DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER

SPECIAL EXCEPTION
4626
and
ALTERNATIVE COMPLIANCE
11010

DECISION

Application:	Alteration, Enlargement, Extension or Reconstruction of a Certified Non-Conforming Use (Liquor Store)/ Alternative Compliance
Applicant:	Ben K. Han t/a Jock's Liquors
Opposition:	Sylvia Brown
Hearing Dates:	November 3, 2011
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 4626 is a request to expand a Certified Non-Conforming Liquor Store developed on approximately 0.2936 acre of land in the C-O (Commercial Office) Zone. The subject property is located on the east side of Eastern Avenue, east of Chapelwood Lane, and north of Sheriff Road, and is identified as 1005 Eastern Avenue, Capitol Heights, Maryland. AC-11010 is a request for Alternative Compliance from bufferyards and plant types prescribed in the *Landscape Manual*.

(2) The Technical Staff recommended approval with conditions. (Exhibit 15) The Planning Board adopted the Staff's recommendation as its own. (Exhibit 18)

(3) Ms. Sylvia Brown appeared in opposition to the instant request at the hearing held by this Examiner.

(4) At the close of the hearing the record was left open to allow the submission of certain items (T.105-108). The last of these items was received on November 28, 2011, and the record was closed at that time.

FINDINGS OF FACT

(1) The subject property is an oddly-shaped, approximately 0.29 acre parcel that is improved with a 1,024 square-foot, one-story block and frame liquor store and associated parking, the majority of which is located in the public rights-of-way for Sheriff

Road, Eastern Avenue and Chapelwood Lane. The Liquor Store has been operating since 1952. At that time the property was classified in the C-A (Commercial-Ancillary) Zone which permitted the use by right. The property was rezoned to the C-O Zone in 1993, via the adoption of a Sectional Map Amendment. The Liquor Store became a non-conforming use at that time. It was legally certified as such by the Planning Board in 2008 upon its approval of CNU-5873-2006. A copy of the certified Use and Occupancy permit was included in the record. (Exhibit 41(c))

(2) The subject property is exempt from the requirements of the Woodland and Wildlife Conservation Ordinance (formerly known as the Woodland Conservation and Tree Preservation Ordinance) because the site is less than 40,000 square feet in size and there is no previously approved Tree Conservation Plan. (Exhibit 57(h))

Master Plan/Sectional Map Amendment/General Plan

(3) The subject property lies within an area discussed in the 2010 Subregion 4 Master Plan and Sectional Map Amendment. The Master Plan recommended multi-level commercial/mixed uses for the site. The Sectional Map Amendment retained the C-O zoning of the site but rezoned the surrounding properties to the north, east and southeast along the Eastern Avenue/Sheriff Road gateway to the M-U-I (Mixed-Use-Infill) Zone within a DDOZ (Development District Overlay Zone). The DDOZ sets forth specific design criteria for land within its boundaries. While the subject property is not located therein Staff noted that the instant request "does implement the plan's strategy for redevelopment of the Sheriff Road and Eastern Avenue parcels for multi-level commercial/mixed use development." (Exhibit 15, p. 2)

(4) The 2002 General Plan placed the property in the Developed Tier. As noted on page 31 of said Plan, "[t]he vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to-high density neighborhoods."

Neighborhood/Surrounding Uses

(5) The property is surrounded by the following uses:

- North and East – Single-family residences in the M-U-I Zone
- South – Across Sheriff Road, a carryout restaurant/beer and wine store in the M-U-I Zone, and a convenience store in the District of Columbia
- Southwest – Across Eastern Avenue, a carryout restaurant in the District of Columbia
- West – A wide unused section of right-of-way for Chapelwood Lane, through which the Applicant gains access. (Exhibits 15, 20 and 51)

(6) The Neighborhood is defined by the following boundaries: Leroy Gorham Drive to the north and east; Sheriff Road to the south; and Eastern Avenue to the northwest. The neighborhood is predominantly residential in character, consisting of single-family dwellings and churches. The commercial uses (the instant use, two (2) carryout

restaurants and a convenience store) are located at the intersections of Sheriff Road, Division Avenue, and Eastern Avenue. (Exhibit 15)

Applicant's Request

(7) Applicant purchased the Liquor Store in 2002. He would like to raze the existing building and relocate it to the eastern portion of the site. Applicant wishes to make certain improvements to the site since the existing facility is unsightly, employees inside cannot see the parking lot when working in the store, there is very little storage area, and there have been complaints of illegal activity on and near the property. (Exhibit 49; T. 7-10) Applicant, therefore, requests approval to redevelop the site with a 1,923 square foot liquor store and an additional 750 square feet of office space on the second floor. There will also be striped parking, heavy landscaping, fencing and a retaining wall. (Exhibit 58) Elevations were submitted for the proposed development. (Exhibit 5) Fourteen (14) parking spaces are required for the uses (less 20% for joint use of parking lot pursuant to Section 27-572 of the Zoning Ordinance) and fourteen (14) are provided.

(8) Changes were made to the original request after comment was received from various County agencies. Some of the requested changes led Applicant to seek a vacation of a portion of the unused right-of-way for Chapelwood Lane (originally platted as Division Avenue). (Exhibits 40(a)-(b), 44, 51 and 53; T. 43-44)

(9) The Applicant is also requesting alternative compliance from Section 4.7 (Buffering Incompatible Uses) of the *Prince George's County Landscape Manual* along the eastern and northern property lines where the proposed use is adjacent to single-family dwellings. Alternative Compliance is also sought since Applicant is not showing a continuous 10-foot wide commercial landscaped strip along the road frontages as required by Section 4.2. There will be a six (6) foot high fence surrounding the eastern and northern boundaries which adjoins single family homes. Finally, there is a retaining wall along the northern property line due to the drop of approximately 12-13 feet between the surface grade of Applicant's property and the property owned by Mr. Louis Jones, Jr.

(10) Mark Ferguson, accepted as an expert in the area of land use planning, addressed Staff's recommended conditions prior to Alternative Compliance approval, discussed *infra*. He explained that alternative compliance to Section 4.2 of the *Landscape Manual* was no longer required because Applicant had included a 10-foot landscape strip along Sheriff Road, Eastern Avenue, and the right-of-way for Chapelwood Lane. (Exhibit 58(b); T. 51) Applicant is now proposing to remove all asphalt and place all required shade trees along the ultimate right-of-way for Sheriff Road. Applicant reduced the number of parking spaces and arrived at a more efficient parking design. The two (2) Section 4.7 Schedules were amended to reflect the correct minimum building setback and minimum yard width. The privacy fence suggested by Staff and the plantings for the eastern property line were provided. A corrected landscape schedule for all areas for which Alternative Compliance is requested was provided. Applicant cannot meet recommended condition (c) on page 10 of the

Technical Staff Report since the existing trees (actually brush) must be removed due to the grading required on the site, and will be replaced with new plantings. A detail of the vinyl fence has been provided. All plants are now drawn to scale and properly depicted on the Plan. Finally, Applicant disagrees with Staff's recommendation as to use of native plants in response to Section 4.9 of the *Landscape Manual*. Instead Applicant wishes to provide the non-native Nellie Stevens Holly, a hybrid plant, for all evergreen trees on site, and install 100% native plants for all shade trees, ornamental trees and shrubs placed on the site. (T. 55) In response to a concern of the People's Zoning Counsel that the Nellie Stevens Holly might not survive on site, and thereby exacerbate the illegal activity that has occurred to the rear of the site, Mr. Ferguson noted that "this species was recommended because it's more durable than your average plant and it's for situations exactly like this that it was bred." (T. 57)

(11) Mr. Ferguson noted that most of the site is paved and located within the public right-of-way of one (1) of three (3) streets. There is also a drop in grade to the north of the site, necessitating the erection of a retaining wall. The site is relatively small, and there was little room for landscaping once the building and parking was laid out in the manner originally suggested by Staff. (Exhibit 48; T. 38-41) Applicant ultimately amended its Site and Landscape Plan to address all but one of the conditions recommended by Staff, discussed *supra*. The Liquor Store footprint has been reduced to 1,923 square feet. The dumpster has been set back 13 ½ feet from the property line. The note concerning the use of the basement for storage and mechanical elements was removed from the building footprint (but was not added as a general note). The parking schedule now reflects the 20% reduction for shared usage. The zoning of the properties to the north and east is reflected on the plan. General Note 10 regarding a rental unit has been removed. Staff's condition regarding a possible medical office on the second floor is just a restatement of a provision of the Zoning Ordinance and need not be inserted on the Site Plan. Finally, Applicant did submit a safety plan, as recommended by Staff, and addressed *supra*. (T. 49-51)

(12) Mr. Ferguson opined that it may have been a mistake for the property to not have been included in the rezoning of all surrounding properties to the M-U-I (Mixed Use-Infill) Zone. Applicant submitted a copy of the zoning map for the area that was included in the Master Plan which shows no zoning category for the subject property. (Exhibit 55(b)) Mr. Ferguson expanded on his mistake theory, as follows:

> The Subregion 4 Plan identifies the site as being in a large general area designated as "Living Area B." There is an oddity in the plan, however: The "Proposed Land Use Plan" on page 64 of the Plan text left the site area blank, not designating it for any land use category. In a telephone conversation on November 2, 2011 with Ms. Sonja Ewing of M-NCP&PC, the project leader for the Subregion 4 Master Plan planning project, she indicated that there was no specific intent to leave the subject site blank; her belief was that a GIS database error gave rise to the blank area on the land use map.[1] An e-mail of the same date from Ms. Ewing to this planner (which was copied to the office of the Zoning Hearing Examiner) contained the graphic which will be included in the final printed text; that new graphic indicates that the site is planned for Mixed-Use Commercial.

[1] Ms. Ewing testified at the hearing that Mr. Ferguson's account concerning a mistake was correct. (T. 104-105)

> This land use designation corresponds to the intent communicated by the illustration in Map 12-5 on page 321 of the Plan.
>
> This map shows an illustrative concept plan for the redevelopment of "Opportunity Site 4: Sheriff Road and Eastern Avenue." A notation on that illustration says, "Redevelop the Sheriff Road and Eastern Avenue parcels for multilevel commercial/mixed use development."
>
> On the basis of the original land use recommendation, however, the zoning in the Sectional Map amendment did not reclassify the subject property into the M-U-I Zone, unlike the surrounding properties; instead, the previously-existing C-O Zone was not changed by the Sectional Map Amendment. . . . This planner believes that had there been no GIS database error, the plan would have recommended the application of the M-U-I Zone to the subject property, just as it had been for the adjacent C-O Zoned properties bordering the site to the east. And had that been the case, the existing use would be conforming, as a "food or beverage store" is a permitted use in the M-U-I [Z]one. (Exhibit 47, pp. 5-6).

(13) Subsequent to the hearing Applicant prepared a security plan to minimize loitering at the site. The plan was submitted to the Prince George's County Police Department and the Office of the State's Attorney for Prince George's County for review and comment. (Exhibit 57(i)). Applicant's strategies to eliminate loitering and other crime included:

- A site layout that will limit or deter loitering with building mounted light fixtures to provide good visibility; heavy landscaping (including the installation of prickly holly trees within the side and rear bufferyards); and fencing and retaining walls;
- Limited use of advertisements on store windows to ensure an unobstructed view;
- Use of internal and external security cameras, including a closed circuit television system within the store; and
- Use of bullet proof glass at the check-out counter, and self locking doors, to reduce the opportunity for criminal activity.

Agency Comment

(14) The Technical Staff recommended approval of both requests. It first opined that alternative compliance to Sections 4.2 (Requirements for Landscape Strips along Streets) and 4.7 (Buffering Incompatible Uses) of the *Landscape Manual* should be granted, reasoning as follows:

1. **Section 4.2 (previously Section 4.3.a.)** - The site has a combined 190 linear feet of frontage on Chapelwood Lane, Eastern Avenue and Sheriff Road, including a driveway onto Eastern Avenue from the unused area of right-of-way for Chapelwood Lane. The site would require a 4 to 15-foot-wide landscape strip, depending upon the chosen option available for use in the *Prince George's County Landscape Manual*. The site plan does not reflect a landscape strip along portions of Chapelwood Lane or Sheriff Road and has some areas with minimal landscaping along Eastern Avenue. The applicant applied for alternative compliance from this requirement. The Alternative Compliance Committee proposes an alternative which allows for the provision of a ten-foot-wide strip along Chapelwood Lane and Eastern Avenue. It is depicted in Staff Exhibit A.

Comment: Along Sheriff Road, Staff Exhibit A proposes that the majority of the required 10-foot-wide landscape strip be provided on-site and temporarily, in the ultimate right-of-way. Additional plantings within the ultimate right-of-way will create a temporary landscape strip between ten and thirty feet in width until such time as the roadway is widened. Staff recommends that the applicant replace an area of existing asphalt, within the ultimate right-of-way for Sheriff Road, with a green area and plant the area with three additional ornamental trees and clustering of shrubs for an improvement to the site's street frontage. This area functions as an entry point and gateway into Prince George's County, specifically the Subregion 4 sector plan area. Since no dedication toward the Sheriff Road right-of-way is currently required, the Alternative Compliance Committee determines that the additional green area, ornamental trees and shrubs will provide some mid-to long-term benefit on the site. The plant material proposed within the ultimate right-of-way will need to be removed in the future, upon expansion of Sheriff Road to the limits of the ultimate right-of-way. Even with the future expansion of Sheriff Road, additional plant material within the remaining landscape strip will contribute to the stated purposes of Section 4.2. The Alternative Compliance Committee determines that by providing the required planting units within the available green area, the Staff Exhibit A proposal provides an alternative that is equally effective compared to the strict compliance to the *Prince George's County Landscape Manual.* The Alternative Compliance Committee was unable to make the same finding with the plan proposed by the applicant.

2. **Section 4.7 -** A Type "C" bufferyard, including a 40-foot building setback and a 30-foot-wide landscape yard is required along the northern and eastern property lines where the liquor store is adjacent to single-family detached dwellings. Neither the 40-foot building setback nor the 30-foot-wide landscape yard is being provided for the full length of the property line, nor could it, due to the odd triangular shape of the site.

Comment: The applicant requested alternative compliance from Section 4.7, Buffering Incompatible Uses, along the northern and eastern property lines where the liquor store is adjacent to single-family detached dwellings. Because the lot is oddly shaped and only 12,790 square feet in size, the required bufferyards would encumber approximately 70 percent of the site. However, the applicant's proposal did not provide sufficient buffering. The proposed Staff Exhibit A, however, indicates that an effective bufferyard can be provided, if the plan is revised to show:

Along the Eastern Property Line:

In this area, the applicant should provide a 12-foot building setback, a variable width landscape yard, 110 plant units, and a 6-foot-high privacy fence that begins approximately 40 feet from the front property line and extends to the north property line at the rear of the site, as depicted in Staff Exhibit A. The privacy fence will provide an opaque separation between the liquor store and the adjacent single-family detached residence. The privacy fence should be set back from the ultimate right-of-way to allow for surveillance into the site from Sheriff Road. Details and specifications of the privacy fence should be provided to indicate that it will be durable, non-wood, and natural color. The Alternative Compliance Committee recommends that the bufferyard adjacent to the proposed parking lot be planted with coarse varieties of shrubs and evergreen trees, such as 'Nelly Stevens Holly, which reduces the probability of loitering within the bufferyard.

The Alternative Compliance Committee recommends that the applicant redesign the surface parking lot to create a more efficient parking design, and provide additional green space at the perimeter of the site. Staff Exhibit A indicates that, with redesign, a 12-15-foot-wide bufferyard can be provided along the majority of the eastern property line. The Alternative Compliance Committee finds that by the redesigning the parking area to reduce paving, providing 110 planting units, and a 6-foot-high privacy fence, as shown on the Staff Exhibit A, that the proposal provides an alternative that is equally effective compared to the strict compliance to the *Prince George's County Landscape Manual*. The Alternative Compliance Committee was unable to make the same finding with the plan proposed by the applicant.

Along the Northern Property Line:

The Alternative Compliance Committee recommends that the applicant minimally provide a 12-foot building setback, a continuous 10-foot-wide landscape yard, 100 plant units, and a 6-foot-high privacy fence as indicated in Staff Exhibit A. Details and specifications of the privacy fence should be provided to indicate that it will be durable, non-wood, and a natural color.

The Alternative Compliance Committee finds that by providing 100 planting units, a continuous 10-foot-wide landscape yard, and a 6-foot-high privacy fence as shown on Staff Exhibit A, that the proposal provides an alternative that is equally effective compared to the strict compliance to the *Prince George's County Landscape Manual*. The Alternative Compliance Committee was unable to make the same finding with the plan proposed by the applicant.

Conclusion:

The Alternative Compliance Committee feels that the reduced bufferyard is justified and that a revised plan with the additional planting units and fencing proposed in Staff Exhibit A is equal to or better than normal compliance with Section 4.7 of the 2010 *Prince George's County Landscape Manual*. On June 2, 2011, the Alternative Compliance Committee forwarded their report to the Planning Director for signature. The Planning Director recommends approval, subject to conditions, of the alternative compliance for Sections 4.2 and 4.7 of the *Prince George's County Landscape Manual* along the northern and eastern property lines.

(Exhibit 15, pp. 5-6)

Subsequent to the hearing Staff reviewed Applicant's proposed amendments to its request for alternative compliance (concerning the use of the Nellie Stevens Holly in certain areas to deter loitering and other unsavory activities). Staff evaluated it and noted that it would still recommend approval since "the landscape proposal provides an alternative that is equally effective as normal compliance with the *Prince George's County Landscape Manual.*" (Exhibit 59)

(15) The Transportation Planning Section also recommended approval, reasoning as follows:

> In general, the proposed use has a higher trip generation than a medical office use that would be allowed by right. This is true during the PM peak hour and on a daily basis…. The proposed [use] will include a new liquor store, an office area, and storage space on the second floor. There are no recent traffic counts available in the area. Nonetheless, although the proposed use is more traffic-intensive than the zoning would normally permit, especially during the PM peak hour, the approved special exception would appear to pose minimal transportation adequacy issues.
>
> This finding is based on the assumption that a majority of the trips (60 percent) will be pass-by trips already on the road. A pass-by trip is considered a trip already on an adjacent roadway. Pass-by trips would already be impacting nearby intersections such as Eastern Avenue and Sheriff Road and would not be generated by the proposed use….
>
> There are no issues with the general circulation and parking within the site. The existing access point on Eastern Avenue will be relocated further east, improving access/egress and safety along Eastern Avenue. However, the status of the property immediately west of the site is not fully clear, and coordination with the County Department of Public Works and Transportation is advised….
>
> The Transportation Planning Section finds that the proposal for a retail liquor store would meet the requirements of Subtitle 27 for the approval of a special exception from the standpoint of vehicular circulation and transportation.

(Exhibit 22, p. 2-3)

(16) An officer with the Prince George's County Police Department (the "Department") testified that the Department has had ongoing problems with loitering, prostitution and drug sales in the vicinity of the Liquor Store. There have been several calls and arrests for such activity at the subject property. (Exhibit 45, items highlighted in blue); T. 23-32) He urged that Applicant meet with the Department and the State's Attorney's Office to develop a security plan for the site to combat any illegal activity therein, because he has found that improved lighting and better camera systems assist law enforcement and reduces criminal activity. (T. 25-26)

Opposition's Comment:

(17) Ms. Sylvia Brown testified in opposition to the request. Ms. Brown is a resident of the District of Columbia, but lives very close to the subject property. Her primary objection appeared to be related to the ongoing criminal activity in the area:

> A liquor store will not serve the retail needs of the community. A liquor store will add to the current nuisance and high profile crimes that are menacing the Sheriff Road and Eastern Avenue corridor. The … site impacts the Maryland jurisdictions of Fairmount Heights, Capitol Heights, and Seat Pleasant and the District of Columbia neighborhood of Deanwood. According to *Fairmount Heights gets to know new chief in Night out* [a Gazette.net article], "… an issue the town faces is prostitution on Eastern Avenue." I have had conversations with Prince George's County Police and they have commented on instances of loitering and gambling. I have observed smoking inside the store, which is against Maryland law. Crime has been rampant in the service area to the point of the Prince George's Police Department and the District of Columbia's police

> force, the Metropolitan Police Department, have had a memorandum of understanding to allow crossborder patrols and arrests….
>
> [T]he applicant's plan for a single use retail outlet is short-sighted, lacks vision, and contradicts its own comment. Far from encouraging 'other redevelopment in this particular community' an off-premises alcohol outlet will further depress development opportunities. The planning documents for this are encourage mixed-use development….
>
> The subject property impacts the [border] community. Businesses such as carryouts and off-premises liquor outlets have been linked to nuisance crimes, such as open container violations, loitering and prostitution. It has been demonstrated that the business owner has not been able to intervene with the behaviors and crime incidences of customers. Continuing a single-use off-premises alcohol sales outlet will further degrade the more viable retail and community-building options for the area….[2]

(Exhibit 33(a))

LAW APPLICABLE

(1) The expansion of the certified nonconforming use at issue is permitted in the C-O Zone in accordance with Sections 27-317(a) and 27-384 of the Zoning Ordinance.

(2) Section 27-317(a) provides as follows:

(a) A Special Exception may be approved if:

(1) The proposed use and site plan are in harmony with the purpose of this Subtitle;

(2) The proposed use is in conformance with all the applicable requirements and 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;

(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; and

(6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

(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.

(3) Section 27-384 of the Zoning Ordinance provides as follows:

(a) The alteration, enlargement, extension, or reconstruction of any nonconforming building or structure, or certified nonconforming use (except those certified nonconforming uses not involving buildings, those within the Chesapeake Bay Critical Area Overlay Zones as specified in paragraph 7,

[2] Ms. Brown's document was submitted on her letterhead as a Commissioner with the District of Columbia's Advisory Neighborhood Commission. However, her testimony was strictly as her own, not that of the Commission nor the District of Columbia.

below, unless otherwise provided, and except for outdoor advertising signs), may be permitted subject to the following:

(1) A nonconforming building or structure, or a building or structure utilized in connection with a certified nonconforming use, may be enlarged in height or bulk, provided that the requirements of Part 11 are met with respect to the area of the enlargement.

(2) A certified nonconforming use may be extended throughout a building in which the use lawfully exists, or to the lot lines of the lot on which it is located, provided that:

(A) The lot is as it existed as a single lot under single ownership at the time the use became nonconforming; and

(B) The requirements of Part 11 are met with regard to the extended area.

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

(A) The lot on which it is reconstructed is as it existed as a single lot under single ownership at the time the use became nonconforming;

(B) Either the nonconforming use is in continuous existence from the time the Special Exception application has been filed through final action on the application, or the building was destroyed by fire or other calamity more than one (1) calendar year prior to the filing date;

(C) The requirements of Part 11 are met with respect to the entire use; and

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

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

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

* * * *

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

* * * *

(4) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

> Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has

> met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals "no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan". It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

(5) Alternative Compliance may be granted where, as here, the proposal is equal to or better than normal compliance with the provisions of the *Landscape Manual*.

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are listed in Section 27-102(a) and Special Exception 4626 is in harmony with the applicable purposes, for the reasons provided:

> *(1) To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

By razing an unsightly structure and constructing one that will be situated in a manner that renders the site safer and aesthetically pleasing, the Applicant is addressing certain needs of the public, thereby promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County.

> *(2) To implement the General Plan, Area Master Plans, and Functional Master Plans;*

The 2010 Subregion 4 Master Plan and Sectional Map Amendment supports a commercial/mixed use of the subject property. The office use proposed is permitted by right in the Zone. The subject property is located within the Developed Tier. Allowing the expansion of an existing commercial use to a multi-story, mixed use is also in conformance with the General Plan's vision for the Developed Tier of sustainable, mixed-use, pedestrian-oriented development.

> *(3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

Staff noted that approval of the request will not adversely impact the transportation system or the closest roadway in Maryland (Sheriff Road), primarily due to the large number of pass-by trips. Thus this purpose is satisfied.

(5) To provide adequate light, air, and privacy;

The Applicant's proposal is an expansion of an existing building and reconfiguration of an existing parking lot. Applicant is proposing additional landscaping and does not require any variances to the setback or height restrictions of the Zoning Ordinance. Thus, this purpose is met.

(6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;

Applicant will be providing screening and landscaping for buffering and for aesthetic purposes, as well as security measures. No adverse impact will result from the requested use of the subject property.

(7) To protect the County from fire, flood, panic, and other dangers;

The development will be in conformance with all County regulations, many of which are intended to protect the County from fire, flood, panic and other dangers. Accordingly, this purpose is met

(9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;

Continued use of the property is a positive economic development activity that provides employment and broadens the tax base.

(10) To prevent the overcrowding of land;

The Site Plan is in conformance with the setback and parking requirements of the Zoning Ordinance. The site is not overcrowded.

(11) To lessen the danger and congestion of traffic on streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;

The use is expected to attract pass-by traffic and not unduly increase the number of vehicular trips on the adjacent roadways. It, therefore, meets this purpose.

(12) To insure the social and economic stability of all parts of the County;

By continuing the use that has successfully operated on site for many years and offering employment opportunities, Applicant is furthering the social and economic stability of Prince George's County. (Section 27-317(a)(1))

(2) The general purposes of the Commercial Zones are listed in Section 27-446 and Special Exception 4626 is in harmony with these purposes:

(1) To implement the general purposes of this Subtitle;

Conformance with the purposes of Section 27-102, the general purposes of the Subtitle, has been demonstrated as noted above.

(2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;

The property is in the C-O Zone. As such, the property is in an appropriate location for commercial uses.

(3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;

The use is surrounded, for the most part, by similar strip commercial uses and is, therefore, complementary to other uses in the area. This purpose is thereby furthered.

(4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;

The subject property is almost completely surrounded by similarly developed properties in the M-U-I Zone, and conditions are recommended to diminish opportunities for criminal conduct on site. Thus, no adjacent property will be impacted by noise, glare, noxious matter or other objectionable influences due to the operation of the proposed use. Fire code conformance will be assured at the time of issuance of the Use and Occupancy permit.

(5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;

The Transportation Division, M-NCPPC, found no negative impact on traffic efficiency in its referral.

(6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;

As stated above, the Master Plan proposed a mixed commercial use of the subject property and the instant request does not contravene this goal.

The request is, therefore, in compliance with the Master Plan.

(7) To increase the stability of commercial areas;

Continued use of this property directly influences the stability of this commercial area.

(8) To protect the character of desirable development in each area;

The Applicant's proposal includes the addition of attractive landscaping. It will satisfy this purpose.

(9) To conserve the aggregate value of land and improvements in the County;

Continued use of the subject property will conserve the value of the land and improvements.

(10) To enhance the economic base of the County.

Continued use of the property ensures that the economic base of the County will be enhanced. (Section 27-446)

(3) The specific purpose of the C-O Zone is listed in Section 27-453(a)(1), which provides as follows:

(a) **Purposes**.

(1) The purposes of the C-O Zone are:

(A) To provide locations for predominantly nonretail commercial uses, such as business offices and services of a professional, clerical, or administrative nature, and such retail and service uses as are desirable for the efficient and convenient operation of the nonretail uses.

The proposed use of the subject property furthers this purpose given the inclusion of the office use on the second floor.

(4) The proposed use and the Site Plan (as amended via the conditions) are in conformance with all of the applicable requirements and regulations of the Zoning Ordinance, once the recommended conditions are addressed. No variances, departures or waivers are required. (Section 27-317(a)(2))

(5) The proposed Liquor Store with office space will not impair the integrity of the approved Master Plan since it recommends a mixed commercial use for the subject property. (Section 27-317(a)(3))

(6) The proposed use of the subject property should not have any adverse impact on the health, safety and welfare of residents or workers in the area if the safety plan is implemented since the site will be designed in a better manner than currently exists. However a condition has been added as to lighting since the safety plan discusses the importance of consistent lighting along the building but only shows lighting directly in front of the proposed building. (Section 27-317(a)(4))

(7) The continuation of an active use on the subject property along with the proposed landscaping will enhance the use or development of adjacent properties and the general neighborhood and will not restrict the availability of land in the area for other uses. (Section 27-317(a)(5))

(8) A Tree Conservation Plan is not required as the site contains less than 10,000 square feet of woodlands and does not have a previously approved Tree Conservation Plan. (Section 27-317(a)(6))

(9) The Site Plan indicates the Tree Canopy Coverage computations, and no disturbance to any regulated environmental features has been proposed. (Section 27-317(a)(7))

DISPOSITION

Special Exception 4626 and Alternative Compliance 11010 are APPROVED, subject to the following conditions:

1. Prior to the issuance of permits, Applicant shall submit proof of the vacation of a portion of the unused right-of-way of Chapelwood Lane to the Office of the Zoning Hearing Examiner for inclusion in the record.

2. Prior to the issuance of permits, Applicant shall revise its Special Exception Site Plan to show building mounted lighting around the building (or a lighting plan note to that effect) and not solely on the western wall. The lighting shall be situated in a manner to prevent any adverse impact on the neighboring single-family dwellings to the north and east of the proposed building.

3. Prior to the issuance of permits Applicant shall revise its Special Exception Site plan to include a general note that the storage and mechanical elements shall be placed in the basement of the building.

4. The revised Special Exception Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for review, approval and inclusion in the record.

(Note: The Special Exception Site and Landscape Plan is Exhibit 58(b))