

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

**SPECIAL EXCEPTION**

**4680**

**VARIANCE**

**4680**

**DECISION**

Application: Gasoline Station and Variance  
Applicant: BJ's Wholesale Club, Inc.  
Opposition: None  
Hearing Dates: March 2, 2011 and April 25, 2011  
Hearing Examiner: Maurene Epps Webb  
Disposition: Approval with Conditions

**NATURE OF REQUEST**

(1) Special Exception 4680 is a request to locate a Gas Station on a 0.62 acre of an approximately 13.36 acre parcel located within a 124.68 acre Shopping Center in the C-S-C (Commercial Shopping Center) Zone. Variance 4680 is a request to reduce the required 70-foot right-of-way width requirement to a 47.85-foot width. The subject property is located 1,350 feet south of the intersection of Ritchie-Marlboro Road and Ritchie Station Court (and approximately 900 feet west /northwest of the inner loop of US 95/495), in Capitol Heights, Maryland.

(2) The Technical Staff recommended approval of the Application with conditions. (Exhibits 20 and 25(b)) The Planning Board recommended approval. (Exhibit 50)

(3) No one appeared in opposition to the request.

(4) At the close of the hearing the record was left open to allow the submittal of several items, including the Planning Board resolution. The last of these items was received on March 29, 2011. Subsequent to the first hearing this Examiner needed clarification on the variance request. A second hearing was held on that issue on April 25, 2011, and the record was closed at that time.

**FINDINGS OF FACT**

**Subject Property**

(1) The subject property is located on Parcel 9 and is part of the larger 124.68-acre "Ritchie Station Marketplace" development whose street address is 1751 Ritchie Station

Court. It is a pad site located within the 5,000-space common parking lot for the adjacent BJ's Wholesale Club and the Ritchie Station Marketplace. The entire acreage, with the exception of a pad lot not at issue here, is owned by Ritchie Hill, LLC. Access to Parcel 9 is provided via Ritchie Station Court and easements thereto, discussed *supra*.

(2) A Detailed Site Plan and a Limited Detail Site Plan that address environmental issues (i.e., stormwater management, tree stands, etc.), sidewalks, parking, and traffic concerns, has already been approved. (DSP-04080-02 and 03)

(3) The property is subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance since there are previously approved tree conservation plans for the entire site.

### **Surrounding Property/Neighborhood**

(4) Staff defines the neighborhood as an area enclosed by the following boundaries: to the north, Central Avenue (MD 214); to the south, the Capital Beltway (I-95/495); to the east, Ritchie Branch and Ritchie Road; and, to the west, D'Arcy Road.

(5) The following uses surround the subject property:

- North – A parking lot serving the BJ's Warehouse Club, and graded land for future parking and other commercial uses within the Ritchie Station Marketplace, in the C-S-C Zone
- South – Beyond the 47.85-foot-wide internal driveway, land planned for future parking to serve Parcel 8 and other commercial uses within the Ritchie Station Marketplace, in the C-S-C Zone
- East – Beyond the 30-foot-wide internal drive aisle is undeveloped land proposed for commercial uses; farther east across Ritchie Station Court is graded land for commercial development and other uses within the Ritchie Station Marketplace, in the C-S-C Zone
- West – A parking lot serving the BJ's Warehouse Club, and the BJ's Warehouse Club

### **Zoning**

(6) The subject property lies within an area governed by the 2010 Subregion 4 Master Plan and Sectional Map Amendment. The Master Plan recommends commercial uses for the subject property. The Sectional Map Amendment retained the C-S-C zoning for the majority of the site.<sup>1</sup>

---

<sup>1</sup> The Technical Staff report contains a complete recapitulation of the zoning history of the subject site.

(7) The 2002 General Plan placed the property in 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.

### **Applicant's Request**

(8) The subject property is approximately 26,932 square-feet or 0.6183 acre in size. Applicant wishes to operate a six (6) Multi Product Dispenser ("MPDs") Gas Station with 12 fueling positions. (Exhibit 38) The Gas Station will be a "members only" station, open only to BJ's members. The six fuel islands will be covered by a canopy. (Exhibit 38) The gas station will include a 205-square-foot kiosk for the attendant. The gas station will mirror the materials used for the BJ's Warehouse. An Exhibit was submitted that provided some detail of the architecture and materials to be used. (Exhibit 49) Applicant indicated its willingness to accept the condition proffered by Staff concerning the materials used on this structure. (Exhibits 20 and 49; March 2, 2011, T. 9)

(9) All gasoline pumps and service appliances are located more than 40 feet behind the street line. (Exhibit 34) Applicant's witness, accepted as an expert in civil engineering, testified that the underground storage tanks would be encased in double-walled fiberglass and would meet all federal and state regulations. (March 2, 2011, T. 21- 22)

(10) No exterior vending machines are proposed. The Site Plan shows the topography of the subject property and adjacent lots for a depth of at least 50 feet. All access driveways will be defined by curbing, and the access driveway that serves as the entrance to the use is "a minimum of forth-seven (47) feet in width and ... is not a corner lot located within 20 feet from the point of curvature...." (Exhibit 34, p. 8) Sidewalks are located along the south side of the subject property, outside of the boundaries of the Special Exception (and were approved as part of the Detailed Site Plan approvals).

(11) The subject property is more than 1,000 feet from a lot on which an outdoor playground, library, school or hospital is located. (March 2, 2011. T. 78) There will be no display or rental of cargo trailers, trucks, or similar uses at the site. There will be no storage of junked or wrecked motor vehicles. No repair service is proposed and there will be no accessory storage building. There will be no trash dumpster on site. (Exhibit 34; March 2, 2011 T. 79-81)

(12) The site is subject to approved Tree Conservation Plans. (TCPI/100-04 and TCPII/\_203-91).

(13) Applicant submitted an analysis of need for the Gas Station, prepared by Joseph Cronyn, of Lipman Frizzell & Mitchell, LLC. ("LF&M"). (Exhibit 18) Mr. Cronyn was accepted as an expert witness in the area of market analysis. Since the instant request involves a "niche market" gas station the trade area was not limited to the immediate

Capital Heights area but included a radius of approximately five miles. (Exhibits 18; March 2, 2011 T. 25) Mr. Cronyn opined that there is a need for the gas station at this location, reasoning as follows:

BJ's Warehouse Club members will represent approximately one quarter of all trade area households. They will be attracted to the convenience and price competitiveness of the subject's fuel services, purchasing a projected 4.2 million gallons of gasoline annually at the Ritchie Station Marketplace location. Those purchases, however, represent only 20.1% of demand from member households and 4.3% of total demand in the trade area. The low capture rates demonstrate the fact that the subject primarily provides a convenient service to members and is not a typical service station operation....

Evaluating the BJ's Warehouse Club gasoline fueling station's positioning within its competitive marketplace, LF&M finds that there are 62 existing fueling stations in its trade area pumping an estimated 82.28 million gallons per year. Comparing that figure to estimated total demand for 96.83 million gallons of gasoline in the trade area, we calculate unmet demand (need) within the BJ's trade area at approximately 7.55 million gallons per year....

LF&M is of the opinion that most trade area service stations are unlikely to be significantly impacted by the opening of the BJ's fueling station. Given the wide dispersal of the BJ's Warehouse Club membership, 62 existing fueling stations across the Ritchie Station Marketplace BJ's trade area will compete for consumer demand based on their particular marketing strategies....

Considering public need to mean "expedient or reasonably convenient and useful to the public" ... and "convenient, useful, appropriate, suitable, proper or conducive to the public in the surrounding area" ..., LF&M finds that the proposed service station accommodates the public need because it meets the demonstrated demand of the BJ's Warehouse Club members for fuel service and meets residual demand for gasoline fuel service not already satisfied in the marketplace.

LF&M, therefore, finds that there is sufficient evidence of public need for the proposed gasoline service station.

(Exhibit 18, p. 2; March 2, 2011 T. 26-37)

## **Variance**

(14) The subject property is a pad site within the interior portion of a proposed 4,700 space parking lot for the BJ's Warehouse Club and the remainder of the Ritchie Station Marketplace. It has approximately 461 feet of direct access and frontage on three travel aisles. (Exhibits 34 and 42) The Zoning Ordinance requires that it have 150 feet of

frontage and direct vehicular access to a “street” with a right-of-way width of at least 70 feet (*infra*). In integrated shopping centers private rights-of-way or easements may be approved as “streets”. (Prince George’s County Code, Section 24-128(b)(15))

(15) As originally submitted the Site Plan did not show access to the closest road, Ritchie Station Court, and Applicant argued that since the subject property has benefit of an access easement to Ritchie Station Court that was granted by Ritchie Hill, LLC (owner of the entire site), said easement could be utilized the public road. Section 27-107.01(a)(225) and Section 24-128(b) of the Prince George’s County Code could reasonably have been interpreted to support this position. However, applicant did not draw its Special Exception boundaries to include the area of the easement or any drive aisle.

(16) This Examiner did not agree with Applicant’s position that the majority of the entire shopping center is under one ownership, thereby negating the need for any variance since it is the administrative practice of the Office of the Zoning Hearing Examiner (and indeed the District Council) to only consider the area within the Special Exception boundaries as “the subject property” when interpreting the provisions of the Zoning Ordinance pertaining to the subject property of a Special Exception. Accordingly, the Applicant provided a draft redrawing of its boundaries to include a portion of a drive aisle and the traffic circle on Ritchie Station Court. (Exhibit 19) This amendment provides access to a road and reduces the variance request to 72.39 feet. (April 25, 2011 T. 11)

(17) In support of its variance request, Applicant proffers that the site is unique because it is within an integrated shopping center; it has access via three drive aisles that are recognized in the Subdivision Regulations as equivalent to public right-of-ways although they are only required to be 22-feet-wide; there is no way to provide the requisite 150 feet of frontage along a public right-of-way without resubdividing the entire 124-acre shopping center; and the gas station must be located with its anchor store for employee safety reasons and to provide the one-stop shopping experience that ultimately leads to less traffic. (Exhibit 34)

(18) Francis Silberholz, accepted as an expert in the area of land use planning, prepared a land use analysis of the Application in which he opined that the use satisfies all applicable criteria of the Zoning Ordinance, if the requested variance is approved. (Exhibit 34)

### **Agency Comment**

(19) The Technical Staff recommended approval with conditions. (Exhibits 20 and 25(a)) In doing so it provided the following comment:

The construction of BJ’s Wholesale Club is complete and open to its customers. The proposed gas station will be located in an integrated shopping center,

adjacent to a private driveway. It is meant to serve the members of the discount wholesale club only. The owner has decided to co-locate the gas station with the BJ's store in order to provide a broader range of retail land uses in the shopping center as a convenient one stop shopping option and as part of their marketing and customer service plans. As the entire shopping center was originally planned, particularly Parcel 9 for BJ's Wholesale Club, it did not take the proposed fueling station into consideration; therefore, the gas station does not have the required 150 feet of street frontage rather it only has 117 feet of street frontage. However, the proposed special exception site is connected to a public street (Ritchie Station Court) and is bounded by three internal travel aisles from three sides of the proposed site. The applicant is unable to widen any existing street frontage without re-subdividing the entire site. The Transportation Planning Section, in a memorandum dated November 5, 2010, stated that this plan is acceptable from the standpoint of access and circulation. Staff further supports the applicant's arguments that the internal drive aisles, multiple access routes within the shopping center, and circulation routes will enable vehicles to safely enter and exit the six pumping stations....

(Exhibit 25(a), p. 11)

(20) The Planning Board also recommended approval with two minor conditions. (Exhibit 50, p. 13) It provided the following reasoning in support of its recommendation:

The fundamental purposes of the Zoning Ordinance, as found in Section 27-102, are to protect the health, safety, and welfare of the public and promote compatible relationships between the various types of land. There are no major issues associated with this application that would conflict with the general purposes of this subtitle. The proposed BJ's membership-only gas station not only allows their members to purchase gasoline from their retail outlet at a discounted price, but also provides an extra incentive for members to combine their gasoline purchase trips with their shopping trips to BJ's Warehouse Club and other retail stores located in the shopping center. Also, the proposed gas station will not detract from or impair the health, morals, or welfare of residents in any conceivable way, as it will be located on a pad site entirely within an integrated shopping center....

The gas station is located on a private roadway within an integrated shopping center. Only members of the associated membership store will be allowed to purchase gasoline at this facility. It will not be open to the general public. The majority of the patrons will stop at the gas station in association with a shopping trip to the membership warehouse or nearby stores. Providing a fueling station on a large shopping center will be reasonably accommodating and convenient to BJ's members as well as to the general neighborhood. Additionally, having such a facility as an accessory to BJ's reduces vehicular trips and provides monetary savings to the individual BJ's Warehouse Club members, as well as, to the inhabitants of the county by reducing impacts on traffic, fuel consumption, and air

quality. Therefore, the Planning Board concludes that the approval of the special exception and the variance will not adversely affect the health, safety, and welfare of the residents or workers in the area; rather it will be more beneficial to the community in general.

(Exhibit 50, pp. 12-13)

(21) The State Highway Administration noted no objection to the approval of the request. (Exhibit 10(n))

### **APPLICABLE LAW**

(1) A Gasoline Station is permitted in the C-S-C Zone upon grant of a Special Exception. In order to receive special exception approval, the Applicant must satisfy the provisions of Sections 27-317 and 27-358 of the Prince George's County Zoning Ordinance.

(2) Section 27-317 provides as follows:

- (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 Type 2 Tree Conservation Plan; and
  - (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.
- (b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:
- (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
  - (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-358 provides as follows:

- (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 purposes of the commercial zones, in general, and the C-S-C Zone in particular, found in Sections 27-446 and 27-454 of the Zoning Ordinance:

### **Sec. 27-446. General purposes of Commercial Zones.**

(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.

### **Sec. 27-454. C-S-C Zone (Commercial Shopping Center).**

(a) **Purposes.**

- (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**

(5) 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 rubblefills 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 rubblefill would be to assess whether there would be an actual deficit of capacity. In a case involving liquor licenses, Baltimore County Licensed 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.” I believe 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.

### **Special Exceptions**

(6) In Schultz v. Pritts<sup>2</sup>, 291 Md. 1, 432 A. 2d 1319, 1325 (1981), the Court of Appeals provided the following standard to be applied in the review of a special exception application:

<sup>2</sup> A recent decision by the Court of Appeals, Montgomery County v. Butler, 417 Md. 271 (2010), does not entirely reverse the Schultz decision. The Court did hold in Butler, however, “that, to the extent there is any inconsistency

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 conditions, noted below, are met.

## Variances

(7) A variance can only be granted if it meets the criteria set forth in Section 27-230 (a) of the Zoning Ordinance. That Section provides, in pertinent part, 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.

## CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. The instant Application satisfies the following purposes for the reasons provided:

*To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County*

The use is one that serves the needs of all County residents that rely on the automobile as a means of transportation and who are Costco members.

---

between the special exception standards in the prevailing County Code and the reasoning and holdings of Schultz and its progeny, the County ... was free [to provide differing standards in its legislation].” *Id.*, At 278. There are no differing standards in the Zoning Ordinance; accordingly, Schultz can be cited in this case.

*To implement the General Plan, Area Master Plans, and Functional Master Plans*

The 2002 General Plan placed the property within the Developing Tier. This proposal furthers the General Plan's vision of distinct commercial centers. The District Council recently rezoned the property to the C-S-C Zone, and the requested use is one permitted in said Zone. Accordingly, this purpose is satisfied since the Applicant proposes a commercial use of the subject property.

*To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities*

Development of the subject property in the manner proposed by the Applicant will have no negative impact on the public facilities within the area since adequacy was addressed during subdivision review of the entire site.

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

The Applicant proposes that the site be developed with a Gas Station. The placement of this use in an integrated shopping center will promote the use of the other retail establishments within the Shopping Center. Moreover, there will be adequate landscaping and the new facility will be an aesthetic "fit". This purpose is, therefore, met.

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

The use ensures that a certain number of jobs will be provided and that taxes will be paid into the County's coffers.

Accordingly, the provisions of Section 27-317(a)(1) are met.

(2) The Application satisfies the purposes of the Commercial Zones found in Sections 27- 446 and 27-454 of the Zoning Ordinance since the use is permitted by Special Exception in the Zone and a Gas Station is compatible with the retail uses in the Shopping Center; the use is compatible to the other commercial uses along Ritchie Road; the site is developed in a safe and aesthetically-pleasing manner; and the use accords with the purposes of the General Plan. (Section 27-317(a)(1))

(3) The instant Application only requires the grant of a variance for street frontage. Once the variance is granted, the use can be found to be in conformance with the applicable provisions of the Zoning Ordinance. (Section 27-317 (a)(2))

(4) The use conforms to the Master Plan's vision of distinct commercial centers for the subject property and the General Plan's vision for the Developed Tier. (Section 27-317(a)(3))

(5) The site has been designed in a manner that provides for the safe internal flow of traffic, as well as pedestrian safety. The site is designed in an attractive manner with adequate landscaping. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area. (Section 27-317(a)(4))

(6) The Application, requests the addition of a “members only” Gas Station as an accessory to the “members only” retail store. This will serve those traveling to the retail store and it will be developed in an aesthetically pleasing manner. Therefore, the use will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(7) The proposal is in compliance with an approved Tree Conservation Plan, as discussed *supra*. (Section 27-317(a)(6))

(8) There are no regulated environmental features within the area of the Special Exception. Any on the entire 124-acre site were addressed in the approved Detailed Site Plans. (Section 27-317 (a)(7))

(9) The Special Exception Site Plan, generally meets the requirements of Section 27-358(a)–(c). The topography of the site and abutting lots (for a depth of at least 50 feet) must be provided on the Site Plan. There will be no trash enclosures or exterior vending machines. Architectural renderings and elevations were provided and they demonstrate compatibility with the BJ’s Wholesale Club. The site does not have sufficient frontage along the public road or the easement; however, a variance of 77.61 feet can be granted to remedy that default. The closest school, playground, library or hospital is more than 1,000 feet away. The Site Plan will include notes that there will be no display/rental of cargo trailers, trucks or similar uses and that there will be no storage/junking of wrecked motor vehicles. There will be no repair services offered. All access driveways are at least 30 feet in width and will be defined by curbing. A five-foot wide sidewalk is provided off-site and was approved as part of the Detailed Site Plan approvals. The gasoline pumps and other appliances are more than 25 feet from the streetline.

(10) BJ’s Wholesale Club usually operate in conjunction with a “members only” Gas Station. The needs analysis reveals there to be sufficient excess capacity for the use and the longstanding success of such uses in association with the retail store indicates that the Gas Station addresses the needs of residents and businesses in the County if need is defined as “convenient, useful and appropriate”. Moreover, the use is one often found in or near integrated shopping centers and it should not unduly restrict or upset the balance of land uses in the area. (Section 27-358 (d))

(11) Section 27-358, *supra*, requires that the subject property have at least 150 feet of frontage and direct vehicular access, to a street. If the Special Exception boundaries are revised as suggested on Exhibit 19, Applicant will only require a variance of 72.39

feet the minimum necessary. The requested use, located within an integrated shopping center, can be found to be an extraordinary situation. The shopping center has already been approved and is the subject of several detailed site plans. The co-location of the Gas Station with the wholesale club is a burgeoning trend that offers convenience to its members but also offers more one-stop shopping and, hopefully, less vehicular traffic. Granting this minimal variance under these circumstances does not substantially impair the intent, purpose, or integrity of the Master Plan or General Plan. Denying it would certainly result in undue hardship upon the owner of the property.

### **DISPOSITION**

Special Exception 4680 and a Variance for SE 4680 are Approved, subject to the following conditions:

- (1) The Special Exception Site Plan shall be revised to show the boundaries tentatively penciled in on Exhibit 19, and notes shall be added to include the language set forth in Section 27-358 (a) (3) and (4), and to indicate that there will be no repair services performed. The revised Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for review and approval prior to the issuance of any permits.
- (2) Detailed Site Plan DSP -04080-03 shall be revised administratively by the Urban Design Section as designee of the Planning Board to include the Gas Station.
- (3) Applicant shall replace the Linetec LT430143 "Woodland Red" with exterior insulation and finishing system (EIFS) #105 Suede, identified on the submitted Ritchie Station Marketplace Materials Selection sheet.

[NOTE: The Special Exception Site Plan and Landscape Plan is Exhibit 38.]