



SPECIAL EXCEPTION APPLICATION NO. 4451 (VSE-4451)

Application	General Data	
Project Name: Potomac Business Park Location Southeast corner of the intersection of Oxon Hill Road and Felker Avenue, Oxon Hill, Maryland Applicant/Address Oxon Hill Associates, LC 12500 Fairlakes Circle, Suite 400 Fairfax, VA 22033 Correspondent Andre Gingles 11785 Beltsville Drive, Tenth Floor Calverton, MD 20705	Date Accepted	12/10/01
	Planning Board Action Limit	N/A
	ZHE Hearing Date	04/03/02
	Plan Acreage	2.80
	Zone	I-3
	Dwelling Units	N/A
	Square Footage	N/A
	Planning Area	76B
	Council District	8
	Municipality	N/A
	200-Scale Base Map	208 SE 01

Purpose of Application	Notice Dates	
< Gas Station in accordance with Sections 27-358 and 27-317 < Variance for 300-foot setback of school lot line and 25-foot setback of building from street line in accordance with Sections 27-230	Adjoining Property Owners (CB-15-1998)	12/17/01
	Previous Parties of Record (CB-13-1997)	N/A
	Sign(s) Posted on Site	2/1/02
	Variance(s): Adjoining Property Owners	12/17/01

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

February 27 ,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. 4451**
Variance Application No. 4451

REQUEST: **Gas Station**

RECOMMENDATION: **SE-4451: DENIAL**
VSE-4451: 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.

SE-4451

FINDINGS:

- A. Location and Field Inspection: The property is located on the southeast corner of the intersection of Oxon Hill Road and Felker Avenue, Oxon Hill, Maryland. It consists of 2.80 acres, which is part of the lot known as Lot 1, Potomac Business Park, recorded in the land records of Prince George's County at Plat Book VJ 178 @ Plat 69. The applicant has indicated that application will be submitted with the Subdivision Section for a lot line adjustment for a proposed Lot 6. Felker Avenue is currently partially complete and will be finished as part of the Potomac Business Park. The property is zoned I-3. The subject property is somewhat rectangular in shape and is currently unimproved.
- B. History: The property is the subject of an approved Conceptual Site Plan, No.87116. Preliminary Plat approval, No. 4-88054, was subsequently approved for the property. The subject site is a portion of Lot 1, Plat Book VJ 178 @ Plat 69 recorded in the Prince George's County land records on February 26, 1997. The 1984 Subregion VII Sectional Map Amendment classified the property in the I-3 Zone.
- C. Master Plan Recommendation: The *Adopted and Approved Master Plan for Subregion VII* (October 1981) covers the subject property. The master plan recommends the property for a hotel and/or motel development on the southeast quadrant of the Indian Head Highway and Oxon Hill Road Intersection. The master plan also encouraged commercial recreational development linked to the hotel with direct access to Oxon Hill Road on the south side of Cory Branch. Conceptual Site Plan No.-87116 was approved for the property by the Prince George's County Planning Board on November 19, 1987. SP-87116 allowed office/research and other development/warehouse and other proposed uses in the I-3 zone. Gas stations are permitted in the I-3 zone with special exception

approval.

- D. Request: The applicant proposes to construct a gas station on the subject property along with a convenience store, car wash, and service center. Shell Gas will operate the gas station. It will consist of five multiproduct dispensers (MPDs) with ten fueling positions. The proposed 3,800- square-foot convenience store will have drinks, snacks, and other convenience items and also will house a gas station attendant that will monitor gas-filling operations on the site. The proposal includes the construction of a 7,380 square-foot, 10-bay service center to perform vehicle-related services, which, according to the applicant, is incidental to the gas station use. The proposed car wash will occupy 1,108 square feet of space.
- E. Neighborhood and Surrounding Uses: The neighborhood contains a mix of residential and commercial uses. Commercial uses are present along Oxon Hill Road. Residential uses are present in the southern part of the neighborhood along Indian Head Highway and Livingston Road. The property is bounded by vacant property to the south, zoned I-3; a Prince George's County Board of Education facility to the east in I-3 zoning; the Oxon Hill Road right-of-way to the north, and the Felker Avenue right-of-way to the west. Further west across Felker Avenue is a hotel located in the C-S-C Zone. To the north across Oxon Hill Road are located commercial uses in the C-O Zone, a Forest Height Baptist Church in the R-R Zone, and the Oxon Hill Plaza in the C-S-C Zone. Oxon Hill High School is located further south of the subject site and Oxon Hill Elementary School is located at the southern-most portion of the neighborhood. The neighborhood is generally defined by the following boundaries:

North Capital Beltway (Interstate 1-95)

East Livingston Road

South Livingston Road

West Indian Head Highway (MD 210)

- F. Specific Special Exception Requirements: A food or beverage store and car wash are permitted as accessory uses to a gas station in the I-3 Zone. A gasoline station is permitted in the I-3 Zone as a special exception. Section 27-358 sets forth the specific special exception requirements.

(a) **A gas station may be permitted, subject to the following:**

- (1) **The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet.**

The proposed gas station has direct access (right in, right out) to Oxon Hill Road (MD 414) and Felker Avenue. Frontage in excess of 150 feet exists along both Oxon Hill Road and Felker Avenue, and each road has a right-of-way in excess of 70 feet. The applicant has indicated that a new signal is proposed for the intersection of Felker Avenue and Oxon Hill Road.

- (2) **The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located.**

The property does not conform to this requirement. A school facility (the John Hanson Jr. High School) is located on the adjoining property. The applicant's statement of justification indicates that the closest school building is located 48 feet from the property line and that the closest gas pumps will be located 232 feet from the property of the school. The statement of justification contends that the Board of Education does not maintain a regular school at this building.

However, contrary to the applicant's contention, the building on the adjoining property is used as a temporary holding facility on an on-going basis, during construction or renovation of the various schools (existing and new) in the area. Currently, two elementary schools, Carmody Hills and Panorama, are using the facility. Beginning with the fall school season, the subject facility will be used as a pre-K through 8th grade Montessori magnet school.

The applicant has filed a variance requesting relief from this requirement.

(3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417.

The applicant's proposal does not include these activities. The applicant's statement of justification indicates that there will be no display or rental of cargo trailers, trucks, or similar uses at this site, except as a Special Exception in accordance with the above requirement. A note shall be placed on the site plan indicating compliance with this requirement.

(4) The storage or junking of wrecked motor vehicles (whether capable of movement or

not) is prohibited.

The proposed gas station will not include the storage or junking of wrecked motor vehicles (whether capable of movement or not). A note shall be placed on the site plan indicating compliance with this requirement.

- (5) Access driveways shall be not less than thirty (30) feet wide unless a lesser width is allowed for a one-way driveway by the Maryland State Highway Administration or the County Department of Public Works and Transportation, whichever is applicable, and shall be constructed in compliance with the minimum standards required by the County Road Ordinance or Maryland State Highway Administration regulations, whichever is applicable. In the case of a corner lot, a driveway may begin at a point not less than twenty (20) feet from the point of curvature (PC) of the curb return or the point of curvature of the edge of paving at an intersection without curb and gutter. A driveway may begin or end at a point not less than twelve (12) feet from the side or rear lot line of any adjoining lot.**

The site plan shows a 35-foot-wide access driveway on MD 414 and Felker Avenue. The State Highway Administration, in a memorandum dated January 9, 2002, has indicated that it has no objection to the subject proposal. Furthermore, the applicant's access will be subject to the rules and regulations of the State Highway Administration and the Prince George's County Public Works and Transportation

- (6) Access driveways shall be defined by curbing.**

The site plan indicates that all access driveways will be defined by curbing.

- (7) A sidewalk at least five (5) feet wide shall be provided in the area between the building line and the curb in those areas serving pedestrian traffic.**

An existing four-foot wide sidewalk is provided along Oxon Hill Road and a six-foot- wide sidewalk is proposed for Felker Avenue. All internal sidewalks for the site are at least five feet wide. The applicant must provide sufficient justification for not providing the required five-foot-wide sidewalk along Oxon Hill Road. Otherwise, either the sidewalk has to be widened or a variance shall be requested.

- (8) Gasoline pumps and other service appliances shall be located at least 25 feet behind the street line.**

The site plan indicates that all gasoline pumps and service appliances are located more than 25 feet behind the street line.

- (9) Repair service shall be completed within 48 hours after the vehicle is left for service.**

Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall

be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.

The applicant's proposal includes a construction of a ten-bay service center to perform vehicle-related services. The applicant maintains, however, that automotive replacement parts and accessories will be stored in the proposed service center, which will be wholly enclosed. In addition, the applicant states that the proposed service center will be constructed in materials similar in appearance to the gas station and be placed on a permanent foundation.

The proposed ten-bay service center is too large, in terms of size and types of services, to be considered as an incidental use to the gas station. Although the applicant refers to the service center as an incidental use, with its size and the various services it offers, staff is questioning how incidental it is to the gas station which is supposed to be the primary use. The proposed ten-bay service center, which will provide lubrication, tire sales, and auto service, appear to be a full-fledged separate entity, independent of the gas station. A vehicle service, lubrication, or tune-up facility to perform vehicle-related services is not a permitted use in the I-3 Zone.

- (10) Details on architectural elements such as elevation depiction of each facade, schedule of exterior finishes, and description of architectural character of proposed buildings shall demonstrate compatibility with existing and proposed surrounding development.**

In response to the Urban Design Review Section's referral comment, the applicant has provided a supplemental submission including pictures detailing the architectural elements of the surrounding uses in the area, as well as a statement regarding the compatibility of the proposed use with its surroundings. The description of architectural character of the proposed building demonstrates that

the proposed development is architecturally compatible with the existing and proposed surrounding development.

(b) In addition to what is required by Section 27-296(c), the site plan shall show the following:

(1) The topography of the subject lot and abutting lots (for a depth of at least 50 feet).

(2) The location and type of trash enclosures.

(3) The location of exterior vending machines or vending area.

The topography requirement is complied with and depicted on the applicant's site plan accordingly.

The site plan shows two trash enclosures located in the southwest and southeast corners of the property. The height of the enclosure is eight feet. There are no vending machines proposed.

(c) Upon the abandonment of a gas station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the owner of the property. For the purpose of this Subsection, the term "abandonment" shall mean non-operation as a gas station for a period of fourteen (14) months after the retail services cease.

There is no indication in the record of a potential conflict with this requirement.

(d) When approving a Special Exception for a gas station, the District Council shall find that the proposed use:

(1) Is necessary to the public in the surrounding area.

(2) Will not restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

On December 4, 2001, the applicant submitted a proof of need analysis prepared by Giegrich and Associates, Inc. Upon reviewing the proposal and the applicant's proof of need analysis, Dr. Joseph Valenza of the Research Section has offered the following conclusions (see attached memo of January 14, 2002, from Dr. Valenza for details).

■ I have reviewed the proof of need analysis submitted with the application for the proposed Oxon Hill Gas Station, SE-4451. While I believe the applicant may be correct in concluding that the gas station support exceeds supply, I don't think there is enough support for an additional gas station.●

In light of Dr. Valenza's findings, staff cannot make a determination that the proposed gas station is necessary in the surrounding area and that the use will not unduly restrict the availability of land, or upset the balance of land use, in the area for other trades and commercial uses.

Parking Regulations: **Section 27-568 of the Zoning Ordinance requires one parking space for each employee of the gas station and one parking space for every 150 square feet of gross floor area for the food or beverage store. Section 27-568 also requires three parking spaces for each service bay.**

The applicant's site plan indicates that the gas station will have two employees and therefore, requires two parking

spaces. The proposed food and beverage store consists of 3,174 square feet of gross floor area (GFA). A total of 24 parking spaces are required and provided for the gas station/convenience store. Thirty spaces are provided for the service center and three spaces for the car wash.

Loading Requirements: Section 27-582 of the Zoning Ordinance requires one loading space for retail sales and service (per store) comprising over 2,000 square feet of gross floor area (GFA).

The proposal conforms to this requirement. Two loading space are provided, dimensioned at 15 feet wide by 33 feet long. The loading space is located near the car wash area and in the southeast side of the property.

Landscape Manual Requirements: The applicant's proposal is subject to the requirements of Sections 4.2, 4.3, 4.4 and 4.7 of the *Landscape Manual*.

In response to the Urban Design Review Section's comments, the applicant has relocated the trash enclosure to the southwest corner of the property. In addition, additional screening has been provided along the south property line from the adjacent property.

Zone Standards: The site plan conforms to all other development standards of the I-3 Zone. However, the applicant needs to provide more information regarding compliance with condition No. 4 of the approved Preliminary Plat of Subdivision 4-88054. The condition states :

■A 50-foot-wide nondisturbance area shall be established along all Commission (The Maryland-National Capital Park and Planning Commission), Board of Education, and other residentially zoned properties where the forest stand delineation performed November 16, 1987, indicates tree stands 1,2, and 5.●

Sign Regulations: The site plan shows two freestanding signs located along the Oxon Hill Road and Felker Avenue frontage. The applicant has provided the design, types and colors of the various signs. The proposed signs meet all area, height and setback standards of the sign regulations. As an integral part of the overall development, the signs appear to be compatible with the existing and proposed development in the surrounding area in terms of design.

Subdivision: In a revised memorandum of February 11, 2002, the Subdivision Section has indicated that the proposed special exception site plan is not in conformance with the preliminary plan and record plat. The memorandum stated that the record plat includes many notes which require action and payments prior to building permits. These are generally not a problem at the special exception stage. However, in addition to Note 10, which denies access to MD 414, the impact of Note 8 should also be understood at this time. Note 8 requires the applicant to receive approval of the detailed site plan prior to issuance of building permits. The Subdivision Section suggested that to avoid conflicts between the special exception and the detail site plan, the applicant should consider concurrent review. The Subdivision Section concluded that to ratify the discrepancies, the applicant has two options. First, the plan can be redesigned to eliminate direct access to Oxon Hill Road. In the alternative, the applicant may file a variation request at the time of final plat.

With respect to access from Oxon Hill Road, the applicant has obtained approval via letter dated September 25, 2001, from the Maryland Department of Transportation, State Highway Administration for the placement of the proposed entrance along MD 414 for right in, right out movements. With respect to the issue of special exception review Vs detailed site plan review, although approval of the special exception site plan eliminates the need for the detailed site plan review, the proposal will still need to demonstrate consistency and compliance with the conditions of Preliminary Plat 4-88054 prior to the issuance of permit.

Special Exception Variance: **Section 27-358(a)(2)** requires that the subject property on which a gas station is located shall be at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located.

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 its proximity to the adjacent Board of Education facility, which is sometimes used as a school. The applicant argues that the construction of Carmody Hills Elementary in Capital Heights is expected to be completed by 2002, and thus, it is arguable whether a school will be in operation at the adjacent Board of Education building once this proposed facility is constructed. The applicant further indicated that the proposed development is designed to accommodate the adjacent school facility. As such, the closest school building is located 48 feet from the school's property line and the closest gas pumps are located 232 feet from the property of the school. Furthermore, the applicant has submitted a revised site plan to show a six-foot-high, board-on-board fence with 12-inch brick piers at 30-feet on center along the east property line adjacent to the Board of Education property. The applicant indicates that the fence is in addition to the

landscaping already proffered along the east property line.

Staff agrees with the applicant that the school facility is a temporary holding facility for Prince George's County public schools in the area that are under construction or renovation. However, staff disagrees with the applicant's assumption that the function of the facility as a temporary holding school is a short-term project that would cease with the completion of the construction of a single school. According to staff from the Department of Planning and Architectural Services of the Prince George's County Public School, students from Carmody Hills and Panorama Elementary Schools are currently housed at the facility on the Board of Education property. In fall 2002, students from a county Montessori magnet program will be housed at the school (see attached memo from the Growth Policy and Public Facilities Section).

As of now, the adjoining property is functioning as a school and from all indications will continue to do so at least for the coming two or three years. There is no indication that the function of the adjoining facility as a school will be discontinued beyond the next two, five or ten years. Nor is there any indication that as it currently exists, the use on the adjoining property can be considered as anything else but a school. The applicant has not provided convincing evidence that there is an extraordinary condition in this case other than the assumption that the adjoining facility might be converted to an administrative facility at sometime in the future.

With respect to unusual and practical difficulty or undo hardship to the applicant, it would be self-imposed since the applicant is proposing the placement of a gas station within 300 feet of a school knowing the zoning restrictions. As such, there is no valid basis for the requested variance.

With regard to the master plan, the Community Planning Section has indicated that ■the subject application for gas station, convenience store, car wash and service center is inconsistent with the master plan recommendation.●

Notwithstanding the Community Planning Division's findings, given the Conceptual Site Plan (SP-87116) and the

Preliminary Plat (4-88054) approvals, with the proposed landscaping and design specification, and with compliance with the conditions of the approved preliminary and record plat, the proposed development would not substantially impair the integrity of the master plan.

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 purposes:

Purpose No. 6: To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development.

The proposal fails to provide convincing evidence to substantiate the applicant's contention that there is enough support in the area for the proposed gas station and that the station is necessary to the public. Moreover, the relationship of the various uses on the property with each other, at the minimum, is questionable and unclear.

(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. The

proposed use does not conform to the specific requirements of the special exception relative to gas station that requires a finding that the use is necessary to the public in the surrounding area and will not upset the balance of land use for other trades and commercial uses. Moreover, the proposal does not meet the minimum 300-foot-setback requirement from a school property.

(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 Master Plan, the General Plan.

The Community Planning Division has offered the following comments:

The subject property, which is part of the southeast quadrant of Indian Head Highway and Oxon Hill Road intersection, is encouraged by the 1981 Master Plan for hotel and motel development. A conceptual site plan was approved prior to the subdivision of the Potomac Business Park for a hotel, restaurant, warehouse complex, and a department store. Only the hotel has been built while the rest remains vacant. The approval of use contained in the concept plan was inconsistent with the master plan recommendation. Consequently, the subject application for gas station, convenience store, car wash and service center is inconsistent with the master plan recommendation.

Although a gas station is allowed in an I-3 Zone under Special Exception, it should be reviewed within the overall context of the Potomac Business Park site plan and building design in terms of aesthetics and contextual compatibility. As an entrance feature to the business park, it should be subject to extremely high- quality site and building standards.

The automobile repair facility (Great American Service Center) proposed as part of this application

appears as a separate use and should be verified for appropriateness as an incidental service to a gas station use.

The property is adjoined to the east by John Hanson Middle School. Appropriate setback and buffering should be determined for the safety and welfare of the students.

(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.

The proposed gas station is located within a distance less than what is considered safe for the users of the adjoining school facility. Moreover, the applicant has not been able to demonstrate that another gas station is necessary in the area and the proposed station will not upset the balance of commercial uses. Therefore, positive findings of compliance with these requirements cannot be made.

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

A Tree Conservation Plan is not required because the property is less than 10,000 square feet in area and it does not have a previously approved Tree Conservation Plan (per Letter of Exemption from Environmental Planning Section issued on December 12, 2001).

CONCLUSION

Based on the preceding analysis and findings, it is recommended that SE-4451 and VSE-4451 be DENIED.