



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

PGCPB No. 11-16

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Upper Marlboro, Maryland 20772

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File No. DSDS-662

R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board has reviewed DSDS-662, Fort Washington Shell requesting a departure from Section 27-614(a)(1) of the Zoning Ordinance to reduce the required 40-foot building setback for a main building associated with 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 February 24, 2011, the Prince George's County Planning Board finds:

- A. **Location and Field Inspection:** The property is known as Parcel 109 and consists of approximately 0.399 acres in the C-M and I-1 Zones. The site is located along the west side of Indian head Highway (MD 210) at its intersection with Livingston Road. The current use of the property consists of an auto filling station and a food or beverage store that was approved on February 14, 1992, pursuant to Special Exception Application SE-4040.

The review of current zoning maps and aerial photographs demonstrates that the land area that is located just south of the principal structure on the property is situated in the I-1 Zone. More specifically, it appears that the limits of the I-1 Zone extend approximately 75-feet from the south side (rear) of the main building to the southern property line, with the remainder of the property being located in the C-M Zone. The structures on the property that are associated with the gas station and food and beverage store uses are primarily located in the C-M Zone, while the I-1 Zoned portion of the site consists of an open space area containing a small amount of grass and a few scattered shade trees.

Information derived from the Maryland Department of Assessments and Taxation indicates that the primary structure on the property was constructed in approximately 1959. Nine surface parking spaces are provided on the site that are sized in accordance with the pre-1970's zoning standards. Vehicular access to Livingston Road is provided by two 35±-foot-wide driveway entrances. Two sea containers are encroaching off the eastern edge of the property and appear to be located on land that is owned by the State Highway Administration (SHA). The sea containers are labeled as "To be removed" on the submitted site plan.

A 24-foot high freestanding sign and a propane refilling station are located along the northern edge of the parking compound. The existing freestanding sign is adequately setback from all of the adjacent property lines in accordance with the requirements of the Zoning Ordinance. A small canopy is provided in the center of the property to shelter the two existing pump islands and four gasoline pump dispensers. Both the canopy and the food and beverage store have been recently updated with new Shell signage.

B. Development Data Summary:

	EXISTING	APPROVED
Zone(s)	C-M/I-1	C-M/I-1
Use(s)	Auto Filling Station/Food or Beverage Store	Auto Filling Station/Food or Beverage Store
Acreage	0.399	0.399
Parcel	1	1
Square Footage/GFA	1,318	1,318

C. History:

September 19, 1968—The existing auto filling station was certified as a legal nonconforming use pursuant to Permit 680309-U.

October 20, 1981—1981 *Adopted and Approved Master Plan for Subregion VII, Henson Creek (Planning Areas 76A and 76B) and South Potomac (Planning Area 80)* released recommending that the subject property be incorporated into the grade separated interchange between Livingston Road and Indian Head Highway (MD 210).

June 21, 1982—Special Exception, SE-3340 approved for an auto filling station in the C-2 Zone.

August 4, 1982—Appeal No. 6467 granted by the Board of Zoning Appeals for a variance from the 10-foot-wide landscape strip requirement and from the 25-foot setback requirement for gasoline pumps.

November 18, 1991—Alternative Compliance, AC-91110, was withdrawn by the applicant upon a determination from the Alternative Compliance Committee that the site was not subject to the requirements of the *Prince George's County Landscape Manual*.

February 14, 1992—Special Exception, SE-4040, approved eliminating the two-service bays used for repair services and the conversion of the existing building to a new food or beverage store.

March 4, 2002—Use and Occupancy Permit 5057-2002-U approved for an auto filling station and food and beverage store for South Potomac Texaco.

November 18, 2008—Permit No. 37805-2008-CE approved to replace the existing canopy with a new canopy.

February 3, 2009—Permit No. 1775-2009-S approved for new Shell building and canopy signs.

February 3, 2009—Permit 1778-2009-SG placed on “Hold” for the freestanding sign pending the approval of the subject departure application.

February 5, 2009—Use and Occupancy Permit 1779-2009-U approved for an auto filling station and food and beverage store, and a trade name change from Texaco to Shell.

February 10, 2009—Permit No. 2836-2009-CE approved to replace the existing gas dispensers in kind with new gas dispensers.

- D. **Master Plan Recommendation:** The subject property is located within the State Highway Administration’s (SHA) proposed interchange at MD 210 and Palmer Road/Livingston Road.

The master plan recommends F-11 (Indian Head Highway, MD 210) to be upgraded to a freeway consistent with the State Highway Administration’s MD 210 multimodal study. This recommendation includes interchange designs that are consistent with the approved final environmental impact statement for MD 210. The interchange design appears to affect the subject property. However, the continuation of the existing use will not impair the integrity of the 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area*.

The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* classifies portions of the property in the Commercial Miscellaneous (C-M) Zone and the Light Industrial (I-1) Zone. The SMA includes this area for future application for a Mixed-Use Zone or other appropriate zoning tool for evaluation and approval based on the concepts and guidelines contained in the master plan.

This application is located in the master plan designated Henson Creek Transit Village mixed-use area. However, the subject property is within the SHA’s proposed interchange at MD 210 and Palmer Road/Livingston Road. Because the current use will be removed once the interchange is built, the continuation of the existing use under a different brand will not impair the integrity of the master plan. The application does not propose to expand the current use. The gas station and food and beverage store currently provide convenient shopping for commuters along Indian Head Highway and surrounding neighborhoods until the proposed limited access interchange is constructed.

- E. **Request:** The applicant has requested a departure from Section 27-614(a)(1) of the Zoning Ordinance in order to request relief from the required 40-foot building setback for a main building associated with a freestanding sign. The existing main building is set back 14.86 feet from Indian Head Highway (MD 210) along the east side, and 9.58 feet from Livingston Road along the west side. The applicant is requesting a departure of approximately 26 feet and 31 feet respectively, to allow a freestanding sign on a property where the main building is set back less than 40 feet from the front street line.

F. Surrounding Uses:

North—Indian Head Highway (MD 210), Livingston Road, and Palmer Road Intersection

South—Laundromat and Restaurant in the C-M Zone

East—Indian Head Highway (MD 210) right-of-way

West—Livingston Road right-of-way

G. Sign Requirements:

1. Section 27-614(a)(1) of the Zoning Ordinance requires that in all Commercial and Industrial Zones (except the I-3 and U-L-1 Zones), freestanding signs shall only be located on property where the main building associated with the sign is located at least forty (40) feet behind the front street line. This shall not apply to integrated shopping centers, other commercial centers with three (3) or more businesses served by common and immediate off-street parking and loading facilities, industrial centers, or office building complexes.

The subject property is unable to conform to the requirements of Section 27-614 (a)(1) of the Zoning Ordinance. By definition, this property is considered to be a "Through Lot" because it is a corner lot that has street frontage along three of its four property lines. The main building associated with the freestanding sign is required to be set back at least 40 feet from the front street line. Section 27-107.01(a)(139) of the Zoning Ordinance states that; "In a "Through Lot", all lot lines abutting the streets are "Front Street Lines". Therefore, in this particular instance, the main building associated with the freestanding sign would have to be setback at least 40 feet from all three property lines that abut a street in order to obtain approval of a sign permit for a freestanding sign.

The main building on this property faces north, and the structure is in compliance with the 40-foot setback requirement along the northern property line where the existing freestanding sign is actually located. However, along the west side of the property, the main building is setback only 9.58 feet from the front street line of Livingston Road, and along the east side, the main building is setback only 14.86 feet from the front street line of MD 210. The applicant respectfully requests a departure of 31 feet along the western property line abutting Livingston Road, and a departure of 26 feet along the eastern property line abutting MD 210.

2. Section 27-614(a)(4) of the Zoning Ordinance requires freestanding signs in all Commercial and Industrial Zones (except the I-3 Zone), to be located at least (10) feet behind the street line. Where the street line is situated behind the actual existing street right-of-way line, freestanding on-site signs may be temporarily located within the area between the street line and the existing street right-of-way line (the area of proposed future widening of an existing street), provided that:

(A) The land area involved has not been, and is not in the process of being, acquired for street purposes;

The entire site is located within the master plan right-of-way for the planned interchange at MD 210 and Palmer Road/Livingston Road. The construction of the Livingston Road overpass could require the eventual demolition of the gas station (although detailed designs for this interchange have not been completed to date, and the station appears to be outside of the footprints of planned roadways and structures). There does not appear to be any means of avoidance of the right-of-way impact. The underlying special exception was approved and the gas station was permitted for construction prior to the approval of the above-cited master plan.

The 2006 *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* recommends F-11 (Indian Head Highway, MD 210) to be upgraded to a freeway consistent with the State Highway Administration's MD 210 multimodal study. This recommendation includes interchange designs that are consistent with the approved final environmental impact statement for MD 210. The availability of a selected alternative is an indication that the interchange configuration has had extensive environmental and public review, along with State and Federal approval. While the status of property acquisition along MD 210 must be confirmed with the Maryland State Highway Administration, there is no indication that design has begun south of the Kerby Hill Road intersection, meaning that acquisition in this area has not begun. The planned interchange is not funded for design, right-of-way acquisition, or construction at this time, and there is no timetable for the start of these processes.

(B) The sign is located at least ten (10) feet behind the existing street right-of-way line; and

The freestanding sign is setback 28.62 feet from the existing street right-of-way line of Livingston Road along the western property line, 10.75 feet from the existing street right-of-way line of MD 210 along the northern property line, and 15.46 feet from the existing street right-of-way line of MD 210 along the eastern property line. Therefore, the location of the existing freestanding sign is in compliance with the setback requirements provided in Section 27-614(a)(4)(B) of the Zoning Ordinance.

(C) A written agreement between the owner and the Department of Environmental Resources assures that the sign will be removed, at the owner's expense, at the time of acquisition of that area for street purposes.

Prior to the issuance of a sign permit, this written agreement must be consummated.

3. Section 27-614(a)(6) of the Zoning Ordinance states that gas station price signs shall be affixed to the same freestanding structure that supports the sign containing other advertising matter. A freestanding price sign erected in accordance with this Section shall

not be permitted on the premises if other price signs erected in accordance with Section 27-623 are present on the premises.

The gas station price signs are proposed to be affixed to the freestanding sign. No other price signs are proposed on the site.

4. Section 27-614(b)(1) of the Zoning Ordinance states that the maximum height for a freestanding sign in the C-M and I-1 Zones is 25 feet when measured from the finished grade at the base of the sign to the top of the sign.

The existing freestanding sign is 24 feet in height, and is therefore, in compliance with Section 27-614(b)(1) of the Zoning Ordinance. No changes to the height or location of the existing sign are being proposed by the applicant at this time.

5. Section 27-614(c)(3)(B) of the Zoning Ordinance states that in all Commercial Zones (except the C-O Zone) and all Industrial Zones (except the I-3 Zone), the area of the sign shall be not more than one (1) square foot for each four (4) lineal feet of street frontage, to a maximum of two hundred (200) square feet for each sign, if the business is not located in an integrated shopping center, other commercial center with three (3) or more businesses served by common and immediate off-street parking and loading facilities, industrial center, or office building complex. The street frontage shall be measured on the property occupied by the use associated with the sign.

Based on the property's linear feet of street frontage, the maximum sign area allowed for the proposed freestanding sign is approximately 175.02 square feet. The applicant proposes a sign area that consists of approximately 170 square feet. Therefore, the proposed freestanding sign is in compliance with Section 27-614(c)(3)(B) of the Zoning Ordinance.

6. Section 27-614(c)(6) of the Zoning Ordinance states that freestanding gas station price signs shall meet the following standards:
 - (A) **If the sign reflects the price of only leaded regular and unleaded regular gasoline, it shall not exceed twenty-five (25) square feet in area, except as provided for in subparagraph (C), below;**
 - (B) **If the sign reflects the price of three (3) or more types of gasoline, it shall not exceed fifty (50) square feet in area, except as provided for in subparagraph (C), below;**
 - (C) **Any unused freestanding sign area authorized under other provisions of this Section may be added to the permissible sign area for gasoline prices;**

- (D) The total combined area of freestanding gasoline price and other on-site signs on one (1) support structure shall not exceed two hundred (200) square feet.**

The applicant proposes a total sign area that consists of 170 square feet, which includes the gas station price signs. Therefore, the freestanding gas station price signs are in compliance with Section 27-614(c)(6) of the Zoning Ordinance.

7. Section 27-589(a) of the Zoning Ordinance contains the following purposes for regulating signs:
- (1) To promote the health, safety, and welfare of the present and future inhabitants of the Regional District;**
 - (2) To encourage and protect the appropriate use of land, buildings, and structures;**
 - (3) To regulate unsightly and detrimental signs which could depreciate the value of property and discourage quality development in the Regional District;**
 - (4) To regulate signs that are a hazard to safe motor vehicle operation;**
 - (5) To eliminate structurally unsafe signs that endanger a building, structure, or the public;**
 - (6) To prevent the proliferation of signs that could detract from the scenic qualities of the landscape or the attractiveness of development; and**
 - (7) To control the location and size of signs, so as to provide for adequate identification and advertisement in a manner that is compatible with land uses in the Regional District.**

The applicant is proposing to update the existing freestanding sign on the property in order to reflect a trade name change from Texaco to Shell. No changes are being proposed to the height or location of the existing freestanding sign. The proposed sign is not excessive in size; it will be located so as not to interfere with adequate sight lines or otherwise pose a hazard to motorists. The sign will provide for adequate identification and advertisement, and will be compatible with the commercial use of the property and with the overall streetscape along Livingston Road.

H. Required Findings:

Section 27-239.01(b)(8)(A) of the Zoning Ordinance provides that in order for the Planning Board to grant the departure, it shall make the following findings:

(i) The purposes of this Subtitle will be equally well or better served by the applicant's proposal.

In general, the purposes of the sign ordinance are to regulate unsightly and hazardous signs, to provide adequate identification and advertisement, to promote the general welfare of the residents of the county, and to foster the appropriate use of land, buildings and structures. Although the building setback from the front street line is less than the required setback along two of the site's three property lines that abut a public right-of-way, the proposed sign is in an appropriate location and will not appear overwhelming from the street. The existing freestanding sign is proposed to remain at its current location on the property and the structure is setback a minimum of 10 feet from all three property lines that abut a public street.

Although, the main building on this property is setback less than the required 40 feet from the front street line along the east and western property lines, the main building is in compliance with the 40-foot setback requirement along the northern property line where the freestanding sign is actually located. The location, size, and design of the freestanding sign is adequate to provide identification and advertisement for the gas station and food and beverage store, and the sign is in full compliance with the height and sign area restrictions provided in Part 12 of the Zoning Ordinance. Therefore, the purposes of this Subtitle will be equally well or better served by the applicant's proposal.

(ii) The departure is the minimum necessary, given the specific circumstances of the request.

The freestanding sign is in total compliance with Part 12 of the Zoning Ordinance for the purposes of setbacks, sign height and sign area. The departure request is for the sole purpose of requesting relief from the requirements of Section 27-614(a)(1) of the Zoning Ordinance, which requires the main building associated with the freestanding sign to be setback 40 feet from the front street line. Since the departure request pertains to the existing location of the main building on the property and its proximity to the front street lines, the applicant has no ability to further reduce the departure request beyond what existing conditions dictate. Therefore, the departure is the minimum necessary, given the specific circumstances of the request.

(iii) The departure is necessary in order to alleviate circumstances which are unique to the site or prevalent in areas of the County developed prior to November 29, 1949.

The freestanding sign has existed on this property for several decades, and the subject sign was properly reflected on prior special exception site plans that were approved for the property. However, a sign departure was not requested or evaluated at the time of special exception.

Information derived from the Maryland Department of Assessments and Taxation indicates that the primary structure on the property was constructed in approximately 1959. Due to the age of the existing building and the unique location of the property which abuts three public rights-of-way,

the existing building is required to be setback 40 feet from the front street line along three of the site's four property lines in order to obtain approval of a sign permit for a freestanding sign.

The configuration of the parcel itself is also fairly unique as the total width of the property where the main building is located is less than 75 feet wide. With a 40-foot setback being required from Livingston Road on the west side, and a 40-foot setback being required from MD 210 on the east side, a combined setback of 80 feet would be required on a property that is less than 75 feet in total width. Therefore, the departure is necessary in order to alleviate circumstances which are unique to the site.

(iv) The departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.

Gas stations are required to have pricing signage in accordance with Section 27-594(a)(1) of the Zoning Ordinance. A freestanding sign is necessary to further provide adequate identification and advertisement for the use. There are existing commercial uses along Livingston Road and MD 210, most of which have freestanding signs. A freestanding sign has existing on the site for many years, and the applicant proposes no changes to the existing height or location of the freestanding sign. The applicant wishes to update the existing freestanding sign in order to reflect the trade name change from Texaco to Shell, and the approval of the subject departure application is necessary in order for the applicant to obtain a sign permit to perform the work.

The proposed sign will be compatible with other existing freestanding signs within the general area, and the overall design of the sign will be compatible with the commercial use of the property. The sign will not attract undue attention, but will provide for adequate identification and advertisement, and will be compatible with the overall streetscape. In addition, the sign will help identify the entrance to the gas station ensuring the safety of motorists entering and exiting the site. The sign will be in full compliance with the sign area and height restrictions provided in the Zoning Ordinance, and the setback for the sign further ensures that it will not appear overwhelming from the street. The site is surrounded by public rights-of-way along the north, east and west property lines, and abuts other commercial uses along the southern property line. There are no nearby residential subdivisions that would be visually impacted by the freestanding sign. For the reasons stated above, the departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood.

- I. **Referral**—None of the referral responses noted any objection to the departure request.
- J. **At the Public Hearing**—A supplemental letter from the Zoning Section dated February 15, 2011 was provided to the Planning Board along with the staff report. The letter recommended that a third condition be added to the staff report to address the illegal signs that are present on the site. At the public hearing for this application on February 24, 2011, the Planning Board agreed with the Zoning Section's recommendation to add the additional condition. The condition, which is labeled as Condition 3, has been added accordingly.

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 site plan;
 - a. Update General Note 5 to demonstrate that the property is split-zoned, with the northern portion of the property being located in the C-M Zone and the southern portion of the property being located in the I-1 Zone. The zoning line that separates the two zones shall be reflected on the site plan.
 - b. Provide freestanding sign calculations that provide the total square footage of signage allowed based on the linear feet of street frontage in accordance with Section 27-614(c)(3)(B) of the Zoning Ordinance, and remove the note on the plan which incorrectly indicates that the maximum sign area for this property is 200 square feet.
 - c. Revise the parking schedule to remove the required parking for employees which is only applicable when a kiosk is present on the site. Remove the joint use reduction from the parking schedule and revise the schedule to indicate that a total of 9 parking spaces are required to serve the property.
 - d. Revise the zoning designation of the abutting property to the south (Parcel 110) from the I-1 Zone to the C-M Zone.
2. Prior to the issuance of a sign permit for the freestanding sign, a written agreement between the owner and the Department of Environmental Resources (DER) shall be provided which assures that the sign will be removed at the owner's expense at the time of acquisition of that area for street purposes.
3. Prior to the issuance of a sign permit for the freestanding sign, the applicant shall remove all signs on the premises that do not have a validly issued sign permit from the Department of Environmental Resources (DER).

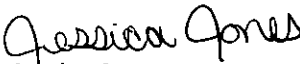
BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council for Prince George's County, Maryland within thirty (30) days of the final notice of the Planning Board's decision.

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This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Squire, seconded by Commissioner Clark, with Commissioners Squire, Clark, Cavitt and Parker voting in favor of the motion, and with Commissioner Vaughns absent at its regular meeting held on Thursday, February 24, 2011, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 17th day of March 2011.

Patricia Colihan Barney
Executive Director

By 
Jessica Jones
Acting Planning Board Administrator

PCB:JJ:JF:arj

APPROVED AS TO LEGAL SUFFICIENCY.


M-NCP/C Legal Department

Date 3/7/11