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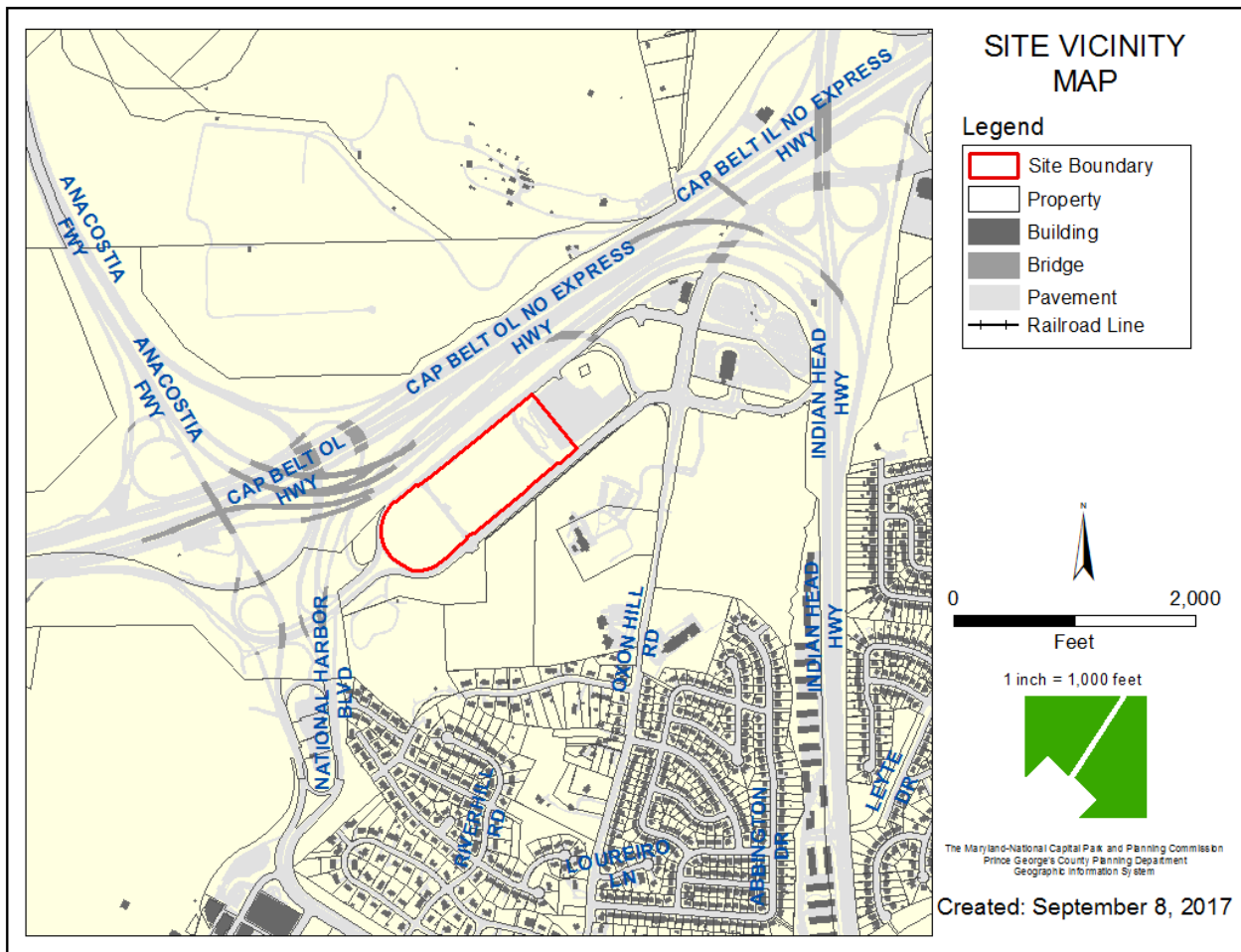
Special Exception

SE-4807

Application	General Data	
Project Name: MGM National Harbor Retail Tobacco Business Location: In the southwest quadrant of the intersection of I-95/495 (Capital Beltway) and MD 210 (Indian Head Highway). Applicant/Address: MGM National Harbor, LLC 101 MGM National Avenue Oxon Hill, MD 20745 Property Owner: Same as applicant	Planning Board Transmittal Date:	11/08/18
	Staff Report Date:	10/24/18
	Date Accepted:	08/13/18
	Planning Board Action Limit:	11/10/18
	Plan Acreage:	23.0635
	Zone:	M-X-T
	Gross Floor Area:	2,038 sq. ft
	Lots:	0
	Parcels:	1
	Planning Area:	80
	Council District:	08
	Election District	12
	Municipality:	N/A
	200-Scale Base Map:	209SE01

Purpose of Application	Notice Dates	
The establishment of a Retail Tobacco Business (RTB) within an existing entertainment establishment of a commercial nature with video lottery facility uses in accordance with Section 27-548.01.04 of the Zoning Ordinance.	Informational Mailing	09/11/17
	Acceptance Mailing:	08/06/18
	Sign Posting Deadline:	10/08/18

Staff Recommendation		Staff Reviewer: Ras Tafari Cannady II Phone Number: 301-952-3411 E-mail: Ras.Cannady@ppd.mncppc.org	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

PRINCE GEORGE’S COUNTY PLANNING BOARD

TECHNICAL STAFF REPORT:

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

VIA: Sherri Conner, Acting Supervisor, Subdivision and Zoning Section
Development Review Division

FROM: Ras Tafari Cannady II, Senior Planner, Subdivision and Zoning Section
Development Review Division

SUBJECT: Special Exception SE-4807

REQUEST: The establishment of a Retail Tobacco Business (RTB) within an existing entertainment establishment of a commercial nature with video lottery facility uses in accordance with Section 27-548.01.04 of the Zoning Ordinance.

RECOMMENDATION: **APPROVAL with conditions**

NOTE:

The Planning Board has scheduled this application on the consent agenda for transmittal to the Zoning Hearing Examiner on the agenda date of November 8, 2018.

You are encouraged to become a person of record in this application. The request must be made in writing and addressed to the Prince George’s County Office of the Zoning Hearing Examiner, County Administration Building, Room 2184, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772. 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:

1. **Location:** The proposed use is located within an existing building on Parcel 4-A, known as the MGM-National Harbor Casino. The site is comprised of 23.0635 acres of land in the Mixed Use-Transportation Oriented (M-X-T) Zone. The subject site is generally located approximately one mile northeast of the Woodrow Wilson Bridge, in the southwest quadrant of the intersection of I-95/495 (Capital Beltway) and MD 210 (Indian Head Highway), in Planning Area 80 and Council District 8. The tract is south of I-95/495 and west of Oxon Hill Road, with frontage on MGM National Avenue to the south. The subject site is on an elevated plateau overlooking the waterfront entertainment/retail complex portion of National Harbor.
2. **History and Previous Approvals:** The subject site is a part of the larger development known as National Harbor, which has a long approval history and consists of two major land areas; the “Waterfront Parcel” and the “Beltway Parcel.” The subject site is part of the Beltway Parcel, which is defined as Parcels 1, 2, 3, 4-A, 5, 6, and 7. All M-X-T-zoned properties within the National Harbor development were rezoned through eight zoning map amendments approved in the 1980s and 1990s.

The Beltway and Waterfront Parcel areas were originally zoned Rural Residential (R-R) when it first became subject to the zoning authority in 1957. On July 12, 1983, the subject property was rezoned to M-X-T via Zoning Map Amendments A-5635-C and A-5636-C. Zoning Map Amendment A-5635 originally requested to rezone 79 acres of R-R property to R-H property in 1967. This proposal was amended to rezone 66.55 acres of R-R property to M-X-T property in 1983. Concurrently, Zoning Map Amendment A-5636 originally requested to rezone 14.07 acres of R-R property to C-2 property. Both subject applications were later consolidated with applications A-5619, A-5620, A-5621, creating a comprehensive concept plan, A-9433 subject to 20 conditions, permitting the comprehensive rezoning of the land area included in A-9433 to M-X-T on July 12, 1983. This comprehensive plan was later amended on October 7, 1988 by the Prince George’s County District Council. The conditions of amended Zoning Map Amendment A-9433 do not affect this development proposal. The 1984 *Approved Subregion VII Master Plan and Sectional Map Amendment* classified the overall property within the Beltway Parcel as M-X-T zoning.

This site is subject to Conceptual Site Plan CSP-98012, which was approved by the District Council on June 10, 1998, subject to 35 conditions. The conditions do not affect the review of this special exception (SE).

An amendment to the CSP, CSP-98012-01, was approved by the Planning Director on September 4, 2008. This amendment revised the zone boundaries of the Waterfront Parcel as allowed by Note 1 of the parent CSP. A second amendment to the CSP, CSP-98012-02 (PGCPB Resolution No. 15-117) was approved by the Prince George’s County Planning Board on November 5, 2015, adding 3.14 acres of land to the Waterfront Parcel.

Subsequently, Preliminary Plan of Subdivision (PPS) 4-01048 (PGCPB Resolution No. 01-163(C)(A)) for the subdivision of 534 acres into 98 lots and 8 parcels was approved by the Planning Board on July 26, 2001, subject to 32 conditions. The following PPS conditions, in **boldface** type, are applicable to this SE, followed by staff comment:

11. ***[Total development within the Beltway Parcel of the subject property shall be limited to the following:**

- a. **200,000 square feet of retail space.**
- b. **1,220,000 square feet of general office space.**
- c. **850 hotel rooms.**
- d. **A visitors' center.**

Alternatively, other permitted uses which generate no more than 2,702 AM peak hour trips and 2,565 PM peak hour trips.]

Total development within the Beltway Parcel of the subject property shall be limited to the following:

- a. **200,000 square feet of retail space.**
- b. **443,000 square feet of general office space.**
- c. **850 hotel rooms.**
- d. **A visitors' center.**

***Denotes amendment**

Underlining indicates new language

[Brackets] indicates deleted language

Alternatively, other permitted uses which generate no more than the number of peak hour trips (1,226 AM peak hour trips and 2,565 PM peak hour trips) generated by the development shown on the currently approved Conceptual Site Plan SP-98012 may be allowed. Upon the modification of said conceptual plan (or approval of a succeeding application), the above level of development may be modified to allow the above uses, except that a maximum of 1,220,000 square feet of general office space may be allowed (or other uses generating no more than 2,702 AM and 2,565 PM peak hour vehicle trips).

The proposed use of an Retail Tobacco Business (RTB) does not seek to amend the 200,000-square-foot cap on retail development as approved by this condition. Pursuant to an e-mail from the Transportation Planning Section (Burton to Cannady II) dated September 20, 2018, staff finds that given the proposed use will be contained within the confines of an existing facility, no additional vehicular trips are anticipated.

On September 27, 2005, the Prince George's County Council adopted Council Bill CB-20-2005 amending the definition of a waterfront entertainment/retail complex, to permit residential uses.

In April of 2006, the *Approved Master Plan and Sectional Map Amendment for the Henson Creek-South Potomac Planning Area* (Henson Creek-South Potomac Master Plan and SMA) retained the subject site in the M-X-T Zone. Detailed Site Plan DSP-07073 was approved by the Planning Board on July 9, 2009 (PGCPB Resolution No. 09-114) for 39.4 acres of land, which included the subject property.

There have been several amendments to DSP-07073. A summary of all amendments are included within the backup of this technical staff report. Specifically, DSP-07073-01 approved the existing development on the subject property. The DSP-07073 conditions of approval, including condition of subsequent revisions, do not affect the review of this SE.

Currently, the subject property is known as Parcel 4-A, recorded in Plat Book SJH 243-61, approved by the Planning Board on November 20, 2015.

The following final plat note, in **boldface** type, is applicable to this SE, followed by staff comment:

5. **Total development of the National Harbor Subdivision, pursuant to approval of Conceptual Site Plan SP-98012, Preliminary Plan of Subdivision 4-01048 and enactment of Council Bill 20-2005, shall include 2,600,000 square feet of retail, dining and entertainment development, 200,000 square feet of conference center, 3,600 hotel rooms, 443,000 square feet of general office space, visitors' center (collectively, 7.34 million square feet) and 2,500 Waterfront Parcel residential dwelling units or such other alternative uses that generate no more than 5,775 AM and 5,699 PM peak-hour vehicle trips. The development is premised on the satisfaction of the transportation conditions expressed in Condition Nos. 13, 14, 15, 16 and 19 of the corrected amended resolution of Preliminary Plan of Subdivision 4-01048.**

The proposed retail space located within the MGM Casino is within the previously approved 2,600,000 square feet of retail development permitted pursuant to approval of Conceptual Site Plan SP-98012, PPS 4-01048, and enactment of Council Bill 20-2005. The retail space is located on the lower main casino level which includes other retail and restaurant uses within the MGM National Harbor Casino. There is an escalator that guests use to access the atrium or second level gaming floor. Excluding the hotel and four parking levels located below the casino, there are two casino or gaming floor levels. All gaming, restaurant, and retail uses are only accessible from the interior of the MGM National Harbor Casino. There is no direct exterior access to gaming, restaurant, or retail uses. In addition, pursuant to an e-mail from the Transportation Planning Section (Burton to Cannady II) dated September 20, 2018, staff finds that given the proposed use will be contained within the confines of an existing facility, no additional vehicular trips are anticipated.

3. **Neighborhood and Surrounding Uses:** The general neighborhood is bounded to the north by I-95/495 (Capital Beltway), MD 210 (Indian Head Highway) to the east, Broad Creek to the south, and the Potomac River to the west. The immediate uses surrounding the subject property are as follows:

North— MGM National Avenue and Capital Beltway (I-95) – The land across I-95/495 from the Beltway Parcel is occupied by the Oxon Hill Children’s Farm, owned by the National Park Service, located within the Reserved Open Space (R-O-S) Zone.

South and West— MGM National Avenue and various roadways and highway access ramps – Across said road are lands owned by The Maryland-National Capital Park and Planning Commission (M-NCPPC), Betty Blume Neighborhood Park, and the grounds of Oxon Hill Manor.

East— Existing surface parking in the M-X-T Zone, to be redeveloped with a 1,271,000-square-foot, 17-story, mixed-use building in accordance with the approval of DSP-07073-02 for the Beltway Parcel.

4. **Request:** The establishment of an RTB within an existing entertainment establishment of a commercial nature with video lottery facility uses. More specifically, the applicant is proposing one 2,038-square-foot space for the retail sale and consumption of tobacco products, to be limited to 1,145.5 square-feet of gross floor area (56.2%), with a food and beverage component, to be limited to 892.5 square-feet of gross floor area (43.8%).

5. **Development Data Summary:**

	EXISTING	PROPOSED
Zone(s)	M-X-T	M-X-T
Use(s)	Commercial/Retail/Entertainment Establishment	Retail Tobacco Business (Retail)
Acreage	23.0635 (Parcel 4A)	23.0635 (Parcel 4A)
Parcels	1	1
Gross Floor Area	2,038 sq. ft. (Retail)	2,038 sq. ft. (RTB)
Lots	0	0

6. **Required Findings:** Section 27-317(a) of the Prince George’s County Zoning Ordinance provides that:

(a) A Special Exception may be approved if:

- (1) The proposed use and site plan are in harmony with the purposes of this Subtitle.**

The purposes of Subtitle 27 of the Prince George’s County Code, as set forth in Section 27-102(a)(1) through (15) of the Zoning Ordinance, are generally to protect the health, safety, and welfare of the public; to promote compatible relationships between various land uses; to guide orderly development; and to ensure adequate public facilities and services. Specific to the M-X-T Zone, as set forth in Section 27-542(a) of the Zoning Ordinance, the purposes relate to promoting the orderly development and redevelopment of land in the vicinity of major interchanges, major intersections, major intersections, major transit stops, and designated General Plan Centers so that these areas will enhance the economic status of the County; create compact, mixed-use, walkable communities enhanced by a mix of residential, commercial, recreational, open

space, employment, and institutional uses. As outlined in the applicant's statement of justification (SOJ) dated June 7, 2018, adopted herein by reference, with the recommended conditions, staff finds that the uses and the site plans, as proposed, are 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.

As outlined within this technical staff report, this application has demonstrated conformance 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.

The subject site was rezoned to the M-X-T Zone through several zoning map amendment applications. The proposed use is a permitted use in the zone at the location proposed which is interior to an existing 1,078,237-square-foot facility. The retail store is accessed from the interior of the existing building with no separate direct access from the exterior of the building.

The Henson Creek-South Potomac Master Plan and SMA retained the subject site in the M-X-T Zone. The previously approved CSP for the larger development, including the Beltway Parcel, specifically defines a mix of retail, commercial office, hotel, and a visitor's center.

The Beltway Parcel was envisioned in the CSP as a high-density urban environment with 725,000 square feet of retail space, 200,000 square feet of general office space, 1,000 hotel rooms, and a 50,000-square-foot visitor's center, or other uses not exceeding the designated trip cap. At the time of PPS, the plan called for the same mix of uses, but with an increase in the amount of office space (to 443,000 square feet) and a reduction in retail space (to 200,000 square feet) and hotel rooms (850). The current MGM-National Harbor Casino is developed as a landmark building, fulfilling the vision of a high intensity development that was intended when the property was placed in the M-X-T Zone. Per the applicant's SOJ, the proposed RTB is proposed for the convenience of the MGM-National Harbor Casino patrons.

The subject property is located within the National Harbor Regional Transit District. The 2014 *Plan Prince George's 2035 Approved General Plan's* defined Regional Transit Districts as "high-density, vibrant, and transit-rich mixed-use areas envisioned to capture the majority of future residential and employment growth and development in the County" (page 106).

The master plan recommends mixed-use land uses on the subject property. The request for an RTB use within the existing MGM-National Harbor Casino is not inconsistent with the purposes and standards of the M-X-T Zone, as well as the master plan.

Staff finds that this application for the establishment of a RTB located within the interior of the MGM-National Harbor Casino, will not substantially impair the integrity of the Henson Creek-South Potomac Master Plan and SMA.

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

The applicant's SOJ, dated June 7, 2018, highlights the instillation of a high-volume heating, ventilation, and air conditional system (HVAC) specifically designed for the RTB, in which the HVAC is designed with capacities in accordance with Chapter 4 and 5 of the International Mechanical Code for Smoking Lounges located in Retail Stores and Public Spaces pursuant to Subtitle 4 of the County Code. Per the applicant, a critical component of the HVAC system is that it provides the proper percentage exchange of the room's air with outside air that is either heated or cooled to match the ambient temperature of the room. The proposed HVAC system will meet the dual purpose of providing a smoking venue for patrons, while also affording an environment of clean fresh air. As stated within the discussion portion of this report, Subtitle 4 will regulate appropriate ventilation to be reviewed at the time of permit.

None of the responses from any of the referral agencies received by staff indicate that the proposed establishment of an RTB located within the interior of the MGM-National Harbor Casino, subject to specific conditions, will 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 Henson Creek-South Potomac Master Plan and SMA recommends mixed-use land uses for the subject property. The subject use is located within the existing MGM National Harbor Casino site within the Beltway Parcel at National Harbor.

The MGM National Harbor Casino parcel does not abut existing residentially-zoned neighborhoods and is more than 550 feet from residential development. The subject site, which has a long and narrow configuration is surrounded by roadways and highways.

This SE is for a 2,038-square-foot RTB use within the interior of the 1,078,237-square-foot MGM National Harbor Casino. The application will be subject to the requirements of Subtitle 4 of the County Code, to ensure proper ventilation of the retail space. The operational compliance to Subtitle 4 will be determined by the Prince George's County Department of Permitting, Inspections and Enforcement at the time of permitting.

Staff finds that the proposed use of a 2,038-square-foot RTB within the interior of the 1,078,237-square-foot MGM-National Harbor Casino will not be detrimental to the use or development of adjacent properties or the general neighborhood.

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

The site has an approved Type II Tree Conservation Plan, TCPII-023-01-03, and was grandfathered from the natural resources inventory process because it has an associated PPS that was approved prior to September 2010. The site is entirely developed, and the proposed application area is inside the existing MGM National Harbor Casino, allowing the proposed site plan to remain in conformance with the approved TCPII. No revision to the TCPII is proposed with this application.

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

There is no proposed exterior site work or grading associated with the proposed RTB; therefore, this standard does not apply. This site has an approved Type II Tree Conservation Plan, TCPII-023-01-23, which was originally approved with Conceptual Site Plan CSP-98012 and Detailed Site Plan DSP-07073, respectively. The approved TCPII shows the site cleared of all woodland with an off-site woodland conservation requirement of 17.39 acres.

7. Specific Special Exception Requirements:

Section 27-415.01. Tobacco shops, electronic cigarette shops or a retail tobacco business.

(a) Tobacco shops, electronic cigarette shops, or a retail tobacco business may be permitted by Special Exception, subject to the following:

(1) The structure in which the use is proposed shall be located at least three hundred (300) feet from any school, library, park, recreational facility, and historic site, resource, or district identified on any applicable Historic Site and District Plan, a National Register Site, or an Historic District. This provision shall not apply to a Retail Tobacco Business within a Recreational or Entertainment Establishment of a Commercial Nature with Video Lottery Facility uses in accordance with Section 27-548.01.04 of this Subtitle.

The MGM-National Harbor Casino's Detailed Site Plan (DSP-07073-01) was approved by the Planning Board (PGCPB Resolution No. 14-36) on June 9, 2014, and affirmed by the District Council on July 14, 2014, as an entertainment establishment of a commercial nature with a video lottery facility. Therefore, the above referenced standard does not apply to the proposed RTB application.

(2) In its final decision to approve a Special Exception for the use, the Council may impose other reasonable requirements deemed necessary to safeguard the health, safety, morals, and general welfare of the community, taking into account the character of surrounding properties and the general neighborhood, and any other uses on the subject property.

As stated within the applicant's SOJ dated June 7, 2018, the applicant will comply with any requirements deemed necessary by the Council to safeguard the health, safety, morals, and general welfare of the community, taking into account the character of surrounding properties and the general neighborhood, and any other uses on the subject property.

- (3) **No Special Exception shall be permitted for a tobacco shop, electronic cigarette shop, or a retail tobacco business located within 2,000 feet of another tobacco shop, electronic cigarette shop, or a retail tobacco business.**

The subject application complies with this standard. The closest tobacco retailer identified as being proximate to the front entrance to the MGM-National Harbor Casino is identified as "Tobacco Land - Tobacco Shop," located approximately 5,550 feet northeast at 6259 Livingston Road, Oxon Hill, Maryland 20745.

8. **Zone Standards:** The applicant's proposal for the establishment of an RTB within a specialty designed venue located within the interior of MGM-National Harbor Casino complies with the requirements of Section 27-542(a), M-X-T Zone (Mixed Use-Transportation Oriented, of the Zoning Ordinance. This proposal is in compliance with the requirements of Section 27-542 of the Zoning Ordinance.
9. **Parking Regulations:** In accordance with the parking and loading regulations contained in Section 27-574 of the Zoning Ordinance, the number of parking spaces required in the M-X-T Zone were calculated by the applicant and submitted for Planning Board approval at the time of DSP approval. Previously approved Detailed Site Plan DSP-07073-11 shows a requirement of 4,599 parking spaces, which includes 58 handicap spaces (8 van-accessible), and 5 loading spaces. The subject property continues to provide 4,705 parking spaces, which includes 70 handicap spaces (8 van-accessible), and 5 loading spaces as approved on DSP-07073-11. The use is replacing a previous retail use and this use generates the same demand on parking. Therefore, there is no change to the required number of parking spaces.
10. **2010 Prince George's County Landscape Manual Requirements:** The subject application, which does not propose a structural change of the MGM-National Harbor Casino, remains in conformance with the landscape plans approved with DSP-07073, and subsequent revision, and Alternative Compliance AC-14005.
11. **Tree Canopy Coverage:** The project is not subject to the requirements of Subtitle 25, Division 3, The Tree Canopy Coverage Ordinance, because the passage of Council Bill CB-19-2013 amended Section 25-127, Applicability, which now exempts the project as stated below:

(b) **Exemptions**

- (1) **The following are exempt from this Division:**

(J) **Properties in a commercial, industrial or mixed-use zone subject to a Detailed Site Plan or Specific Design Plan approved before September 1, 2010 or maintained an active grading permit since September 1, 2010.**

The subject property is located a mixed-use zone and the applicable Detailed Site Plan (DSP-07073) was approved prior to September 1, 2010, qualifying the project for the exemption delineated above.

12. **Signage Regulations:** The subject application does not include any proposed signage.
13. **Referral Comments:** The following referrals were received and are incorporated herein by reference; all of the comments are addressed on the site plan, or as part of this technical staff report:
 - a. Environmental Planning Section dated August 23, 2018 (Schneider to Cannady II)
 - b. Permit Review Section dated August 16, 2018 (Gallagher to Cannady II)
 - c. Special Projects Section dated August 21, 2018 (Mangalvedhe to Cannady II)
 - d. Community Planning Division dated September 5, 2018 (Zamore to Cannady II)
 - e. Transportation Planning Section dated September 21, 2018 (Burton to Cannady II)
 - f. Prince George's County Department of Permitting, Inspections and Enforcement (Formukong to Cannady II)
14. **Discussion:**

Section 27-107.01. – Definitions.

(202.1) Retail Tobacco Business: A retail store where the primary use is the retail sale of tobacco products and tobacco smoking accessories which may include on site consumption in accordance with Section 19-131 of the County Code and the incidental sale of food and or beverage provided the gross floor area of the food and or beverage area does not exceed forty-nine percent (49%) of the gross floor area.

The floor plan prepared by the applicant's architect, Hamilton Anderson Associates entitled "Proposed Retail Tobacco Store Floor Plan" provides a breakdown of the gross floor area (GFA) within the RTB. The applicant is proposing the retail sale and consumption of tobacco products to be limited to 1,145.5 square feet of gross floor area (56.2%), and the food and beverage component to be limited to 892.5 square feet of gross floor area (43.8%) of the total 2,308-square-foot retail space. As mandated by the County Code, the applicant's proposal conforms to the requirement for the gross floor area of the food and beverage area to not exceed 49% of the gross floor area.

Section 19-131. - Smoking Prohibited.

- (a) It shall be unlawful for any person to smoke or use an electronic cigarette in any eating and drinking establishment open to the public except as provided in (b) below.**
- (b) Smoking is not prohibited by this Section in the bar and dining area of an eating and drinking establishment that:**

- (1) (A) **Is a club as defined in the State alcoholic beverages law and has a valid use and occupancy permit issued by the Department of Permitting Inspection and Enforcement;**
- (B) **Has an alcoholic beverages license issued to private clubs under the State alcoholic beverages law; and**
- (C) **Allows consumption of alcoholic beverages on its premises; or**
- (2) **Is licensed pursuant to Section 6-201(r)(13) of the State alcoholic beverages law.**

A valid alcoholic beverage license permitting the on-site consumption of beer, wine and liquor was issued in accordance with the State alcoholic beverages law by the State of Maryland on November 4, 2016 and has been successfully renewed in each year since. The applicant has provided a copy of the 2018 Facility Liquor License issued on March 29, 2018, with an expiration date of May 31, 2019 with the subject application.

- (c) **Use of an electronic cigarette is not prohibited by this section in a facility that has been awarded a video lottery operation license by the Maryland Video Lottery Location Commission under State Government Article, Title 9, Subtitle 1A.**

The MGM-National Harbor Casino is currently operating under video lottery operations in accordance with its valid license issued by the State of Maryland on December 8, 2016, with an expiration date of December 8, 2031. The applicant has provided a copy of the Video Lottery and Table Games Operations License issued by the State of Maryland with the subject application.

- (d) **Smoking is not prohibited by this Section in a retail tobacco business as defined by Section 27-107.01(a)(202.1) of the County Code, where a food and beverage area are incidental, provided that it complies with the standard for ventilation of such a facility as defined under Subtitle 4 of the County Code.**

The applicant is proposing the retail sale and consumption of tobacco products with an incidental food and beverage area. The applicant's SOJ, submitted on June 7, 2018, states the following: "According to mechanical designed prepared for the RTB by Hamilton Anderson Associates, the heating, ventilation, and air conditioning system (HVAC) is designed with capacities in accordance with Chapter 4 and 5 of the International Mechanical Code for Smoking Lounges located in Retail Stores and Public Spaces pursuant to Subtitle 4 of the County Code." A critical component of the HVAC system is that it provides the proper percentage exchange of the room's air with outside air that is either heated or cooled to match the ambient temperature of the room. Conformance with the building code requirements pursuant to Subtitle 4 will be evaluated at the time of building permit.

RECOMMENDATION

A special exception use is considered compatible with uses permitted by-right within the M-X-T Zone, as long as specific special exception criteria are met. Unless unique adverse impacts are identified, the special exception may be approved. The appropriate standard for determining whether the use would create an adverse impact upon surrounding properties is to show that the proposed use, at this particular location proposed, would not have adverse impacts above and beyond those inherently associated with the special exception use, regardless of its location within the M-X-T Zone.

Based on the applicant's statement of justification dated June 7, 2018, the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings as set forth in Section 27-317 (in general) and Section 27-415.01, for tobacco shops, electronic cigarette shops or a retail tobacco business, of the Zoning Ordinance in this instance. Therefore, staff recommends approval of Special Exception SE-4807, MGM National Harbor Retail Tobacco Business, subject to the following conditions of approval:

1. Prior to the certification of the special exception, the site plan shall be revised as follows:
 - a. Edit General Note 16 to state "CSP-98012 Approved on 6/10/1998."
 - b. List the gross and net acreage of Parcel 4-A (gross/net) within the general notes.
 - c. List the gross floor area of the special exception use within the general notes.
 - d. Update the general plan notes to reflect the current information as approved under Detailed Site Plan DSP-07073-01.
2. The installation and maintenance of a sprinkler system that is NFPA 13 Standards for the Installation of Sprinkler Systems compliant to mitigate the fire risk.
3. The installation and maintenance of automated external defibrillators (AEDs) in accordance with Code of Maryland Regulations (COMAR) requirements (COMAR 30.06.01-05).