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Special Exception Application

SE-4535

| Application | General Data |
|---|----------------------------------|
| Project Name: Rita's Water Ice Location: South side of Woodyard Road opposite Clinton Street, known as 9101 Kinney Place. Applicant/Address: Jackie Foster 6403 Woodley Road Clinton, Maryland 20735 | Date Accepted: 6/9/05 |
| | Planning Board Action Limit: N/A |
| | Plan Acreage: 0.407 |
| | Zone: C-S-C |
| | Dwelling Units: N/A |
| | Square Footage: 1,806 |
| | Planning Area: 81A |
| | Tier: Developing |
| | Council District: 09 |
| | Municipality: N/A |
| 200-Scale Base Map: 212SE06 | |

| Purpose of Application | Notice Dates |
|------------------------|---|
| Fast-food restaurant | Adjoining Property Owners Previous Parties of Record Registered Associations: 3/30/05 (CB-12-2003) |
| | Sign(s) Posted on Site and Notice of Hearing Mailed: N/A |

| Staff Recommendation | | Staff Reviewer: Laxmi Srinivas | |
|----------------------|--------------------------|--------------------------------|------------|
| APPROVAL | APPROVAL WITH CONDITIONS | DISAPPROVAL | DISCUSSION |
| | X | | |

September 14, 2005

TECHNICAL STAFF REPORT:

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

VIA: Jimi Jones, Acting Zoning Supervisor

FROM: Laxmi Srinivas, Senior Planner

SUBJECT: **Special Exception Application No. 4535**

REQUEST: **Rita's Water Ice (Fast-food restaurant)**

RECOMMENDATION: **APPROVAL** with 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 south side of Woodyard Road opposite Clinton Street, known as 9101 Kinney Place. The property is improved with a one-story building of 1,806 square feet. It was formerly used as a Pizza Hut restaurant. The applicant proposes to convert the existing building to a fast-food restaurant. The property has 69.7 feet of frontage on Woodyard Road. Vehicular access to the property is from Woodyard Road via a private street called Kinney Place.

- B. **Development Data Summary:**

| | EXISTING | PROPOSED |
|--------------------|------------|----------------------|
| Zone(s) | C-S-C | C-S-C |
| Use(s) | Restaurant | Fast-food Restaurant |
| Acreage | 0.407 | 0.407 |
| Lots | 1 | 1 |
| Parcels | N/A | N/A |
| Square Footage/GFA | 1,806 | 1,806 |

- C. **Master Plan Recommendation:** The 1993 Subregion V Master Plan retains the property in the C-S-C Zone and retains commercial uses for the property.

- D. **Request:** The applicant proposes to use the existing restaurant building for a fast-food restaurant. The proposed restaurant will sell Italian Ice, cones, custard, pretzels and water with no internal patron service or sit-down service. A fair amount of patronage will be foot traffic and due to the proposed walk-up window, trash will be at a minimum. The applicant is providing trashcans at appropriate locations. Most of the packaging is disposable and will be taken with the patrons. The hours of operation are from 12 noon to 9:00 p.m. The restaurant's security plan includes security lighting and security cameras to ensure the safety of the employees and customers. The proposal includes trademark back-lit awnings and dome signs for the building frontage facing Kinney Place. A sign permit is required for the proposed signs on the awnings. The proposal does not include a drive-through facility. The building has 69.7 feet of frontage along Kinney Place. The location, height and area of the proposed signs must comply with the requirements of Section 27-613, Attached to a Building or Canopy, of the Zoning Ordinance. The applicant has not provided sign details for the proposed signs. A condition of approval has been added to require the applicant to obtain a sign permit.

- E. **Neighborhood and Surrounding Uses:** The property is surrounded with the following uses:

North—Woodyard Road and commercial uses in the C-M Zone across from Woodyard Road.

South—Single-family residential in the R-55 Zone.

East—Kinney Place and commercial uses in the C-S-C Zone across from Kinney Place.

West—Office in the C-S-C Zone.

The neighborhood is bounded by Woodyard Road on the north, Branch Avenue on the east, Surratts Road on the south, and Brandywine Road on the west.

F. **Specific Special Exception Requirements:** A fast-food restaurant is permitted in the C-S-C Zone as a special exception. **Section 27-350** sets forth the specific requirements:

(a) **A drive-in or fast-food restaurant may be permitted, subject to the following:**

- (1) **All proposed buildings, structures, and outdoor facilities (including vehicle parking) shall be located at least two hundred (200) feet from the nearest property line of any land in any Residential Zone, or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan. The District Council may reduce this setback requirement when it determines that the landscaping, screening, and buffering requirements in the Landscape Manual, or other conditions, will adequately protect abutting residential property;**

The above section is not applicable because the applicant is using an existing restaurant building for the fast-food restaurant.

- (2) **A bicycle rack for at least six (6) bicycles shall be provided on the premises, unless the applicant demonstrates to the satisfaction of the District Council that the requirement is inappropriate because of the location or nature of the establishment;**

The applicant has adequate space in the parking lot to accommodate six bicycles. A condition of approval has been added to require the same.

- (3) **The use will not restrict the availability, or upset the balance, of land use in the neighborhood for other commercial uses; and**

The existing building was used as a restaurant. The applicant is proposing a fast-food restaurant that is very similar to the existing use. The existing building is in a shopping center zoned for commercial uses. Therefore, the proposed fast-food restaurant will be compatible with the surrounding commercial uses and will not conflict with the adjacent residential and office uses. It will maintain the existing land use balance in the neighborhood.

- (4) **Special consideration shall be given to advertisement, outdoor display, outdoor activity, lighting, hours of operation, and other aspects of the proposed operation to assure that the health, safety, and general welfare of the community will be protected.**

The applicant is proposing signs on the canopy to advertise and identify the fast-food restaurant. A condition of approval has been added to require the applicant to obtain a sign permit for the proposed signs. A fair amount of patronage will be foot traffic and due to the proposed walk-up window, trash will be at a minimum. The applicant is providing trashcans at appropriate locations. Most of the packaging is disposable and will be taken with the patrons. The hours of operation are from 12 noon to 9 P.M. The restaurant's security plan includes security lighting and security cameras to ensure the safety of the employees and customers. Conditions of approval have been added to provide bicycle racks. With the proposed conditions, the advertisement, outdoor display, outdoor activity,

lighting, hours of operation, and other aspects of the proposed operation will assure the health, safety, and general welfare of the community will be protected.

- (b) **A special exception shall not be required for the conversion of a drive-in restaurant to a fast-food restaurant, or the conversion of a fast-food restaurant to a drive-in restaurant, provided that no enlargement or extension takes place. The addition of a window or other facility to provide for drive-in service shall not be construed to be an enlargement or extension. The conversion shall be permitted for a drive-in or fast-food restaurant which has become a certified nonconforming use or was established pursuant to a Special Exception, provided that any conditions of the Special Exception remain in effect.**

This section is not applicable because the proposal is for conversion of a restaurant to a fast-food restaurant.

- G. Parking required by Section 27-582 for a fast-food restaurant: 1 parking space per 50 sq.ft. of gross floor area (excluding any area used exclusively for storage and patron seating, and any exterior patron service area) = six spaces for 300 sq.ft. of restaurant area.

Parking provided= 26 parking spaces

A condition of approval has been added to require the applicant to provide a parking schedule.

- H. **Loading Regulations: Section 27-582 of the Zoning Ordinance does not require a loading space for retail uses that are less than 2,000 square feet of gross floor area.**

The applicant has not provided any loading spaces.

- I. ***Landscape Manual Requirements—Landscaping, Buffering and Screening:***

Section 27.328.02(a) of the Zoning Ordinance exempts proposals that do not involve the construction, enlargement or extension of a building from compliance with the landscaping, buffering and screening requirements of the *Landscape Manual*.

The applicant is not proposing any construction, enlargement or extension of the existing building. Therefore, the proposal is exempt from the requirements of the *Landscape Manual*.

The existing landscaping on the property is adequate to screen the shopping center from the street and adjacent properties.

- J. **Sign Regulations:** The proposal includes trademark back-lit awnings and dome signs for the building frontage facing Kinney Place. A sign permit is required for the proposed signs on the awnings. The location, height and area of the proposed signs must comply with the requirements of Section 27-613, Attached to a Building or Canopy, of the Zoning Ordinance. The applicant has not provided sign details for the proposed signs. A condition of approval has been added to require the applicant to obtain a sign permit.

- K. **Zone Standards:** A fast-food restaurant is permitted in the C-S-C Zone by special exception. However, specific calculations and measurements must be provided for building height, lot coverage, frontage, yards, and other required setbacks to demonstrate compliance with the requirements of the

Ordinance. A condition of approval has been added to require the same. With the proposed condition, the site plan demonstrates conformance with the development standards of the C-S-C Zone.

L. Other Issues:

1. The Permit Review Section (memorandum dated June 17, 2005) recommends addition of notes regarding the proposal details, parking schedules and building information. Conditions of approval have been added to require these minor changes to the site plan.
2. The Subdivision Section (memorandum dated June 28, 2005) states that the property is the subject of record plat WWW 83@82, known as Clinton Gardens, Lots 15, Block A. The section has asked for minor revisions. Conditions of approval have been added to require the same. The special exception is in conformance with the final plat.
3. The Historic Preservation and Public Facilities Planning Section (memorandum dated August 31, 2005) states that the proposed development will be within adequate coverage of the nearest fire and rescue facility. The proposed development will be within the service area for Police District I-Hyattsville and the existing police services are adequate.
4. The Environmental Planning Section (memorandum dated June 27, 2005) states that there are no streams, wetlands, or 100-year floodplains associated with the property. There are no noise issues or environmental issues. The Environmental Planning Section has issued a letter dated April 19, 2005.
5. The Urban Design Review Section (memorandum dated July 18, 2005) states that the proposal is exempt from the requirements of the *Landscape Manual* as there is no increase in square footage. The section had suggested that the applicant submit building mounted signs for review.
6. The Historic Preservation and Public Facilities Planning Section (memorandum dated July 28, 2005) has stated that a Phase I archeological survey is not recommended by the Planning Department.
7. The Transportation Planning Section (memorandum dated August 29, 2005) states that the proposed use will generate 78 AM and 42 PM peak-hour vehicle trips. Since the restaurant only sells water ice, frozen desserts and pretzels, the AM peak hour trip generation would be very limited and the PM peak hour trip generation would be lower than for a typical fast-food restaurant. The off-site traffic impact of the use would be relatively small and would not result in particular safety issues. The site plan shows no new structures within the future right-of-way. The section finds that the special exception would not adversely affect the health, safety, or welfare of residents in the area.
8. The State Highway Administration (memorandum dated July 1, 2005) states that the annual average daily trip (AADT) volume on MD 223 is 38,175 vehicles per day with a 40 MPH posted speed limit. The entrance to the property on Kinney Place is shared by adjoining properties. Use of this entrance should be maintained per easement for ingress/egress agreement 4281/001. Modifications or improvements to the subject access connection with Kinney Place may be required. A condition of approval has been added to require the same.

N. **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. There are no major issues associated with this application that would conflict with the general purposes of this Subtitle. The proposed use of the property as a fast-food restaurant will be compatible with the commercial use of the subject property and complement the adjacent office and residential uses of the adjacent properties. With the proposed conditions, the proposed use and site plan will be in harmony with the purposes of this Subtitle.

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

The previous Pizza Hut restaurant was a permitted use in the C-S-C Zone and did not require a special exception. The proposed fast-food restaurant requires a special exception in the C-S-C Zone. The Permits Section has indicated that compliance with the *Landscape Manual* is required, because the intensity of the use is being changed. However, Section 27-328.02 exempts compliance with the *Landscape Manual*. With the recommended conditions, the proposed fast-food restaurant will meet all the applicable regulations of this subtitle.

(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 1993 Subregion V Master Plan retains the property in the C-S-C Zone and retains commercial uses for the property. The proposed fast-food restaurant is compatible with the adjacent commercial, office and residential properties. The proposal is consistent with the 2002 General Plan development policies for the Developing Tier.

(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.

With the recommended conditions, the proposed use will not adversely affect the health, safety or welfare of residents or workers in the area, and there is no indication that it would be detrimental to the use or development of adjacent properties or the general neighborhood. The Historic Preservation and Public Facilities Planning Section and the Transportation Planning Section have concluded that the existing public facilities are adequate to serve the proposed fast-food restaurant. The proposed use of the subject property as a fast-food restaurant will be compatible with the adjacent commercial, office and residential uses and will provide a quality restaurant in the neighborhood.

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

The site is exempt from the county's Woodland Conservation Ordinance because it contains less than 10,000 square feet of woodland. The section has issued a standard letter of exemption dated April 19, 2005.

CONCLUSION

Based on the preceding analysis and findings, it is recommended that Special Exception SE-4535 be APPROVED subject to the following conditions:

1. Prior to the Zoning Hearing Examiner's hearing, the site plan shall be revised to show the following:
 - a. Site development data including the total floor area of the building, the lot coverage, height and dimensions of the building and all setbacks
 - b. A parking schedule showing the required and existing parking spaces for the fast-food restaurant and all the existing buildings
 - c. Lot 15 included in the site plan drawing because all three buildings have a recorded ingress/easement and parking easement.
 - b. Lot number of the property and zoning of the property
 - e. Height of the chain-link fence
 - f. A bicycle rack for six bicycles
 - g. Location of the trash cans
 - h. All adjacent zones and uses
 - i. Title block revised to clarify exclusion of Outlot A
 - j. All existing buildings to remain clearly labeled
2. Prior to issuance of building permits, the applicant shall obtain approval for the existing entrance and any proposed modifications from the State Highway Administration.