

December 11, 2002

TECHNICAL STAFF REPORT:

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

VIA: Arie Stouten, Zoning Supervisor

FROM: Elsabett Tesfaye, Senior Planner

SUBJECT: **Special Exception Application No. 4412, including Variance No. VSE 4412A**

The applicant for the above referenced case had submitted a revised plan since the last Planning Board review date of October 3, 2002. Staff reviewed the revised plan and found that it does not address or resolve the issues and concerns that are specific to the proposed use for the subject property. Therefore, staff's recommendation for a DENIAL of the special exception request remains unchanged.

With regard to the requested three variances, the revised plan provides at least ten percent of green area as required; therefore, the requested variance from the ten percent green requirement is no longer needed. Moreover, all fences, as depicted on the revised plan, are now meeting the setback requirements and the need for variance is limited to that of the two existing buildings that do not meet the setback requirements. As such, the request for variances is considered minor, and it is not a determining factor in staff's recommendation for denial of the application.

No new information is added to the technical staff report dated September 25, 2002. However, this report includes, as attachments, recently submitted comments from the Community Planning Division (memorandum dated November 25, 2002), the Environmental Planning Section (memorandum dated November 18, 2002), and the Town of Cheverly (letter dated November 19, 2002), in response to the applicant's revised plan.



SPECIAL EXCEPTION NO. 4412 AND VSE-4412

Application	General Data
Project Name: Beltway Used Auto Parts Location East side of Kenilworth Avenue, approximately 128 feet south of Creston Street, known as 2421 Kenilworth Avenue. Applicant/Address Beltway Used Auto Parts Correspondent Lawrence N. Taub O'Malley, Miles, Nylen & Gilmore, P.A. 11785 Beltsville Drive, 10 th Floor Calverton, MD 20705	Date Accepted 3/14/02
	Planning Board Action Limit N/A
	Tax Map & Grid 58 D3
	Plan Acreage 1.26
	Zone I-2
	Dwelling Units N/A
	Square Footage N/A
	Planning Area 69
	Council District 05
	Municipality N/A
	200-Scale Base Map 203NE4

Purpose of Application	Notice Dates
<ul style="list-style-type: none"> Vehicle Salvage Yard Variance of setback for eight-foot fence, 25-foot setback from the street, 30 foot setback from side yard, and 10 percent green area requirement. 	Adjoining Property Owners 4/11/01 (CB-15-1998)
	Previous Parties of Record N/A (CB-13-1997)
	Sign(s) Posted on Site
	Variance(s): Adjoining Property Owners 4/11/01

Staff Recommendation			Staff Reviewer: Elsabett Tesfaye
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
		X	

September 25, 2002

TECHNICAL STAFF REPORT:

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

VIA: Arie Stouten, Zoning Supervisor

FROM: Elsabett Tesfaye, Senior Planner

SUBJECT: **Special Exception Application No. 4412, including Variance No. VSE 4412A**

REQUEST: **Vehicle Salvage Yard**

RECOMMENDATION: **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 301-952-3530.

FINDINGS:

- A. Location and Field Inspection: The property is located on the east side of Kenilworth Avenue, approximately 128 feet south of Creston Street, known as 2421 Kenilworth Avenue. The special exception site has 126 feet of frontage on Kenilworth Avenue and a 128 feet of frontage on Creston Street. The site is currently used for auto part sales and installation. It is irregularly shaped and comprises approximately 1.7 acres of land. It is improved with a 4,941-square-foot Quonset hut, a 9,940-square-foot warehouse building, and a 28,310-square-foot paved asphalt, outdoor storage area. A paved parking area is located along the property's Kenilworth Avenue frontage. An eight-foot-high chain-link fence with metal screen is located along the southern property line and along the Creston Street frontage (north). The entire frontage of Kenilworth Avenue serves as a vehicular access to the site and a four-foot-high, rollaway chain-link gate provides access to the rear of the site on the Creston Street frontage.

- B. Development Data Summary:

	EXISTING	PROPOSED
Zone(s)	I-2	I-2
Use(s)	Auto Parts Sales	Vehicle Salvage Yard and Auto Parts Sales
Acreage	1.27 ac. (55136 SF)	1.27 ac. (55136 SF)
Parcels	Part of Parcel 48	Part of Parcel 48
Square Footage/GFA	14,881 SF	14,881 SF

- C. History: The property was zoned C-2 in 1949, as part of the original Comprehensive Zoning. The 1982 Sectional Map Amendment for Planning Area 69 rezoned the property to the I-2 Zone. The property was retained in the I-2 Zone in the approved 1994 Sectional Map Amendment for Planning Area 69.
- D. Master Plan Recommendation: The Bladensburg, New Carrollton and Vicinity Master Plan recommends heavy-industrial uses for the property.
- E. Request: The applicant proposes to add a vehicle salvage yard use to the existing auto part sales use on the site. The establishment of the proposed salvage yard use would allow the applicant to validate a 14,881-square-foot unauthorized vehicle salvage yard that is currently operating on the subject site. The proposed salvage yard consists of a parking lot with 11 parking spaces and a 28,310 square-foot outdoor storage area.
- F. Neighborhood and Surrounding Uses: The neighborhood is predominantly industrial, developed with a mixture of warehouses, truck sales and services, and storage uses. The subject property is bounded by a vacant gas station and a liquor store on the remainder of Parcel 47 (northwest), a parking lot, a cellular communication monopole, and a petroleum handling equipment company office and garage across Creston Street (northeast), a truck dealership (south), and a building materials company (east). To the west, across Kenilworth Avenue, is the Baltimore-Washington Parkway, followed by the Anacostia River Park. All the adjoining properties are zoned I-2. The subject property is located

within Employment Subarea 5, as designated by the master plan. The neighborhood is generally defined by the following boundaries:

North and Northeast:	B & O railroad
East:	B & O railroad
South:	John Hanson Highway (US 50)
West:	Kenilworth Avenue (MD 201)

These boundaries are consistent with the boundaries defined by the applicant and Employment Subarea 5, as defined by the Master Plan for Planning Area 69.

G. **Specific Special Exception Requirements:** Pursuant to **Section 27-417.03**, a vehicle salvage yard is permitted in the I-2 Zone as a special exception subject to the following:

- (1) **The use shall be enclosed by a solid, slightly, light-tight wall or fence at least eight (8) feet high, and found to be satisfactory by the District Council;**

The applicant proposes to provide an eight-foot-high opaque wood fence (board-on-board) along the boundary lines of the special exception site.

- (2) **The fence shall not be constructed of corrugated metal or fiberglass, or sheet metal.**

The proposal conforms to this requirement. The fence will be constructed of wood.

- (3) **Outdoor storage shall not be visible from the ground level beyond the fence.**

The applicant's statement of justification indicates that the topography of the site is level; therefore, the outdoor storage will not be visible at ground level from beyond the fence. Moreover, the entire width (200 feet) of the 22-foot-high warehouse building along the eastern property line and the width (24 feet high) of the Quonset hut along a portion of the northwestern boundary of the site screen the visibility of the outdoor storage area.

- (4) **Interior storage shall be located within a fireproof building.**

The applicant indicated that the proposed use fully complies with this requirement.

H. **Parking Regulations:** **Section 27-568 of the Zoning Ordinance** requires one parking space for 1,000 square feet of gross storage area of the first 10,000 square feet, plus one additional space for every additional 10,000 square feet.

A note on the site plan indicates that the proposed vehicle salvage yard consists of 14,881 square feet of gross storage area contained within the two existing buildings. Eleven parking spaces are required. A total of 11 spaces, including one van-accessible space for the physically handicapped, are provided.

The applicant's statement of justification indicates that, "The proposed vehicle salvage yard will

diversify the existing used tire sales and installation business.” This leads to the conclusion that the existing use remains operational on the site. Accordingly, the site plan should show parking spaces for the existing use. The current parking requirement for vehicle parts and tire store is one parking space for every 500 square feet for the sales and storage area, plus three parking spaces for each service bay. However, if the use commenced prior to 1949, some of the required parking may be grandfathered.

Moreover, the existing buildings should be handicap accessible in accordance with ADA requirements.

- I. **Loading Requirements:** **Section 27-582 of the Zoning Ordinance requires one loading space per 1,000 square feet of gross storage area of the first 10,000 square feet, plus one loading space for every additional 10,000 square feet.**

One loading space is required for the proposed use. A loading space dimensioned 45 feet by 12 feet is provided.

- J. **Landscape Manual Requirements:** **Section 27-328.02—Landscaping, Buffering and Screening:**

Except for uses which do not require the construction, enlargement, or extension of a building, all land uses requiring the approval of a Special Exception shall comply with the landscaping, buffering and screening requirements set forth in the *Landscape Manual* through the approval of a landscape plan. In approving a Special Exception, the District Council may require additional landscaping, screening or buffering if it determines that amount required by the *Landscape Manual* is insufficient to adequately protect adjacent uses.

The Zoning Ordinance exempts the proposal from compliance with the landscaping, buffering and screening requirements of the *Landscape Manual* because the use will not involve the construction, enlargement or extension of a building. The applicant site plan does not provide any planting on the site.

Although the proposal is exempt from the *Landscape Manual* in this case, it still has to meet the landscaping, buffering and screening requirements of the I-2 Zone. **Section 27-470(b)(1) requires that at least 10 percent of the net lot area shall be maintained as green area.** The applicant has requested a variance from this requirement.

- K. **Zone Standards:** The proposal requires variances from the requirements for the 25-foot setback from the street, the 30-foot side yard setback, and a green area of ten percent of the net lot area. The issues related to the variances will be addressed in section N of this report.
- L. **Sign Regulations:** No sign is shown on the site plan. All signs that will be placed on the property must meet all area, height and setback standards. In addition, any proposed freestanding sign must be identified on the approved site plan.
- M. **Other Issues:** If the applicant is going to continue the operation of the existing vehicle parts and tire installation, the installation area must be demonstrated on the site plan.
- N. **Variance Requests:**

The proposed site plan requires the following variances (VSE-4412):

1. Section 27-470(b)(1): To waive the requirement that at least ten percent of the net lot area shall be maintained as green area.
2. Section 27-474(b): To waive the required 25-foot setback from the street
3. Section 27-474(b): To waive the required 30-foot setback for side yards.

Section 27-230 requires the Planning Board to make the following findings in order to grant a variance.

1. **A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions.**
2. **The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or undue hardship upon, the owner of the property.**
3. **The variance will not substantially impair the intent, purpose or integrity of the General Plan or Master Plan.**

The applicant maintains that the subject property's extraordinary condition is the fact that it was developed in 1947 prior to the enactment of the current zoning provision. The applicant explains that the entire site is paved or covered with buildings that do not meet the current setback requirements, although they met the requirements effective at the time the property was developed. The applicant also indicated that the Ordinance requires the proposed use to be enclosed with an eight-foot-high fence. Since fences higher than six feet must meet the building setback requirements, a variance is necessary. The applicant is of the opinion that the application of the required setback for the proposed eight-foot-high fence will result in buildings protruding out beyond the fence line, resulting in a jumbled appearance of the site from Creston Street.

The applicant contends that the strict application of the 25-foot setback for the location of the proposed eight-foot-high fence along the Creston Street frontage and the minimum 30-foot setback for the total of both side yards would result in a portion of the existing asphalt paved yard being located outside of the proposed fenced enclosure and, therefore, not usable for the proposed outdoor storage area. The applicant contends that the loss of this usable area is a hardship. The applicant also maintains that the strict application of the requirements would result in the removal of a portion of the existing buildings and in the removal of a portion of the existing asphalt-paved lot.

It is true that the subject property was developed prior to when many of the current zoning requirements became effective, and that the current use on the property doesn't conform to current zoning standards for the I-2 Zone. However, the applicant is requesting a new special exception use that will exacerbate noncompliance with current zoning standards. In other words, the applicant is proposing to use the property beyond its potential capacity. Therefore, the need for the variances is self-imposed and not justified.

With respect to the master plan compliance, the Community Planning Section has offered the following comments:

The proposed use directly contradicts the recommendation of the master plan for this area, thereby substantially impairing the integrity of the master plan. The granting of the requested variances along with the special exception would compound the problem.

With the subject proposal, the applicant has not met the burden of proof under Section 27-230.

O. 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.

The fundamental purposes of the Zoning Ordinance, as found in Section 27-102, are to protect the health, safety and welfare of the public and promote compatible relationships between the various types of land uses. Review of the applicant's site plan for conformance with the requirements of the Ordinance indicates potential conflicts with the following fundamental purpose:

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

The proposal's inconsistency with these purposes is addressed in detail in the discussions under 27-317(a) 3, 4 and 5 below.

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

The proposed use is not in conformance with all the applicable requirements and regulations of this Subtitle. Review of the proposal reveals deficiencies in meeting requirements of the I-2 Zone for which the applicant is requesting variances.

(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.

The *Approved Master Plan for Bladensburg, New Carrollton and Vicinity* recommends this property for heavy-industrial development. The subsequent sectional map retained the property in the I-2 Zone. The Master Plan also includes the subject property in Employment Subarea 5. In the Employment section, the Master Plan identifies and describes numerous problems with the existing frameworks of Subarea 5. Addressing these problems and concerns, in pages 87 and 88, the plan states that:

“Subarea 5 enjoys an excellent high visibility location near the District of Columbia at the interchange of US 50, I-295, the Baltimore-Washington Parkway and Kenilworth Avenue. A railroad line provides rail access. It is also reasonably close to the Cheverly Metro Station and adjoins a high quality industrial area to the east (Subarea 4). However, it is an industrial area, which does not live up to its potential, containing a lengthy list of problems as noted in the Background section. This is particularly unfortunate since this employment area is situated at a principal

gateway to the County.

“Due to the complexity of the problems in this area, it is recommended for special study. In order for substantial improvement to occur, parts of this area must be redeveloped. This is unlikely to occur through natural market forces due to the multiplicity of small lots created by the original residential subdivision pattern upon which a large part of this area stands. This creates a substantial parcel assembly problem for any potential redeveloper. The special study would entail an examination of the process through which other jurisdictions, nationally, have successfully grappled with this problem and creation of a workable strategy for this area. The special study should also include the nearby Tuxedo service-commercial strip, which is also a potential candidate for redevelopment because of its location but faces the same parcel assembly problem.

“Should the special study conclude that redevelopment is not viable, it should nonetheless address the multitude of enforcement, security, design, aesthetic and public works issues in order to correct these problems to the extent possible short of redevelopment.”

In a supplemental submission dated September 20, 2002, the Community Planning Division has indicated that the planning issues and determinations discussed in its April 19, 2001, memorandum remain unchanged. The Division also offered a summary of the visions and goals of the *Tuxedo Road/Arbor Street Planning and Urban Design Study*, which was completed in January 2001.

The January 2001 *Tuxedo Road/Arbor Street Planning and Urban Design Study* articulates the community’s long-range vision for the area, inclusive of the subject property, which does not imply the compatibility with the type of uses proposed:

“Increase the economic viability, physical attractiveness, and functional relevance of the Tuxedo Road/Arbor Street commercial and industrial area so that it can serve as an appropriate gateway to Prince George’s County, a strong support for the Cheverly Metro Station, and a compatible neighbor to the Town of Cheverly.”

The study’s goal for land use is to “ensure that the land use designations throughout the study area are adequate to achieve the long-range vision for the area.” The urban design goal is to “create a visually and functionally cohesive and attractive identity for the area that will allow it to be perceived as a strong, positive community entity for Prince George’s County and the Town of Cheverly.” Environmentally, the goal is to “ensure that all actions within the area will serve to either improve environmental condition where needed or protect current environmental resources.” Objectives are put forth that expand upon the goals, such as:

- Ensure that zoning designations support the land use vision,
- Establish an image that will attract stable, higher use businesses,
- Establish an attractive, cohesive identity for the area.

The primary strategy recommended is to initiate a sector plan to implement the study recommendations. The *Tuxedo Road/Arbor Street and Cheverly Metro Area Sector Plan and Sectional Map Amendment* was initiated July 2002 and a public forum is anticipated in November 2002. The District Council approval is expected in late 2003.

By a letter dated September 23, 2002 (see attachment), the applicant has responded to the September 20, 2002, comments of the Community Planning Division indicating that "...the concerns raised by the Community Planning Division are those relating to whether or not the proposed use conforms to a future vision of the industrial area in which the subject property is located, which is not discussed within the current master plan. There is simply no evidence whatsoever to support a finding that the proposed use will "substantially impair" the current master plan..."

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

The addition of the proposed vehicle salvage yard use to the site may not represent detraction from the established character of the neighborhood. However, its adverse effect on the health, safety or welfare of residents or workers in the area is more perceptible in this particular case and would exacerbate the already depressed condition of an area that is afflicted by a multitude of problems. The problems, as well as steps to addressing them, have been articulated in detail in the approved master plan.

The Transportation Planning Section has indicated that from the standpoint of transportation, this special exception raises no health, safety or welfare issues.

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.

As noted, the subject property is within Employment Subarea 5, as designated by the Master Plan. The Employment Area section of the Master Plan provides a detailed description of conditions in the area and address issues and problems affecting the area as follows:

"Subarea 5 is bounded by US 50, Kenilworth Avenue and the railroad tracks. The original lotting pattern has been a strong determinant of its character. Part of the area was originally subdivided into residential lots, with the remainder subdivided into large industrial parcels. The latter area typically presents fewer problems. For example, it is the location of larger firms with a greater capital investment and more attractive buildings. Also, this area typically provides the required on-site parking, has off-street loading spaces and a feeling of openness. Some sites have landscaped strips. Conversely, the area with the residential-size parcels has the opposite situation. There is little on-site parking and a consequently heavy use of streets for this purpose. Having been built to residential instead of industrial standards, the streets are narrow. Thus, trucks frequently extend into the street while loading and unloading. Gates open into the street right-of-way, in some cases creating an obstacle for drivers. Typical buildings in this small-lot area are often frame, block or 'Butler'-style with a lower capital investment than the area with large lots.

"There are a number of other problems in this Subarea:

- “1. There is insufficient screening of the area from US 50
- “2. The appearance of the area from Kenilworth Avenue is generally poor.
- “3. There are no curbs in front of several businesses along heavily traveled Kenilworth Avenue.
- “4. There are a large number of junked vehicles in the area.
- “5. There are piles of junk on vacant lots and in parking areas
- “6. The area is extensively littered.
- “7. A number of parking areas are unpaved.
- “8. 51st Place, which is the main access from Tuxedo Road, is unpaved.
- “9. Security concerns are more evident here than in the other subareas (Extensive use of razor wire fencing.).
- “10. Very little landscaping, few mature trees”

The site is located within a light-industrial enclave with no residential development in the vicinity. Existing uses in the immediate area in which the site is located include automobile auctions, a parking lot, automobile repair, automobile parts replacement, and electrical supply warehouse facilities. Thus, the location and operation of the subject vehicle salvage yard in the area may not be inconsistent with the existing industrial developments in the area.

However, as it is noted by the Community Planning Division (see April 19, 2001, referral comments), an automobile salvage yard is a very low capital intensive use and is the direct opposite of the high capital intensive uses that are sought for the area through redevelopment and revitalization. It will compound the problem that the special-study, sector plan and sectional map amendment will seek to correct. The Community Planning Division has also offered the following comments regarding the impact of the proposed use on the property and the neighborhood:

“An important additional consideration is that automobile salvage yards have tended to become ‘brownfields’ that are undesirable for redevelopment purpose. The various fluids present in vehicles collect in the ground and become an expensive problem to correct. As such, former salvage yards are avoided by redevelopers. Accordingly, this particular use is likely to compound the parcel assembly problem that is at issue in the master plan and, as such, will further contribute to the impairment of the master plan.”

Moreover, the subject property is a highly visible site as a gateway to Maryland and Prince George’s County; therefore, its development, redevelopment or revitalization warrants careful consideration in terms of design, economic viability, and aesthetic appearance. The establishment of an automobile salvage yard at this location not only is an undesirable option but it would also unduly restrict and discourage efforts for expanded development, redevelopment and revitalization of the property, thereby adversely affecting the general neighborhood. The potential adverse impact on the neighborhood of the proposed special exception use is more profound in this case than it would have been elsewhere in the same zoning category. This is due to the prevailing conditions in the area, which are unique to the neighborhood, and the particular location of the property within this neighborhood.

The decision in the case of *Schultz v Pritts Md.* 1, 432 A, 432 A.2d 1319 (1981) states that the appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed and the particular location

proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone. Based on this principal, staff finds that the proposed use will 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.

A Tree Conservation Plan is not required because the property contains less than 10,000 square feet of woodland, and it does not have a previously approved Tree Conservation Plan.

CONCLUSION:

The property is currently developed to its fullest potential with a use that is permitted by right but that does not conform to current requirements due to its development prior to the adoption of current development standards of the Zoning Ordinance. In addition, the subject application is in conflict with several of the required findings for the requested special exception. With the proposed special exception use, the uses and operation on the subject property would exceed the site's capacity in a manner that not only creates new deficiencies in terms of development standards, but also affects the development potential of the immediate area as envisioned by the master plan. Furthermore, with respect to the variance requests, the applicant has not met the burden of proof under Section 27-230. Therefore, staff recommends DENIAL of SE-4412 and VSE-4412.