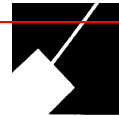


Maryland-National Capital Park and Planning Commission
 Prince George's County Planning Department
 Development Review Division
 301-952-3530



Comment [COMMENT1]: WHEN INSERTING
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ZONING MAP AMENDMENT APPLICATION NO. A-9946 SPECIAL EXCEPTION APPLICATION NO. SE-4397

Application	General Data
Project Name Apple Hill Walk	Date Accepted 6/13/00
	Planning Board Action Limit N/A
Location On the northwest corner of Laurel-Bowie Road and South Laurel Drive.	ZHE Hearing Date N/A
	Plan Acreage A-9946: 3.31 ∇ acres SE-4397: 1.32 ∇ acres
	Zone C-O
Applicant/Address Pumpkin Hill, L.C. Properties 12165 Darnestown Road Gaithersburg, MD. 20878 ATTN: Mr. Kenneth Kasnett	Dwelling Units N/A
	Square Footage N/A
	Planning Area 62
	Council District 01
	Municipality N/A
	200-Scale Base Map 215NE9L

Purpose of Application	Notice Dates
A-9946: Rezoning from the C-O Zone to the C-M Zone SE-4397: Food and Beverage Store in the C-M Zone	Adjoining Property Owners 11/02/00 (CB-15-1998)
	Previous Parties of Record 11/07/00 (CB-13-1997)
	Sign(s) Posted on Site N/A
	Variance(s): Adjoining Property Owners N/A

Staff Recommendation			Staff Reviewer
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

February 7, 2001

TECHNICAL STAFF REPORT:

TO: The Prince Georges County Planning Board
The Prince Georges County District Council

VIA: Arie Stouten, Zoning Supervisor

FROM: Tom Lockard, Senior Planner

SUBJECT: **Zoning Application No. A-9946**
Special Exception Application No. SE-4397

REQUEST: **A-9946: Rezoning from C-O to C-M**
SE-4397: Food and Beverage Store in the C-M Zone

RECOMMENDATION: **A-9946: Denial**
SE-4397: Denial

NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3280.

FINDINGS:

- A. Location and Field Inspection: The subject property is located on the northwest corner of Laurel-Bowie Road (MD 197) and South Laurel Drive. The site is made up of two parcels, and is generally rectangular in shape. It is currently undeveloped.
- B. History: This site has been the subject of two previous special exception applications, both for gas stations. The first, SE-2399 was approved in the early 1970s but never built. The second, SE-39 96, was dismissed in 1990 after the site was placed in the C-O Zone. The subject property was placed in the C-O Zone by the *Sectional Map Amendment (SMA) for Subregion I* which was approved in 1990.
- C. Master Plan Recommendation: The 1990 *Master Plan for Subregion I* recommends a retail-commercial use for the subject property. In the associated SMA, after a reassessment of retail-commercial needs for the area, the site was placed in the C-O Zone.
- D. Request: The applicant requests a reclassification from the C-O Zone to the C-M Zone. If successful in having the property rezoned, the applicant requests to place a food and beverage store on the site, to be built in conjunction with a gas station and car wash, which are permitted uses in the C-M Zone.
- E. Neighborhood and Surrounding Uses: The site is surrounded by the following uses:

North - Right-of-Way for the Baltimore Washington Parkway/MD 197
interchange and a single-family residence in the C-O Zone.

East - Across MD 197 are single-family residences in the R-R Zone and a flower shop in the C-A Zone.

South and West - Garden apartments (The Evergreens, Villages of Montpelier) in the R-18 Zone.

The neighborhood is defined by the following boundaries:

- North - Canadian Way
- East - Patuxent Wildlife Research Center
- South - PEPCO Right-of-Way
- West - Baltimore-Washington Parkway

The surrounding neighborhood is suburban in character and developed with a mixture of single-family residences, townhouses and apartment complexes. Commercial uses, both retail and office are found 1,000⁺ feet to the north at the intersection of MD 197 and Mallard Drive. This existing commercial area includes the Pheasant Run Shopping Center, a 7-Eleven, a small office building and a gas station.

F. Zoning Requirements:

Section 27-157(a) of the Zoning Ordinance provides that no application shall be granted without the applicant proving that either:

(A) There has been a substantial change in the character of the neighborhood; or

(B) Either

- (i) There was a mistake in the original zoning for property which has never been the subject of an adopted Sectional Map Amendment, or**
- (ii) There was a mistake in the current Sectional Map Amendment and such mistake occurred not more than six years prior to the filing of an application for the proposed zoning map amendment providing, however, that for those properties for which the current Sectional Map Amendment has been adopted prior to 1990 such mistake shall have occurred not more than 10 years prior to the filing of an application for the proposed zoning map amendment.**

G. Applicant's Position: The applicant is precluded from arguing mistake since the 1990 SMA was adopted more than six years ago. Therefore, the applicant argues change in the character of the neighborhood:

Change: The 1990 SMA placed the subject property and 35⁺ acres around it in the C-O Zone, responding to an analysis undertaken as part of the 1990 Master Plan which showed an excess of retail commercial zoning in the area. Since that time, numerous changes have taken place which have substantially changed the character of the neighborhood, including several rezonings and road improvements.

The applicant refers to two rezonings in particular:

A-9885/9886

In 1994, the District Council rezoned a site in the northern section of the neighborhood consisting of two parcels (Coscan-Adler Property) totaling 26 $\frac{1}{2}$ acres from the I-3 (planned industrial park) Zone to the R-55 (suburban residential) Zone, based on a mistake argument. The Coscan-Adler Property had been placed in the I-3 Zone by the 1990 SMA, following the recommendation of the 1990 Master Plan. The Council found, among other things, that the site was improperly placed in an industrial zone due to the fact that trucks could not access the site from the Baltimore-Washington Parkway. The R-55 Zone was found to be the most reasonable residential zone for the site.

A-9906

In 1997, the District Council rezoned 12 $\frac{1}{2}$ acres across MD 197 north of the subject property from the C-O Zone to the R-55 Zone based upon a change in the character of the neighborhood. In this case, the Zoning Hearing Examiner and District Council found that the change had been brought about as a result of the reclassification of the Coscan-Adler Property from a planned industrial park use to a residential subdivision.

The applicant feels that the improvements to the Baltimore-Washington Parkway also reflect a change in the character of the neighborhood. According to the applicant, the 1990 Master Plan and SMA did contemplate these improvements, it showed them to be farther to the north. The Master Plan contemplated the taking of 3.86 $\frac{1}{2}$ acres for the improvement, but because of the shift to the south, 13.06 $\frac{1}{2}$ acres were taken, further reducing the amount of C-O zoning in the area.

H. **Staff's Analysis:**

Change: Once in the last decade, the District Council found a substantial change occurred in the character of the neighborhood sufficient to approve a piecemeal zoning request. Unfortunately for the applicant, this change was from commercial/industrial uses to residential uses. The applicant argues that these new residential areas need to be served by uses such as the ones they are proposing to provide.

This argument is not supported by the needs analysis provided by the applicant. This area continues to be adequately served by existing retail-commercial uses, as was noted in the 1990 Master Plan. The relocation of the road improvements to the interchange at the Baltimore-Washington Parkway and MD 197 does not constitute a substantial change to the character of the neighborhood. The fact that it was clearly anticipated by the 1990 Master Plan and SMA precludes it from serious consideration as a substantial change. The Master Plan Map is a guide for future development, not a construction document. Staff is unable to

find any significant difference between the interchange improvements shown on the Master Plan Map and the resulting interchange, at least not so significant a difference as to find a substantial change in the character of the neighborhood towards service-commercial development.

I. Conformance with the Purposes of the Zone Requested: The purposes of the C-M Zone are contained in Section 27-459 of the Zoning Ordinance:

- (a) **To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas;**
- (b) **To provide these locations, where possible, on nonresidential streets; and**
- (c) **To provide for concentrations of these uses which are relatively far apart.**

Finding: Development of the subject property in the C-M Zone would not be consistent with the District Council's vision of an office-commercial development with easy access to major roadways. While it is true that the market for office development has declined in the past decade, it could just as easily recover. One of the reasons this area has not developed in offices was the poor connection with the Baltimore-Washington Parkway, which has now been improved in a multi-million dollar project.

Supposing the applicant was successful in having the site rezoned, the proposed food and beverage store is not the usual service-commercial use expected in the C-M Zone. The 1990 Master Plan contains the following guideline regarding retail activities in service-commercial areas:

- The provision of typical retail shopping center facilities should be discouraged in areas designated for service - commercial uses because of the intent to locate service - commercial activities together at appropriate locations apart from activity centers. • (1990 Master Plan, p.112)

It would place such uses on a residential street, South Laurel Drive, in direct contradiction to the purposes of the Zone.

Furthermore, in a memorandum dated November 17, 2000, the Community Planning Division Points out that the *Master Plan for Subregion I* is specific in designating areas within the subregion for service-commercial uses as follows:

■ Service-Commercial Areas

Service-commercial uses normally are not found within a retail shopping center. This plan supports that practice. However, it is important that such activities not be scattered haphazardly throughout the subregion. Accordingly, several areas are specifically designated for service-commercial uses.

1. Contee Road/Route 1 Intersection and Environs: This area already contains three automobile dealerships, with an additional one planned on a parcel within the City of Laurel.
2. Route 1 North of Cherry Lane: The frontage of Route 1 has been extensively developed in service-commercial uses.
3. Oakcrest Route 1 Frontage: Sections are designated for service-commercial uses.
4. Beltsville Route 1 Frontage: A section is designated for service-commercial uses.
5. Industrial Areas: A number of service-commercial uses are allowed on land in the I-1 and I-2 Zones.●

The subject property is not one of the plan's designated service-commercial areas. Instead, the C-M Zone at this location would appear to violate the plan principle ■ that such activities not be scattered haphazardly throughout the subregion.●

CONCLUSION:

The applicant has not met their burden of proof in this application. While there has been substantial change in the character of the neighborhood since the adoption of the 1990 SMA, that change does not support placing the subject property in the C-M Zone. The C-M Zone is a ■ Heavy Commercial● zone with a multitude of permitted uses which would be a questionable choice for the entrance to a major residential complex, as is found here.

In addition, staff finds:

1. The requested zone is not in accordance with the approved Master Plan and SMA.

2. The request is for a single, small parcel, in direct conflict with one purpose of the C-M Zone ~~to~~ provide for concentrations of these uses.
3. Approval of the requested zone would benefit the applicant without there being a corresponding benefit to the neighborhood in general.

In our estimation, there is no other commercial zoning category that would be more appropriate for the site. There is no need for additional retail-commercial space in this area, a fact that has been recognized since the 1990 Master Plan. This fact is further amplified by the inability of the Pheasant Run Shopping Center to attract retail-commercial uses; two of its units are occupied by churches and another by a day-labor agency. The amount of new residential development that has come about as a result of the rezonings does not change this fact. Based on the changes which have taken place in the neighborhood, the supportable change (if any) would be from the C-O Zone to the R-55 Zone, but the site's location between two major roadways makes this choice dubious at best. Therefore, staff recommends DENIAL of ZMA A-9946.

J. Specific Special Exception Requirements -Food and Beverage Store (Section 27-355):

(a) **A food or beverage store may be permitted, subject to the following:**

1. **The applicant shall show a reasonable need for the use in the neighborhood;**

Finding: The term ~~need~~ in a special exception case has been determined to mean ~~expedient~~, reasonably convenient and useful to the public. This is a less onerous finding than when an applicant must show a use to be ~~necessary~~, which carries the burden of showing an actual deficit exists which can be filled by the requested use.

The applicant has submitted a needs analysis for the proposed food and beverage store. According to a referral reply sent by the Information Center (M-NCPPC), the analysis does not show a need for the use in this location. The applicant uses a 1.5 mile market area for the proposed use which is too large and ignores the Baltimore-Washington Parkway as a trade boundary. It is unreasonable to believe that persons living on the north side of the Parkway, where there are at least four convenience stores and mini-marts, will drive to this convenience store. Even if they were likely to drive to the southeast side to shop for convenience goods, they would first have to purposefully by-pass the closer 7-Eleven located 1,000 feet north of the subject property in the Pheasant Run Shopping Center.

In addition, the referral points out that the applicant promulgates a 3,000 person per food and beverage store ratio, which we assume they have obtained from some industry source. If this is correct, the population in the neighborhood identified by the applicant in this case is not large enough to justify an additional food and beverage store. The neighborhood currently contains 4,200 people being adequately served by the existing convenience store.

While the applicant need not show an actual deficit in food and beverage stores, they must show that the proposed use would be expedient, reasonably convenient and useful to the public in the subject neighborhood. Towards this end, they have established a trade area which exceeds the reasonable boundaries, taking in substantial areas northwest of the Parkway which are served by their own convenience stores. Is there a reasonable need in the subject neighborhood for a convenience store? Undoubtedly so. Would a store at this location be expedient, reasonably convenient and useful to the public? Probably. Would it be redundant given the fact that there is a long-existing 7-Eleven that is meeting the need a thousand feet away? We think so. Unfortunately for the applicant, there is already a convenience store in this neighborhood that is expedient, reasonably convenient and useful to the public. Allowing for a proliferation of such uses in a neighborhood is not sound planning judgment.

2. **The size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;**

Finding: A 3,438 Sq. St. food and beverage store at this location would be easily accessible for the residents of The Evergreens and the Villages of Montpelier apartment complexes. However, as stated earlier, there is no need for an additional food and beverage store in this neighborhood.

3. **The proposed use shall not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses;**

Finding: The food and beverage store, if approved, would result in additional retail-commercial uses in an area that has long been recognized as having an overabundance of such uses. This retail use would be in the C-M Zone, a service-commercial zone which was created to allow for uses that may be ■disruptive■ in retail-commercial areas. In addition, it must be noted that the applicant is requesting C-M zoning for 3.31 ∇ acres, of which the subject food and beverage store, gas station and car wash would take up 1.32 ∇ acres. This would leave almost two acres of undeveloped land which could then be used for any of the uses permitted in the C-M Zone, including numerous auto-related uses and other heavy-commercial uses that would be inappropriate at the entrance to a residential neighborhood and next to undeveloped land zoned for commercial-office development.

4. **In the I-1 and I-2 Zones, the proposed use shall be located in an area which is (or will be) developed with a concentration of industrial or office uses;**

Finding: The site, if rezoned pursuant to A-9946, would be in the C-M Zone. Thus, this section is not applicable to this request.

5. **The retail sale of alcoholic beverages from a food or beverage store approved in accordance with this section is prohibited; except that the District Council**

may permit an existing use to be relocated from one C-M zoned lot to another within an urban renewal area established pursuant to the Federal Housing Act of 1949, where such use legally existed on the lot prior to its classification in the C-M Zone and is not inconsistent with the established urban renewal plan for the area in which it is located.

Finding: The applicant does not propose the sale of alcoholic beverages.

K. Parking and Loading Requirements: Parking and loading for the site breaks down as follows:

<u>USE</u>	<u>SCHEDULE</u>	<u>SPACES REQUIRED</u>
Gas Station/Food and Beverage Store (3,925 s.f.) w/ 2 employees	1/employee +1/150 s.f. up to 3,000 s.f. +1/200 s.f. additional	27
Car Wash (1,368 s.f.)	1/500 s.f.	3
TOTAL PARKING REQUIRED		30
TOTAL PARKING PROVIDED		30
TOTAL LOADING REQUIRED	1/2,000 to 10,000 s.f. GLA	1
TOTAL LOADING PROVIDED		1

The applicant has provided the correct amount of parking and loading to serve the proposed uses. However, General Note 18 as shown on the site plan is incorrect, showing no loading space as required (although one is provided). Note 18 would need to be revised if this application is approved. The applicant must also show the method by which compact parking spaces are to be identified in the field.

L. Landscape Manual Requirements: The landscape plan submitted with the application appears to show compliance with the requirements of the *Landscape Manual*. However, the following revisions must be made if the application is approved:

1. If bufferyard ■C• adjoins a compatible use, a five-foot-wide perimeter landscaped strip needs to be provided.
2. A plant schedule must be provided to demonstrate compliance with Section 4.3(b) of the *Landscape Manual*.
3. A detail for the dumpster screening material must be provided.

4. The site plan shows the site to adjoin the South Laurel Apartments to the west. However, the corresponding bufferyard schedule notes a commercial use to the west. The applicant must revise the site plan to show buffering in accordance with the *Landscape Manual*.

M. Zone Standards: The subject development proposal meets the standards for development in the requested C-M Zone.

N. Sign Regulations: One sign is shown on the site plan. It meets the setback, size and height requirements of Part 12 (Sign Regulations) of the Zoning Ordinance.

O. Other Issues:

1. The gas station component of this proposal is required to receive Detailed Site Plan approval pursuant to Section 27-461(1)(b). The proposed gas station must be in accordance with Sections 27-358(a)(1), (2), (4), (5), (6), (7), (8), (9) and (10). Such approval must be obtained prior to permit issuance.
2. Although there is no limit on the height of buildings in the C-M Zone, the site plan must reflect the height of all structures shown thereon, particularly the gas station/food and beverage store and the car wash.

P. 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 purposes of this Subtitle.

Finding: The purposes of the Zoning Ordinance are many and varied, but they generally seek to protect and promote the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County. This is accomplished by promoting beneficial land use relationships, thus minimizing adverse impacts on adjoining properties. This proposal for a food and beverage store does not promote these purposes. It is located in a neighborhood which is already adequately served by retail-commercial and convenience stores. In fact, given that the Pheasant Run Shopping Center is unable to attract retail-commercial uses, it could be argued that the area is over-served by such uses.

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle.

Finding: Presuming the site were rezoned, with minor amendments to the site plan the proposal conforms with the requirements and regulations of the Zoning Ordinance.

- (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 Map Plan, the General Plan.**

Finding: The proposed development of a food and beverage store would actually conform to the Master Plan's recommendation for retail-commercial use. However, it conflicts with the District Council's adaption of the C-O Zone which prohibits most retail uses.

- (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.**

Finding: Special exception uses are deemed compatible in the specific zone they are allowed, absent site-specific evidence to the contrary. In the subject case, we have a proposal for a neighborhood which is already adequately served by the type of use proposed. Further saturation of the general neighborhood with superfluous retail-commercial uses could erode the existing retail-commercial base and thereby, adversely affect the health, safety and welfare of area residents and be detrimental to the use and development of other properties within the neighborhood.

- (6) **The proposed site plan is in conformance with an approved Tree Conservation Plan.**

Finding: The site is exempt from this requirement. A letter of exemption, dated May 11, 2000, was issued because the proposed development does not have 10,000 square feet of woodland, and the site does not have a previously approved Tree Conservation Plan.

CONCLUSION:

The proposed use and site plan are not in harmony with the purposes of the Zoning Ordinance. Likewise, the site plan does not conform to all requirements. Also, the proposed use would adversely affect the health, safety and welfare of area residents, and it will be detrimental to the use and development of other properties in the neighborhood. The applicant has not met their burden of proof in this case. Even if they had, the fact that staff is recommending denial of the companion zoning map amendment compels us to recommend DENIAL of SE-4397.