor changes, in general. .**

- (4) The revised site plan shall comply with all applicable requirements of this Subtitle, and with any conditions, relating to the use, imposed in the approval of the Special Exception or of any applicable Zoning Map Amendment, subdivision plat, or variance.**

The revised site plan is in compliance with all prior approved conditions and applicable requirements of the Zoning Ordinance, and no variances have been requested as part of the special exception application.

**H. Specific Special Exception Requirements:**

**Section 27-358. Gas Station**

- (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;**

The subject property has 150 feet of frontage on Brooks Drive and 168 feet of frontage on Marlboro Pike. Direct vehicular access is provided to both streets which have rights-of-way that are in excess of 70 feet in width.

- (2) **The subject property shall be located at least three hundred (300) feet from any lot on which a school, playground, library, or hospital is located;**

The site is not within 300 feet of a school, playground, library, or hospital.

- (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;**

The display and rental of cargo trailers, trucks, or similar uses is not proposed on the property, and the site plan does not reflect these uses.

- (4) **The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;**

The applicant does not propose auto repair, storage, or junking at this site.

- (5) **Access driveways shall be not less than thirty (30) feet wide, 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;**

The driveway connections were found to meet these criteria during the prior approved special exception applications. However, the existing driveway along Brooks Drive that is located closest to the intersection with Marlboro Pike is set back 15 feet from the point of curvature, and the existing driveway along Marlboro Pike that is located closest to the intersection with Brooks Drive is set back 18 feet from the point of curvature.

The site plan approved with the original special exception application in 1968 is not very legible for the purposes of driveway locations or dimensions from the point of curvature. However, the site plan approved with the following 01 special exception revision,

ROSP SE-1733/01, appears to be in compliance with the required 20-foot driveway setback from the point of curvature. The following special exception application, ROSP SE-1733/02, was never approved by the District Council. Therefore, there is no approved site plan for that application. However, the staff report for the 02 revision states that the access driveways that were shown on the plan were in compliance with the above criteria. The Zoning Hearing Examiner (ZHE) also found the driveway locations on the prior special exception site plan to meet the requirements of the Zoning Ordinance and approved ROSP SE-1733/02 on October 15, 2003.

The driveway locations that are shown on the current site plan do not meet the required 20-foot setback from the point of curvature, and it is unclear if the driveway locations meet the required 12-foot setback from the adjoining lot lines because no dimensions are provided to demonstrate compliance with that requirement.

However, in reviewing the current site plan as well as the prior approved site plans for the property, it appears that no changes have occurred on the site in regards to the locations of the driveway entrances which were previously determined to meet the required 20-foot setback from the point of curvature. The 15-foot dimension provided on the site plan for the driveway entrance along Brooks Drive is not correctly shown from the actual point of curvature, and the 18-foot dimension provided on the site plan for the driveway entrance along Marlboro Pike does not extend all the way to the southern limits of the existing driveway. Therefore, it would appear that the site plan could be revised to meet the required 20-foot setback from the point of curvature. A condition has been established to require the site plan to be revised prior to certification to demonstrate compliance with the above criteria, or obtain approval of a variance prior to the issuance of a building permit.

**(6) Access driveways shall be defined by curbing;**

All of the access driveways are 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;**

There are five-foot-wide sidewalks along both street frontages.

**(8) Gasoline pumps and other service appliances shall be located at least twenty-five (25) feet behind the street line;**

All pump islands and other service appliances are located accordingly.

**(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.**

No prior special exception applications have been approved for this property for the use of an auto repair service. However, gas stations are permitted to perform vehicle-related services that are incidental to the primary use of a gas station in accordance with Section 27-107.01(a)(99) of the Zoning Ordinance. The applicant's statement of justification indicates that the repair service will comply with these requirements.

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

Revised elevations and details of the proposed building addition have been provided for evaluation. The proposed building enclosure is to be finished with white painted masonry brick to match the brick on the existing building, and aluminum-framed, impact resistant windows. The hipped roof on the existing canopy is to remain unchanged. The Urban Design Section finds that, while the proposed architecture is plain and unremarkable, it matches the style of the existing building and proposes a substantial amount of well-balanced fenestration on all three sides. Therefore, the architectural character of the proposed building addition will be compatible with the 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.**

The site plan shows the required topography and the location and type of trash enclosure that is proposed on the site. No exterior vending areas or vending machines are proposed on the property.

- (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.**

The statement of justification indicates that the applicant is aware of this provision and will abide by it.

- (d) **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.**

There has been a gas station on this site for more than 42 years, indicative that the use is necessary to the public in the surrounding area. In that time, the use has provided a convenient service to the surrounding neighborhood. The continuation of this long-existing use will not restrict the availability of land or upset the balance of commercial land uses in the area.

- I. **Parking Regulations:** The use requires six parking spaces and one loading space to serve the building. There are nine parking spaces shown on the site plan, including one van space for the physically handicapped.
- J. **Prince George's County Landscape Manual Requirements:** The application to enlarge an existing gas station involves new construction and is subject to the requirements of the 2010 *Prince George's County Landscape Manual*. The applicant originally submitted an alternative compliance (AC) application for Section 4.7 along the northwestern property line. However, the Alternative Compliance Committee determined that AC would not be necessary under the requirements of the new Landscape Manual.

The submitted revised site plan indicates that the correct number of plants is provided within the landscaped strip along Marlboro Pike; however, the landscape strip along Brooks Drive is deficient as four shade trees are required and only six ornamental trees are provided. Section 4.2 of the Landscape Manual requires shade trees within the landscaped strips, unless overhead utility wires are an issue, at which point, two ornamental trees may be substituted for every one shade tree required. A condition has been established to require the site plan to be revised prior to certification to provide eight ornamental trees within the landscaped strip along Brooks Drive. With the condition, the site plan will be in substantial compliance with the requirements of the *Prince George's County Landscape Manual*.

- K. **Zone Standards:** The development proposal meets the requirements of the C-S-C Zone. On July 23, 1992, Appeal No. 11695 was approved by the Board of Zoning Appeals to waive the fence



height and setback requirements contained in Section 27-447(a) of the Zoning Ordinance in order to construct an eight-foot-high fence on the subject property.

- L. **Signage:** The existing freestanding sign that is located at the intersection of Marlboro Pike and Brooks Drive does not meet the required 10-foot setback from the front street line, and the proposed building addition is not set back 40 feet from the front street line as required by Section 27-614(a)(1) of the Zoning Ordinance in order to have a freestanding sign on the property. However, revised plans were submitted which propose the removal of the existing freestanding sign. No building signs are proposed at this time. Any future signage proposed on this property will require the approval of a revised special exception site plan prior to the approval of a sign permit.
- M. **Required Findings:** Section 27-317(a) of the Zoning Ordinance provides that 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.**

The District Council, in its 1968 special exception review of the existing gas station (SE-1733), found that the use and site plan met and satisfied all of the provisions of Section 27-317. The additional storage and vending area that is now proposed does not increase the intensity of the special exception use. It is, therefore, reasonable to conclude that the proposed use will continue to be in harmony with the purposes of the Zoning Ordinance and that all of the criteria set forth in Section 27-317 are satisfied.

If the proposed site plan revisions are made, the proposed use will be in conformance with all the applicable requirements and regulations of the Zoning Ordinance. The use and the proposed building addition will not impair the integrity of the 2009 *Marlboro Pike Sector Plan and Sectional Map Amendment*, which recommends a commercial land use for the subject property. The gas station use has existed at this site for more than 42 years without causing any apparent adverse impact on the

health, safety, or welfare of residents or workers in the area. The proposed changes will not be detrimental to the use or development of adjacent properties, as the abutting property to the northwest is currently improved with a retail commercial use, and the remaining surrounding property is undeveloped, located within the same commercial zoning category as the subject property, and is currently under the ownership of the applicant. Finally, the site is exempt from the requirement to file a tree conservation plan because the site is less than 40,000 square feet in size and there is no previously approved tree conservation plans associated with the property.

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, subject to the following conditions:

1. Prior to certification, the following revisions shall be made to the special exception site plan:
  - a. Provide a total of eight ornamental trees within the Section 4.2 landscaped strip along Brooks Drive, or obtain approval of an alternative compliance application.
  - b. No new building signage, including any signage on the windows or doors of the building, is approved as part of the subject application.
2. Prior to the issuance of a building permit, demonstrate compliance with the setback requirements within Section 27-358(a)(5) of the Zoning Ordinance for the existing driveway locations, or obtain approval of a variance.

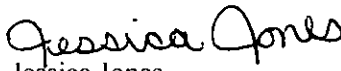
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

\* \* \* \* \*

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 Squire, seconded by Commissioner Vaughns, with Commissioners Squire, Vaughns, Cavitt, Clark 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 30<sup>th</sup> day of June 2011.

Patricia Colihan Barney  
Executive Director

By   
Jessica Jones  
Planning Board Administrator

PCB:JJ:JF:arj

APPROVED AS TO LEGAL SUFFICIENCY.

  
M-NCPPC Legal Department

Date 6/15/11