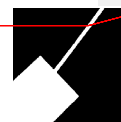


Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530



Comment [COMMENT1]: WHEN INSERTING
INFORMATION AT THE @ SIGN
REMEMBER TO USE INDENT FOR SECOND
LINE - NOT TAB. ALSO, IT WILL LOOK
LIKE THE TEXT IS GOING WACKO, BUT
DON'T WORRY - IT IS FINE.

SPECIAL EXCEPTION APPLICATION No. 4407

Application	General Data
Project Name Barnabas Liquors Location Southeast side of St. Barnabas Road approximately 150' south of Clifton Road, known as 4620 St. Barnabas Road. Applicant Tu Corporation 4620 St. Barnabas Road Temple Hills, Maryland 20748	Accepted 2/2/01
	Ag Board Action Limit N/A
	Ap & Grid 088/B-4
	Creage 0.1151 Acre
	C-M
	g Units N/A
	Footage N/A
	g Area 76A
	l District 08
	pality N/A
	ale Base Map 206SE3/4

Purpose of Application		Notice Dates		
Nonconforming buildings, structures, and uses; alteration, enlargement, extension, or reconstruction. 27-317 & 27-384		ing Property Owners -1998)		02/14/01
		as Parties of Record -1997)		N/A
		Posted on Site		N/A
		ce(s): Adjoining Property Owners		N/A
Staff Recommendation		Reviewer		Tom Lockard
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION	
	X			

August 29, 2001

TECHNICAL STAFF REPORT:

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

VIA: Arie Stouten, Zoning Supervisor

FROM: Tom Lockard, Senior Planner

SUBJECT: **Special Exception Application No. 4407**

REQUEST: **Alteration of a Certified Nonconforming Use (Liquor Store in the C-M Zone)**

RECOMMENDATION: **Approval, subject to conditions**

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 301-952-3530.

FINDINGS:

- A. Location and Field Inspection: The subject property is located on the southeast side of St. Barnabas Road, 150' feet south of its intersection with Clifton Road. The subject property is developed with a small, five-unit strip shopping center. The applicant operates a liquor store from Unit A of the center.
- B. History: The site was placed in the C-M Zone from the C-2 Zone by the 1984 *Subregion VII Sectional Map Amendment* (SMA). At that time, the existing liquor store (which had been established in the shopping center in 1972) became a nonconforming use. The 2000 *Heights and Vicinity SMA* retained the site in the C-M Zone. It was certified as a legal nonconforming use on August 15, 2000, pursuant to Use and Occupancy Permit No. 8317918-2000-U.
- C. Master Plan Recommendation: The 2000 *Heights and Vicinity Master Plan* recommends commercial-miscellaneous use for this site.
- D. Request: The applicant requests permission to relocate the nonconforming liquor store from its existing location in Unit A of the shopping center to Unit B. This would effectively double the size of the store from the existing 2,500' square feet to 5,000' square feet.
- E. Neighborhood and Surrounding Uses: The site is surrounded by the following uses:

North - Strip-commercial uses in the C-M Zone.

East - Auto-related uses in the I-1 Zone.

South - An equipment rental business in the C-M Zone.

West - Across St. Barnabas Road, an auto dealership and other auto-related uses in the C-M Zone.

The neighborhood is defined by the following boundaries:

Northwest - St. Barnabas Road

Northeast - Branch Avenue

South - The Capital Beltway

West - Temple Hill Road

The surrounding neighborhood has developed in two distinct characters. The northern section of the neighborhood near the intersection of St. Barnabas Road and Branch Avenue is developed with single-family residences in the Gordon's Corner subdivision. The remainder of the neighborhood is developed with commercial and industrial uses, including many auto-related businesses and a large sand and gravel wash plant.

- F. Specific Special Exception Requirements: Section 27-384 - Nonconforming buildings, structures, and uses; alteration, enlargement, extension, or reconstruction.

- (1) 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:

- (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.

Finding: This section does not apply because no building or structure is proposed for enlargement.

- (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:

- (1) 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.

Finding: This use became nonconforming in 1984 upon adoption of the *Subregion VII SMA*. The lot remains unchanged as a single lot under single ownership since that time.

The requirements of Part 11 refer to the provision of off-street parking and loading spaces sufficient to serve the use. The mix of uses in the center, if the relocation is permitted, requires 73 parking spaces and 5 loading spaces. The site plan shows 74 parking spaces and 5 loading spaces. Thus, this requirement is met. The site plan does not show the width of an existing gate along the drive aisle leading to the rear parking area. This gate must allow for a minimum 22-foot-wide drive aisle. The site plan must be amended to show this dimension.

- (3) **A certified nonconforming use may be reconstructed, provided that:**

- (1) The lot on which it is reconstructed is as it existed as a single lot under single ownership at the time the use became nonconforming;
- (2) Either the nonconforming use is in continuous existence from the time the Special Exception application has been filed through final action on the application, or the building was destroyed by fire or other calamity more than one (1) calendar year prior to the filing date;
- (3) The requirements of Part 11 are met with respect to the entire use; and

- (4) The Special Exception shall terminate unless a building permit for the reconstruction is issued within one (1) calendar year from the date of Special Exception approval, construction in accordance with the building permit begins within six (6) months from the date of permit issuance (or lawful extension), and the construction proceeds to completion in a timely manner.

Finding: This section does not apply to the subject application because it does not propose reconstruction..

- (4) When not otherwise allowed, a certified nonconforming use may be otherwise altered by the addition or relocation of improvements, such as fencing, landscaping, off-street parking and loading areas, and outdoor trash enclosures, or the relocation of buildings or other improvements within the boundary lines of the lot as it existed as a single lot under single ownership at the time the use became nonconforming.

Finding: No such improvements are proposed.

- (5) Any new, or any addition to, or alteration or relocation of an existing building or other improvement (which is either nonconforming or utilized in connection with a certified nonconforming use), shall conform to the building line, setback, yard, and height regulations of the zone in which the certified nonconforming use is located. The District Council may further restrict the location and bulk of the building or structure where the evidence so warrants. If the use is presently permitted by Special Exception in the zone, the new building, improvement, or addition shall conform to all of the physical requirements of the specific Special Exception use.

Finding: Liquor stores are a subcategory of food and beverage stores. Food and beverage stores require a special exception in the C-M Zone. Further, according to Section 27-355 (Specific Requirements for Food and Beverage Stores), the retail sale of alcoholic beverages is prohibited from food and beverage stores in the C-M Zone. This notwithstanding, this section refers to physical requirements of the specific Special Exception use. If a liquor store is not permitted in the C-M Zone even through a special exception, there can be no physical requirements which apply to this use.

- (6) The District Council may grant this Special Exception for property within a one hundred (100) year floodplain only after it has determined that the proposed enlargement, extension or alteration will:

(A) Not require additional filling in the floodplain;

(B) Not result in an increase in elevation of the one hundred (100) year flood; and

- (3) Conform with all other applicable requirements of this Subtitle and of Division 2 of Subtitle 4, "Building," of this Code, entitled "Floodplain Ordinance."

Finding: The subject property is not in the floodplain.

- (7) **In a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted where the existing impervious surface coverage exceeds that allowed by Section 27-548.17, and which would result in a net increase in the existing impervious surface coverage. In addition, a Special Exception shall not be granted which would result in converting a property which currently meets the impervious surface coverage requirements of Section 27-548.17 to a nonconforming status regarding impervious surface coverage, except if a finding of extenuating circumstances is made, such as the necessity to comply with other laws and regulations.**

Finding: The site is not in the Chesapeake Bay Critical Area.

- (b) **Applications for this Special Exception shall be accompanied by a copy of the Use and Occupancy Permit for the certified nonconforming use, as provided for in Section 27-241(b).**

Finding: The applicant has submitted a copy of the permit.

- (c) **In a Chesapeake Bay Critical Area Overlay Zone, in order to permit the alteration, enlargement, extension, or reconstruction of any nonconforming building or structure or nonconforming use, the District Council shall find that:**
- (1) **Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Overlay Zone provisions would result in unwarranted hardship;**
 - (2) **A literal interpretation of the County's Critical Area Program regulations would deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area Overlay Zones;**
 - (3) **The granting of a Special Exception would not confer upon an Applicant any special privilege that would be denied by this Subtitle to other lands or structures within the Chesapeake Bay Critical Area Overlay Zones;**
 - (4) **The request for a Special Exception is not based upon conditions or circumstances which are the result of actions by the Applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;**
 - (5) **The granting of a Special Exception would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Chesapeake Bay Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the applicable laws within the Chesapeake Bay Critical Area; and**

- (6) **The application for a Special Exception has been made in writing to the District Council or Zoning Hearing Examiner, if applicable, with a copy provided to the Chesapeake Bay Critical Area Commission.**

Finding: As previously noted, the site is not in the Chesapeake Bay Critical Area.

- G. Parking Regulations: The mix of uses within the center require 73 off-street parking spaces and 5 loading spaces. The site plan show 74 parking spaces and 5 loading spaces.
- H. Landscape Manual Requirements: Because the applicant is not proposing any additional square footage, the site is exempt from the requirements of the *Landscape Manual*.
- I. Zone Standards: Other than the liquor store use, which has been certified as legally nonconforming, the site plan meets the standards of the C-M Zone.
- J. Sign Regulations: There is no freestanding sign shown on the site plan. If one is anticipated, it must be added prior to approval.
- K. 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: With the recommended condition, the proposed use and site plan are in harmony with the purposes of the Zoning Ordinance. These purposes generally seek to protect and promote the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County. There has been a nonconforming liquor store at this location for more than 15 years. During this time, there has been no apparent degradation to the health, safety or welfare of the inhabitants of the County, nor will there be with the proposed relocation and expansion.

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

Finding: With the recommended condition to ensure that the parking to the rear of the building is accessible, 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 use will not impair the integrity of the 2000 *Heights and Vicinity Master Plan*, which recommends commercial-miscellaneous use for this site

- (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 in which they are allowed, absent site-specific evidence to the contrary. In the subject case, impacts to adjacent properties and the health, safety and welfare of residents and workers in the area are not apparent. The liquor store has existed in the adjoining unit for more than 15 years without proving to have an adverse impact or being detrimental to the surrounding area.

- (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 December 6, 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 applicant has met their burden of proof in this case. Therefore, staff recommends APPROVAL of Special Exception Application No. 4407, subject to the site plan being revised prior to the issuance of permits to show the width of the existing gate leading to the rear parking area allowing for a minimum 22-foot-wide drive aisle.