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## Special Exception Alternative Compliance

**SE-4626**  
**AC-11010**

Application	General Data	
<b>Project Name:</b> Jock's Liquor  <b>Location:</b> Northeast side of Eastern Avenue, southeast of Chapelwood Lane and north of Sheriff Road  <b>Applicant/Address:</b> Ben K. Han 24006 Dale Brook Court Gambrills, MD 21054  <b>Property Owner:</b> Ben K. Han 24006 Dale Brook Court Gambrills, MD 21054	Planning Board Hearing Date:	06/30/11
	Staff Report Date:	06/14/11
	Date Accepted:	06/18/10
	Planning Board Action Limit:	N/A
	Plan Acreage:	0.2936
	Zone:	C-O
	Gross Floor Area:	2,760 sq. ft.
	Lots:	1
	Parcels:	0
	Planning Area:	72
	Tier:	Developed
	Council District:	05
	Election District	18
	Municipality:	N/A
	200-Scale Base Map:	202NE05

Purpose of Application	Notice Dates	
<b>SE-4626:</b> Enlargement of a certified nonconforming use in the C-O Zone.  <b>AC-11010:</b> Alternative Compliance from Sections 4.2 (Commercial Landscaped Strip) and 4.7 (Buffering Incompatible Uses) of the 2010 <i>Prince George's County Landscape Manual</i> .	Informational Mailing	02/03/09
	Acceptance Mailing:	06/10/10
	Sign Posting Deadline:	N/A

<b>Staff Recommendation</b>		<b>Staff Reviewer:</b> Tom Lockard <b>Phone Number:</b> 301-952-3410 <b>E-mail:</b> <a href="mailto:Thomas.lockard@ppd.mncppc.org">Thomas.lockard@ppd.mncppc.org</a>	
<b>APPROVAL</b>	<b>APPROVAL WITH CONDITIONS</b>	<b>DISAPPROVAL</b>	<b>DISCUSSION</b>
	X		

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

PRINCE GEORGE'S COUNTY PLANNING BOARD

**TECHNICAL STAFF REPORT:**

TO: The Prince George's County Planning Board  
The Prince George's County District Council

VIA: Jimi Jones, Zoning Supervisor

FROM: Tom Lockard, Planner Coordinator

SUBJECT: **Special Exception Application No. SE-4626**  
**Alternative Compliance Application No. AC-11010**  
**Jock's Liquors**

REQUEST: **SE-4626:** Enlargement of a Certified Nonconforming Liquor Store in the C-O Zone in accordance with Sections 27-384 and 27-317 of the Zoning Ordinance.

**AC-11010:** Alternative Compliance from Section 4.7 (Buffering Incompatible Uses) of the Landscape Manual along the eastern and northern property lines and Section 4.2 (Commercial Landscaped Strip) requirement for a continuous 10-foot wide strip along the road frontages.

RECOMMENDATION: **SE-4626: Approval with conditions**  
**AC-11010: Approval with conditions**

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The Planning Board has scheduled this application to be reviewed on the agenda date of June 30, 2011. The Planning Board also encourages all interested persons to request to become a person of record for this application.

Requests to become a person of record should be made in writing and addressed to The Maryland National Capital Park and Planning Commission, Development Review Division, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. Please call 301-952-3530 for additional information.

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## FINDINGS:

- A. **Location and Field Inspection:** The subject property, known as 1005 Eastern Avenue, is located on the northeast side of Eastern Avenue between Chapelwood Lane and Sheriff Road. The property is zoned C-O and is nearly triangular in shape, coming to a point at the intersection of Eastern Avenue and Sheriff Road. There is an existing one-story block and frame liquor store and associated parking on the property. Parking on the site is undefined across a wide expanse of asphalt and broken concrete. The store was certified as a nonconforming use by the Planning Board on October 9, 2008, via CNU-5873-2006. The existing building is poorly maintained and appears to be of questionable structural integrity. Loitering is evident on the subject property and other nearby properties.

- B. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	C-O	C-O
Use(s)	Liquor Store	Liquor Store Office
GFA	1,024 sq. ft.	2,530 sq. ft.
Acreage	0.29 acres	0.29 acres

- C. **History:** The liquor store on this property has operated since 1952. At that time, the site was classified in the C-A (Commercial-Ancillary) Zone which allowed the use by right. The 1993 *Approved Master Plan and Sectional Map Amendment for Landover and Vicinity (Planning Area 72)* reclassified the site to the C-O Zone, which does not allow liquor stores. Thus, the use became nonconforming in 1993 when the site was rezoned through the sectional map amendment (SMA). The Planning Board certified the store as a legal nonconforming use on October 9, 2008.
- D. **Master Plan Recommendation:** The 2010 *Approved Subregion 4 Master Plan and Adopted Sectional Map Amendment (SMA)* recommends multilevel commercial/mixed uses for the subject property. The sectional map amendment retained the subject property to the C-O Zone, while placing the properties to the north, east and southeast along the Eastern Avenue/Sheriff Road Gateway in the M-U-I (Mixed Use-Infill) Zone in a D-D-O-Z (Development District Overlay Zone). The DDOZ contains very specific design criteria and land use recommendations for the M-U-I-zoned properties, encouraging the redevelopment of the area with a mix of use types. While the subject property is not covered by the DDOZ, the applicant's proposal does implement the plan's strategy for redevelopment of the Sheriff Road and Eastern Avenue parcels for multilevel commercial/mixed-use development. The applicant's proposal does not promote the vision of consistent commercial development along a build-to line with parking in the rear. However, given the type of use proposed, the proximity of residences to the rear and the past loitering problems near the site, parking in the rear of the store would not seem advisable.

The 2002 *Prince George's County Approved General Plan* shows 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.

E. **Request:**

**SE-4626**—The applicant seeks approval of a special exception to raze the existing liquor store and redevelop the site with a new, larger liquor store with a separate office space. The site will also be improved through the addition of striped parking, heavy landscaping, fencing and a retaining wall.

**AC-11010**—The applicant is requesting alternative compliance from Section 4.7 (Buffering Incompatible Uses) of the *Prince George's County Landscape Manual* along the eastern and northern property lines where the proposed use is adjacent to single-family dwellings. A type "C" bufferyard, including a 40-foot building setback and a 30-foot-wide landscape yard, is required along these lines. An alternative compliance application is necessary as neither the 40-foot building setback nor the 30-foot-wide landscape yard is being provided for the full length of the property line as required. In addition, the applicant is not showing a continuous 10-foot wide commercial landscaped strip along the road frontages as required by Section 4.2.

F. **Neighborhood and Surrounding Uses:** The neighborhood boundaries identified for this application are:

**North and East:** Leroy Gorham Drive

**South:** Sheriff Road

**West:** Eastern Avenue

The neighborhood is generally residential in character and is predominantly developed with single-family residences and several churches. Commercial uses (including the subject liquor store, two carryout restaurants and a convenience store) are found at the intersections of Sheriff Road, Division Avenue and Eastern Avenue.

The uses surrounding the subject property are:

**North & East:** Single-family residences in the M-U-I Zone

**South:** Across Sheriff Road is a carryout restaurant/beer & wine store in the M-U-I Zone and a convenience store in the District of Columbia.

**Southwest:** Across Eastern Avenue is a carryout restaurant in the District of Columbia.

**West:** A wide unused section of right-of-way for Chapelwood Lane, through which the applicant gains access. The applicant has been in negotiations with DPW&T seeking to abandon this right-of-way.

G. **Specific Special Exception Requirements for Nonconforming buildings, structures, and uses; alteration, enlargement, extension, or reconstruction.** Section 27-384. sets forth the following specific requirements:

- (a) **The alteration, enlargement, extension, or reconstruction of any nonconforming building or structure, or certified nonconforming use (except those certified nonconforming uses not involving buildings, those within the Chesapeake Bay Critical Area Overlay Zones as specified in paragraph 7, below, unless otherwise provided, and except for outdoor advertising signs), may be permitted subject to the following (In pertinent part):**

- (1) **A nonconforming building or structure, or a building or structure utilized in connection with a certified nonconforming use, may be enlarged in height or bulk, provided that the requirements of Part 11 are met with respect to the area of the enlargement.**

**Comment:** The applicant is proposing to raze the existing 1,024-square-foot liquor store and replace it with multilevel, two-story building housing a larger liquor store on the ground floor and office space (a permitted use in the C-O Zone) on the second. Staff is proposing limits on the size of the use to ensure that the requirements of Part 11 (Parking and Loading Standards) are met.

- (2) **A certified nonconforming use may be extended throughout a building in which the use lawfully exists, or to the lot lines of the lot on which it is located, provided that:**

(A) **The lot is as it existed as a single lot under single ownership at the time the use became nonconforming; and**

(B) **The requirements of Part 11 are met with regard to the extended area.**

**Comment:** The subject property remains a single lot under single ownership. As previously noted, all required parking and loading spaces have been provided.

- H. **Parking and Loading Regulations:** Section 27-568 (Schedule of Parking Spaces) of the Zoning Ordinance requires one parking space for every 150 square feet of retail commercial use and one space for every 250 square feet of office space. The applicant's proposal is for 2,045 square feet of retail and 715 square feet of office. This would equate to 17 parking spaces or 14 spaces when the 20 percent reduction for joint use of a parking lot (Section 27-572) is applied. The applicant's plan shows a total of 18 spaces, but as discussed later in this technical staff report, does so at the expense of necessary landscaping and buffering. Staff is recommending the retail portion of the building be reduced to a maximum 1,950 square feet and the office space held to a maximum of 750 square feet, as depicted in Staff Exhibit A. That way, parking requirements are decreased to 13 and additional landscaping can be provided.

As proposed, the use would require a loading space since it has more than 2,000 square feet of retail floor area. Staff is recommending the retail area be reduced to a maximum of 1,950 square feet in order to eliminate the loading space requirement. Once the site plan is redesigned and parking delineated, loading can be accomplished in the wide unused section of Chapelwood Lane.

- I. **Prince George's County Landscape Manual Requirements:** The site is subject to the requirements of the 2010 *Prince George's County Landscape Manual* because it involves an increase in gross floor area of more than ten percent. Per the 2010 Landscape Manual, the project is subject to Section 4.2, Requirements for Landscape Strips along Streets and Section 4.7,

Buffering Incompatible Uses. The following comments are offered regarding conformance of the submitted plans to these requirements:

1. **Section 4.2 (previously Section 4.3.a.)**—The site has a combined 190 linear feet of frontage on Chapelwood Lane, Eastern Avenue and Sheriff Road, including a driveway onto Eastern Avenue from the unused area of right-of-way for Chapelwood Lane. The site would require a 4 to 15-foot-wide landscape strip, depending upon the chosen option available for use in the *Prince George's County Landscape Manual*. The site plan does not reflect a landscape strip along portions of Chapelwood Lane or Sheriff Road and has some areas with minimal landscaping along Eastern Avenue. The applicant applied for alternative compliance from this requirement. The Alternative Compliance Committee proposes an alternative which allows for the provision of a ten-foot-wide strip along Chapelwood Lane and Eastern Avenue. It is depicted in Staff Exhibit A.

**Comment:** Along Sheriff Road, Staff Exhibit A proposes that the majority of the required 10-foot-wide landscape strip be provided on-site and temporarily, in the ultimate right-of-way. Additional plantings within the ultimate right-of-way will create a temporary landscape strip between ten and thirty feet in width until such time as the roadway is widened. Staff recommends that the applicant replace an area of existing asphalt, within the ultimate right-of-way for Sheriff Road, with a green area and plant the area with three additional ornamental trees and clustering of shrubs for an improvement to the site's street frontage. This area functions as an entry point and gateway into Prince George's County, specifically the Subregion 4 sector plan area. Since no dedication toward the Sheriff Road right-of-way is currently required, the Alternative Compliance Committee determines that the additional green area, ornamental trees and shrubs will provide some mid-to long-term benefit on the site. The plant material proposed within the ultimate right-of-way will need to be removed in the future, upon expansion of Sheriff Road to the limits of the ultimate right-of-way. Even with the future expansion of Sheriff Road, additional plant material within the remaining landscape strip will contribute to the stated purposes of Section 4.2. The Alternative Compliance Committee determines that by providing the required planting units within the available green area, the Staff Exhibit A proposal provides an alternative that is equally effective compared to the strict compliance to the *Prince George's County Landscape Manual*. The Alternative Compliance Committee was unable to make the same finding with the plan proposed by the applicant.

2. **Section 4.7**—A Type "C" bufferyard, including a 40-foot building setback and a 30-foot-wide landscape yard is required along the northern and eastern property lines where the liquor store is adjacent to single-family detached dwellings. Neither the 40-foot building setback nor the 30-foot-wide landscape yard is being provided for the full length of the property line, nor could it, due to the odd triangular shape of the site.

**Comment:** The applicant requested alternative compliance from Section 4.7, Buffering Incompatible Uses, along the northern and eastern property lines where the liquor store is adjacent to single-family detached dwellings. Because the lot is oddly shaped and only 12,790 square feet in size, the required bufferyards would encumber approximately 70 percent of the site. However, the applicant's proposal did not provide sufficient buffering. The proposed Staff Exhibit A, however, indicates that an effective bufferyard can be provided, if the plan is revised to show:

**Along the Eastern Property Line:**

In this area, the applicant should provide a 12-foot building setback, a variable width landscape yard, 110 plant units, and a 6-foot-high privacy fence that begins approximately 40 feet from the front property line and extends to the north property line at the rear of the site, as depicted in Staff Exhibit A. The privacy fence will provide an opaque separation between the liquor store and the adjacent single-family detached residence. The privacy fence should be set back from the ultimate right-of-way to allow for surveillance into the site from Sheriff Road. Details and specifications of the privacy fence should be provided to indicate that it will be durable, non-wood, and natural color. The Alternative Compliance Committee recommends that the bufferyard adjacent to the proposed parking lot be planted with coarse varieties of shrubs and evergreen trees, such as 'Nelly Stevens Holly, which reduces the probability of loitering within the bufferyard.

The Alternative Compliance Committee recommends that the applicant redesign the surface parking lot to create a more efficient parking design, and provide additional green space at the perimeter of the site. Staff Exhibit A indicates that, with redesign, a 12-15-foot-wide bufferyard can be provided along the majority of the eastern property line. The Alternative Compliance Committee finds that by the redesigning the parking area to reduce paving, providing 110 planting units, and a 6-foot-high privacy fence, as shown on the Staff Exhibit A, that the proposal provides an alternative that is equally effective compared to the strict compliance to the *Prince George's County Landscape Manual*. The Alternative Compliance Committee was unable to make the same finding with the plan proposed by the applicant.

**Along the Northern Property Line:**

The Alternative Compliance Committee recommends that the applicant minimally provide a 12-foot building setback, a continuous 10-foot-wide landscape yard, 100 plant units, and a 6-foot-high privacy fence as indicated in Staff Exhibit A. Details and specifications of the privacy fence should be provided to indicate that it will be durable, non-wood, and a natural color.

The Alternative Compliance Committee finds that by providing 100 planting units, a continuous 10-foot-wide landscape yard, and a 6-foot-high privacy fence as shown on Staff Exhibit A, that the proposal provides an alternative that is equally effective compared to the strict compliance to the *Prince George's County Landscape Manual*. The Alternative Compliance Committee was unable to make the same finding with the plan proposed by the applicant.

**Conclusion:**

The Alternative Compliance Committee feels that the reduced bufferyard is justified and that a revised plan with the additional planting units and fencing proposed in Staff Exhibit A is equal to or better than normal compliance with Section 4.7 of the 2010 *Prince George's County Landscape Manual*. On June 2, 2011, the Alternative Compliance Committee forwarded their report to the Planning Director for signature. The Planning Director recommends approval, subject to conditions, of the alternative compliance for Sections 4.2 and 4.7 of the *Prince George's County Landscape Manual* along the northern and eastern property lines.

4. **Section 4.9**—This new section has various requirements regarding the use of native plant species, the exclusion of invasive plant species, and the removal of existing invasive

plant species from the site. The proposed planting schedule includes one type of evergreen tree and one type of shade tree, both of which are native species. The shade tree, however, is specified to be planted at too small of a size, six- to eight feet. The Landscape Manual requires that the proposed shade trees be planted at 12 to 14 feet in height, or two and a half to three-inch caliper. Additionally, to fulfill the requirements of this section, certain notes and tables are required to be added to the planting schedule and the plan to demonstrate compliance. Staff recommends that the plan should be revised, as necessary, to reflect the appropriate notes and schedules as required by Section 4.9.

- J. **Sign Regulations:** No freestanding signs are proposed with this application. Any building sign(s) that will be placed on the property must meet all sign requirements.
- K. **Zone Standards:** The proposed use complies with the standards of the C-O Zone.
- 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 purposes of this Subtitle.**

**Comment:** The primary purposes of the Zoning Ordinance are to protect the public health, safety and welfare; to promote the most beneficial relationship between the uses of land and buildings; and to protect landowners from adverse impacts of adjoining development. A liquor store has existed on this property for nearly 60 years. The building housing the store was built in 1940 and is showing its age. Parking is haphazard and landscaping non-existent. Through this application, the applicant proposes to rebuild with a modern building with a defined parking lot, landscaping and buffering against the adjoining residential uses. The use and site plan proposed in this application, with the recommended conditions in place, are in harmony with the purposes of Subtitle 27.

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

**Comment:** With the recommended conditions in place and alternative compliance approved, the proposed use and accompanying site and landscape plan are in conformance with all applicable 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.**

**Comment:** The 2010 Subregion 4 master plan and sectional map amendment recommends multilevel commercial/mixed uses for the subject property as part of a comprehensive redesign of the area. An expanded nonconforming use (in this case the liquor store) is presumed to be compatible in the C-O Zone by virtue of its inclusion as a special exception use. The office use proposed is permitted by right in the C-O Zone. The mixed use proposed is consistent with the planned land use pattern and will not substantially impair the integrity of the approved master plan for the area.

**(4) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area.**



**Comment:** Some nonconforming uses are undesirable nuisances whose termination is necessary to ensure the public health, safety and welfare. But this is more the exception than the rule. Most nonconforming uses are kept compatible through the strict limitations placed on them and the requirement for continuity. So long as the use is legally established and used without a break of more than 180 days, it can continue to do so. However, if the use wishes to expand, it can only do so through approval of a special exception.

A special exception use, not unlike a comprehensive rezoning, is accorded a strong presumption of validity. That is to say, a special exception use is considered compatible with uses permitted by right within the zone, as long as specific criteria are met. Unless unique adverse impacts are identified, the special exception may be approved. In the instant case, the only additional adverse impact identified by staff at this site is the periodic loitering observed not only at this property but on others at this intersection. Staff recommends that the applicant prepare a plan for submission into the record to address the loitering and strategies to minimize it.

By virtue of the improvements proposed by the applicant for the site, and with the recommended conditions in place, it can be reasonably concluded that the proposed use will not have a greater impact than presently exists. It has been a compatible use in the community for some time and its continued operation 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.**

**Comment:** A liquor store has continuously existed on the site for almost 60 years without the defined parking, landscaping and buffering now being proposed. The amount of traffic generated by the uses is not expected to be significantly different. Based on observation, many of the customers walk to the store from the surrounding neighborhood. All of these factors suggest the proposed uses will not be detrimental to the use or development of adjacent properties or the general neighborhood.

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

**Comment:** The property is exempt from the requirements of the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance because it contains less than 10,000 square feet of existing woodland. A letter of exemption was issued on April 8, 2009.

**(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.**

**Comment:** No disturbance to the regulated environmental features within the limits of the subject application has been proposed. The site has a Natural Resource Inventory signed on March 10, 2011, showing no regulated environmental features on-site. The site plan should be revised to show the existing treeline, however.

Subtitle 25, Division 3, the Tree Canopy Coverage (TCC) Ordinance, requires a minimum percentage of tree canopy coverage on properties that require a grading permit. Properties zoned C-O are required to provide a minimum of 10 percent of the gross tract area in tree canopy. The overall development has a gross tract area of 0.29 acres and as such, tree canopy coverage of 0.03 acres (1,263 square feet) is required. Any future permits for the site shall be accompanied by plans that demonstrate how the Tree Canopy Coverage requirement will be fulfilled.

## CONCLUSION:

Based on the preceding analysis and findings, staff recommends APPROVAL of Special Exception Application SE-4626, subject to the following conditions:

1. Prior to final disposition of the case, the site plan shall be revised as follows:
  - a. Reduce the building footprint and size of the retail use to a maximum of 1,950 square feet.
  - b. The dumpster enclosure shall be relocated a minimum of ten feet from the adjacent residential property line.
  - c. The note regarding the use of the basement for storage and mechanical elements shall be removed from the building footprint and made a general note.
  - d. A revised parking schedule taking into account the smaller building and applying the 20 percent reduction for shared usage pursuant to Section 27-572 shall be provided.
  - e. The use (single-family residence) and current zoning (M-U-I) shall be shown for the properties to the north and east.
  - f. General site note 10 shall be removed.
2. If the office space is occupied by a medical practitioner's office, the 20 percent reduction for shared usage of parking spaces shall not apply.
3. Prior to the Zoning Hearing Examiner's hearing, the applicant shall submit into the record a plan for minimizing loitering on the site and strategies to carry out the plan.

In accordance with the analysis and findings of the Alternative Compliance Committee, the Planning Director recommends APPROVAL of Alternative Compliance AC-11010 to Section 4.2 and Section 4.7 of the 2010 *Prince George's County Landscape Manual* along the southern, eastern, and northern property lines for Jock Liquors subject to the following conditions:

1. Prior to final disposition of the case, the site plan shall be revised as follows or information provided:
  - a. Revise the site plan to indicate a conformance with the design concepts contained in Staff Exhibit A, as follows:
    - (1) Provide the required 10-foot landscape strip along the 35-feet of street frontage on Chapelwood Lane, excluding driveway entrances.
    - (2) Remove existing asphalt within the ultimate right-of-way for Sheriff Road. The green area shall be planted with three ornamental trees, or equivalent mixture of ornamental trees and shrubs.

- (3) Redesign the surface parking lot to create a more efficient parking design. The number of parking spaces and the width of the interior drive isle shall be reduced,
  - (4) The applicant shall provide a bufferyard along the eastern property line with privacy fence to be planted with a minimum of 110 plant units.
  - (5) The applicant shall provide a continuous, minimum 10-foot wide bufferyard along the northern property line with privacy fence to be planted with a minimum of 100 plant units.
- b. Provide corrected landscape schedules for all areas for which alternative compliance is requested.
- c. The location, size, and species of existing trees to remain in any required bufferyards shall be fully delineated on the landscape plan. Preservation of established, healthy, non-invasive tree species as a substitution for some of the required plant units shall be allowed.
- d. Provide fence details and specifications to indicate that proposed fencing will be durable, non-wood, and a natural color.
- e. Plants shall be drawn to scale in accordance with Section 2.2(a) (4) of the 2010 *Prince George's County Landscape Manual*. Provide locations and labels of all proposed plants using standard landscape architectural graphic conventions portraying plant spreads at twenty-five to thirty feet for shade trees, ten feet for evergreen trees; and fifteen to twenty feet for ornamental trees.
- f. Trees proposed in fulfillment of the requirements of the *Prince George's County Landscape Manual* shall meet Section 4.9, Sustainable Landscape Requirements. Provide native plant percentages in accordance with Section 4.9(c)(1) and (2).