

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

**SPECIAL EXCEPTION  
2635 & 3400**

**AMENDMENT OF CONDITIONS**

**DECISION**

Application:	Commercial Recreation Attraction
Applicant:	Six Flags America L.P.
Opposition:	Karen Roycroft, et al.
Hearing Dates:	February 28, 2013
Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Special Exception 2635 & 3400 is a request to amend conditions of an approved Special Exception for a Commercial Recreation Attraction on approximately 397.73 acres of R-A (Residential Agricultural) and R-S (Residential Suburban Development) Zoned land located on the north side of Central Avenue, approximately 3,000 feet west of its intersection with Church Road and approximately 3,150 feet east of its intersection with Enterprise Road, identified as 13710 Central Avenue, Largo, Maryland.
- (2) The Technical Staff recommended approval of the proposed amendments to Conditions 1, 2, 6, 19, 22 and 32 and recommended approval in part and denial in part of the proposed amendment to Condition 20.
- (3) The City of Bowie is in support of the proposed amendments, including the revision to Condition 22 which will allow firework displays for a maximum of six (6) displays per season, with the exception of the proposed amendment to Condition 20 to allow overnight stays, and this request has been withdrawn. (Exhibits AC-12 and AC-36, T.p. 124-128) The subject property is located approximately 3/5 miles west of the corporate limits of the City of Bowie.
- (4) S.E. 2635 was approved by the District Council on November 15, 1972 permitting a Commercial Recreation Attraction for "Wild World", subsequently operating as "Adventure World" and currently as "Six Flags America". S.E. 3400 was approved for the same use by the District Council on October 10, 1983. The record contains various amendments and revisions that have been approved for the subject property. (Exhibits AC-27 – AC-35)

(5) The most recent approval for Six Flags America was approved by the District Council July 27, 1999, granting amendments to the Conceptual Site Plan, through its adoption of Zoning Ordinance No. 11-1999. (Exhibit AC-35) This approval contains an inclusive and up to date list of the Conditions of approval. The instant request is for the Amendment of Conditions 1, 2, 6, 19, 20, 22 and 32.

(6) Karen Roycroft, Phil Lee, Angela Taylor, Angela Anglin, Michael Bentivegna, Susanna Brooks, Susan Lerner, Diane Willis, Donald Carson, Oretha Bridgewater-Simms and Pam Cooper appeared in opposition to the instant request.

(7) At the conclusion of the evidentiary hearing the record was kept open for the submittal of certain documents, upon the receipt of which the record was closed on May 1, 2013.

## **FINDINGS OF FACT**

### **Subject Property**

(1) The subject property is located on the north side of Central Avenue (MD Rt. 214), in the R-A and R-S Zones, and consists of 514.9166 acres of land, of which 397.73 acres are located within the approved Special Exception (S.E. 2635 and 3400) area.

(2) The property is located on the north side of Central Avenue (MD Rt. 214), between Enterprise Road and Church Road. The main entrance to the park is 1.2 miles east of Enterprise Road, and 0.7 miles west of Church Road.

The site is currently occupied by the Six Flags America amusement park, which includes both the actively-used park area in the center of the entire property, as well as significant areas of undeveloped land along the western and northern edges of the property. A stream runs across the northern part of the property in a wooded stream valley, separating the actively-used areas of the site from the adjacent Woodmore Meadows and Kettering subdivisions. In addition to the developed amusement park area and its accessory parking and service areas, the remaining area of the site has a mix of wooded and open areas.

In approximate terms, 200 acres of the site's total 515 acres are actively developed and used for the amusement park (though included within this developed area are a number of undeveloped interstitial spaces); a further 15 acres of field are occasionally used for overflow parking. The remaining 300 acres of the site area are undeveloped, mostly in woodland.

### **Surrounding Property**

(3) The subject property is surrounded by the following land uses:

- On the north, Woodmore Subdivision in the R-A Zone
- On the south, Central Avenue, and the Kettering Subdivision and the Evangel Temple in the R-L (Residential Low Development) and R-A Zones

- On the east, Seton Belt Property in the R-A Zone (recently acquired by the State for use as open space)
- On the west, Kingsford Subdivision in the R-R (Rural Residential) Zone

### **Neighborhood**

(4) The neighborhood has been previously defined as having boundaries of, “the adjacent properties and the Central Avenue corridor between Maryland Routes 202 and 301”. Other than the activity at the subject site, the neighborhood is generally characterized by a mix of densities of single-family residential dwellings on lots ranging from 8,000 square feet in the R-80 (One-Family Detached Residential) zoned “Kettering” subdivision to the south, 9,500 square feet in the R-80 zoned “Kingsford” subdivision (platted as a part of Kettering) to the west, 1.0 acres in the “Woodmore Meadows” subdivision to the northwest, to as large as 8.9 acres in the R-A zoned “Woodmore Meadows” subdivision to the north. Small-lot single-family residential dwellings as well as attached single-family dwellings and multi-family dwellings are in the R-L zoned “Cameron Grove” development to the south. Other significant uses in the neighborhood include the Evangel Temple across Central Avenue to the south, and two shopping centers at the intersection of Central Avenue and Enterprise Road (Mitchellville Plaza and Watkins Park Plaza) to the southwest of the site.

The uses further from the site along the Central Avenue corridor are comparable in character to the mix of uses closer to the site, including the Kettering, Lake Arbor, Collington Station and Pointer Ridge residential communities, as well as a large shopping center by Route 202 (Kettering Plaza) and a small commercial center at Hall Road.

### **Master Plan/Sectional Map Amendment**

(5) The applicable Master Plan for the subject property is the Approved Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 71A, 71B, 74A, and 74B, approved on February 7, 2006. The Master Plan Map designates the subject property for “Residential, Low” land use, with a symbol on the site designating it as a “Special Exception Recreational Area”. The lands to the west and north are also designated for “Residential, Low” land use. The lands to the south across Central Avenue are designated for “Commercial,” “Residential, Low” and “Residential, Medium” land use. The lands to the east are designated as “Parkland/Open Space.” Central Avenue is designated as an “Expressway (E-1)”.

(6) The Sectional Map Amendment retained the subject property in the R-A and R-S Zones.

(7) The October 2002 General Plan placed the subject property in the Developing Tier.

### **Applicant’s Proposal**

(8) The Applicant is seeking to amend certain of the merged Conditions of approval of SE 2635 and SE 3400 in accordance with the provisions of §27-324(a)(1) by the deletion of Condition 19, and the modification of Conditions 1, 2, 6, 20, 22 and 32.

(a) Conditions 2 and 19 address a 24-hour noise limitation of 55 dBA; the request is to modify Condition 2 and delete Condition 19 so as to parallel the provision of State law which typically provides for noise limits of 65 dBA during the daytime and 55dBA at night, measured at the property line.

(b) Condition 1 addresses a 200-foot height limit for all structures; the request is to amend this Condition to permit rides to exceed 200 feet, subject to review by the Detailed Site Plan, already required for new “rides or structures with substantial foundations.”

(c) Condition 6 addresses the ability of the operator to freely locate movable rides and small concession stands, food and ticket stands (without substantial foundations) within a certain area designated on the Conceptual Site Plan pursuant to Condition 5; the request is to amend Condition 6 to clarify for administrative purposes that no revisions to approved Plans will be required in connection with these small and/or movable facilities.

(d) Condition 20 addresses the requirement to close park operations at 10:30 p.m.; the request is to amend this Condition to allow the park to remain open after 10:30 p.m. on certain limited occasions for the Halloween season and for after-prom and after-graduation events.

(e) Condition 22 addresses the limitation on firework displays to July 4<sup>th</sup> and Labor Day; the request is to amend this Condition to allow for six (6) firework displays per year.

(f) Condition 32 addresses the limitation on sound amplification equipment after 10:30 p.m.; the request is to amend this Condition to allow for the use of sound amplification equipment after 10:30 p.m. in conjunction with the limited extended hours requested with the modification to Condition 20.

### **APPLICABLE LAW**

(1) A Commercial Recreation Attraction is permitted in the R-A and R-S Zones by grant of a Special Exception pursuant to §27-342 and §27-317 of the Zoning Ordinance.

(2) §27-317 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 in accordance with the requirement of Subtitle 24-130 (b)(5).

(3) The requested amendment must also comply with §27-324 of the Zoning Ordinance which provides in pertinent part:

(a) The District Council may (for good cause) amend any imposed condition or approved site plan without requiring a new application if the amendment does not constitute an enlargement or extension of a Special Exception use.

(1) In the case of an amendment of a condition (imposed as a part of the approval of a Special Exception), the amendment request shall be directed (in writing) to the District Council and filed with the Clerk of the Council. The Zoning Hearing Examiner shall hold a public hearing on the request, in accordance with Section 27-129. The Technical Staff shall analyze the proposed amendment and submit a report to the Zoning Hearing Examiner at least fourteen (14) days prior to the public hearing. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing.

### **Burden of Proof**

(4) The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Special Exception use. The Special Exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Special Exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood will be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Plan.

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 will be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use will be conducted without real detriment to the neighborhood and will 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. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. 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. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51

(1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested Special Exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(5) The appropriate standard to be used in determining whether a requested Special Exception use will have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed will have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

## CONCLUSIONS OF LAW

(1) The instant Application is in harmony with the general purposes of the Zoning Ordinance, §27-102(a) as follows:

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

The modification of Condition 2 and the deletion of Condition 19 will leave the present and future inhabitants of the County with a substantive degree of protection of their health, safety, morals, comfort, convenience, and welfare. The amended Conditions will maintain the protection of the existing Conditions by retaining the existing limitation of nighttime noise exposure at the property line to 55dBA. While the daytime noise generation will be permitted to rise, the permitted noise generation will be less than that generated by typical street traffic on even moderately-travelled roads such as Church Road, and no greater than the noise generation permitted by their next-door residential neighbors.

The modification of the Conditions regarding extended hours of operation for limited events, the relaxation of the height limit, and the small number of additional fireworks displays must be viewed in light of both of: (a) the benefits to the community of having a modern, competitive and economically successful facility available to provide recreational opportunities to the citizens of the County, and (b) the ample protection provided by the existing Site Plan and the remaining conditions which feature ample buffers of woodland between the active uses on the subject property and its abutting neighbors, additional fencing and buffering, a high level of oversight through a multi-layered site plan review process for the consideration and approval of changes to the park, and a structured system of community interaction to ensure that the concerns of the park's neighbors are regularly sought out and addressed.

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

The General Plan classified the subject site in the Developing Tier. The vision for the Developing Tier is, “to maintain a pattern of low- to moderate density suburban residential communities, distinct commercial Centers, and employment areas that are increasingly transit serviceable.” As a Commercial Recreational Attraction is permitted by Special Exception in the two residential zones in which the subject property is located, its continuation with modified conditions will not impair the implementation of the General Plan.

While there is the symbol on the “Land Use and Transportation” Plan Map, no text in the Bowie and Vicinity Master Plan mentions the Six Flags America park. Other public facilities are proposed which will ultimately affect the Six Flags site: A trail is recommended to run in the stream valley crossing the property to the north of the actively-developed area, and a symbol indicating a proposed “Woodmore South Community Park” of 150 acres was placed over the western (undeveloped) portion of the subject property. As the requested amendments will not affect the proposed trail or community park recommendations, the continuation of the Six Flags America facility with the modified conditions will not impair the Master Plan.

Functional Master Plans which are relevant to the subject property include the Green Infrastructure Plan and the *Countywide Master Plan of Transportation*. There are areas of the subject site which are included in the County’s Green Infrastructure network, and the adjacent property (Belt Woods) is listed as an “area of specific countywide significance.” The requested amendments all address operational issues, and as such will not have any physical impact on the County’s Green Infrastructure network.

The Master Plan of Transportation identifies Central Avenue as an Expressway (E-1); Central Avenue is currently built to the four- to six-lane standard the Plan requires, within an adequate right-of-way. The requested modifications to conditions will not affect future upgrades to this roadway.

As the proposed condition modifications are not in conflict with the General Plan, the Master Plan or the applicable Functional Master Plans, the existing Special Exceptions will remain in harmony with the Ordinance’s purpose of implementing those Plans.

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

**(4) *To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;***

As the requested modifications all address operational issues, they will not directly affect the physical scale of activity at the park, so the existing Special Exceptions, after the approval of the subject Application, will remain in harmony with these two Purposes. Furthermore, by allowing the Applicant the ability to upgrade the park in keeping with modern standards for rides and attractions so as to remain competitive with other amusement parks in the Mid-Atlantic region, approval of the modifications will enhance the purpose of recognizing the needs of business.

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

The ample buffers afforded by the approved Special Exception Site Plan/"concept plan," far in excess of the special criteria of §27-342(b)(1), have been found to provide ample light, air and privacy to the surrounding neighbors of the subject site. The requested modification to Condition 1 will keep in place the provision limiting observation towers to 200 feet, allowing only rides which are approved through the Detailed Site Plan review process to exceed that limit. As the ample horizontal buffers (of approximately 1,000 feet minimum from any developed part of the park to the nearest dwelling) will be unaffected by the requested modifications, and any greater views out of the park site from rides exceeding the 200-foot limit will be limited and fleeting by the nature of the speed of the rides, the approval of the requested modification to Condition 1 will ensure that the existing Special Exceptions will remain in harmony with the Ordinance's purpose of providing adequate light, air and privacy. The other requested modifications do not affect issues of light, air and privacy.

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

The approval of the requested modifications will leave the surrounding landowners with ample protection from the adverse impacts of development at this site. The noise generation as measured at the property lines of the subject property will not be permitted to be any louder than any other permitted use, and indeed will not be permitted to be any louder than their much closer next-door neighbors. As the noise generation limits at nighttime will be no different were the requested modification to be approved than it is currently, no additional adverse impact will be felt from the modification to Condition 2.

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

As the requested modifications will not directly affect the application of the provisions of the Zoning Ordinance (and the other provisions of the County Code) which affect the prevention of fire, flood, panic and other dangers, the existing Special Exceptions will remain in harmony with this Purpose.

**(8) *To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;***

Because the subject use is commercial in nature, this purpose is not directly applicable to this Application. The scale and character of the surrounding development, much of which has occurred after the development of the park, indicates that the approval of the subject Special Exception preserved a suitable and healthy environment for the surrounding neighborhood.

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

The approval of the requested modifications will further promote this Purpose by allowing



the Applicant's operations to continue to provide substantial employment and ample contributions to the County's tax base by remaining competitive with the other parks in the Mid-Atlantic region. Providing for the additional modern rides (which require higher drops to generate more speed and which may project noise at higher levels than the current 55 dBA standard), limited extended hours (which will allow the park to provide a safe haven for local youths to enjoy themselves at supervised after-prom events), and a small number of additional firework displays (to attract patrons who might otherwise attend another park in the region without such restrictions) will augment the capacity of the existing Special Exceptions to be in harmony with this Purpose.

**(10) *To prevent the overcrowding of land;***

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

As the requested modifications address operational issues and will not directly affect the scale of activity at the park, the existing Special Exceptions will remain in harmony with these two Purposes of preventing the overcrowding of land and lessening the danger and congestion of traffic on the streets.

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

Making the park available to youth on limited occasions after the normal park closure time of 10:30 p.m. for after-prom or after-graduation activities will contribute to the social stability of the County by providing for safe, supervised, communal events, which will nevertheless operate within the existing level of noise restrictions that protect the surrounding neighborhood. Collectively, the modifications will contribute to the economic stability of the County by allowing the park to remain competitive with the other major parks in the Mid-Atlantic region, so that it can continue to be a major employer and a major contributor to the County's tax base.

**(13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;***

Because the requested amendments only address operational issues and do not propose any change to the approved Special Exception Site Plan/"concept plan", their approval will cause no disturbance to natural features in the County such as stream valleys, steep slopes, dense forests or lands of natural beauty. The existing protections against air and water pollution which are incorporated into the approved Special Exceptions will remain.

While the modification of Condition 2 and the deletion of Condition 19 will permit the generation of additional noise levels during the daytime, the provisions of the modified Condition 2 will continue to protect against noise levels from the site rising to undue levels.

The requested modification to Condition 1 will allow rides and attractions, if approved by the review of a Detailed Site Plan, to extend higher than currently permitted. At present, the depth of the

woods around the northern, western and southern property boundaries is sufficient to prevent visibility of any of the rides from the surrounding public roads, with the exception of brief views of the top of one roller coaster from Central Avenue. While the relaxation of the height limit will allow for the possibility for additional rides to become visible, the limited scale of their visual presence in comparison with the site's frontage of more than a mile along Central Avenue will not impair the existing scenic vista. Indeed, the appearance of brief views of rides above the site's wooded perimeter could be considered as adding a positive, whimsical aspect to the views of the site.

**(14) *To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and***

The ample open space and undisturbed woodlands which cover much of the site will not be affected by the proposed modifications, and so will continue to be in harmony with this Purpose. Furthermore, by providing for the continued economic viability of the park, the approval of the requested modifications will enhance the harmony of the approved Special Exceptions with this Purpose.

**(15) *To protect and conserve the agricultural industry and natural resources.***

This Purpose is not directly applicable to the instant request as the subject property has already been developed. §27-317(a)(1)

(2) The instant Application is in accordance with the specific purposes of the R-A Zone, §27-426(a)(1) as follows:

**(A) *To provide for large-lot one-family detached residential subdivisions, while encouraging the retention of agriculture as a primary land use;***

Because the Ordinance provides for the approval of a Commercial Recreational Attraction by Special Exception, provided that certain conditions are met to ensure its compatibility with large-lot one-family detached subdivisions, the approval of the subject request will not impair this Purpose of the R-A Zone.

**(B) *To encourage the preservation of trees and open spaces; and***

The approval of the subject modifications will not have any effect on the existing Special Exception Site Plan and its ample preservation of trees and open spaces and as such, the approval of the subject request will not impair this Purpose.

**(C) *To prevent soil erosion and stream valley flooding.***

The approval of the subject modifications will not have any effect on the existing Special Exception Site Plan, and as such will not generate any adverse impact on soil erosion or stream valley flooding. Thus, the approval of the subject request will not impair this purpose of the R-A Zone. §27-317(a)(1)

(3) The instant request is also in harmony with the specific purposes of the R-S Zone, §27-511(a)(1), as follows:

- (1) *Establish (in the public interest) a plan implementation zone, in which (among other things):*
  - (A) *Permissible residential density is dependent upon providing public benefit features and related density increment factors; and*
  - (B) *The location of the zone must be in accordance with the adopted and approved General Plan, Master Plan, Sector Plan, public urban renewal plan, or Sectional Map Amendment Zoning Change;*
- (2) *Establish regulations through which adopted and approved public plans and policies (such as the General Plan, Master Plans, Sector Plans, public urban renewal plans, or Sectional Map Amendment Zoning Changes) can serve as the criteria for judging individual development proposals;*
- (3) *Assure the compatibility of proposed land uses with existing and proposed surrounding land uses, and existing and proposed public facilities and services, so as to promote the health, safety, and welfare of the present and future inhabitants of the Regional District;*
- (4) *Encourage amenities and public facilities to be provided in conjunction with residential development;*
- (5) *Encourage and stimulate balanced land development; and*
- (6) *Improve the overall quality and variety of residential environments in the Regional District.*

The adoption of the R-S Zone over a portion of the subject property was enacted subsequent to the construction of the existing park, at such a time when the economic viability of the park's operations was tenuous, and conversion of the site to a planned residential use was contemplated. As the anticipated planned residential use does not exist, and a Commercial Recreational Attraction is permitted by Special Exception in the R-S Zone, the approval of the subject request will not impair these purposes of the R-S Zone. §27-317(a)(1)

(4) The requested amendment of Conditions do not propose a change to the current approved Conceptual Site Plan and therefore the proposed use continues to be in conformance with all the applicable requirements and regulations of the Zoning Ordinance. §27-317(a)(2)

(5) The requested modifications will not affect the harmony of the existing Special Exceptions with the general purpose of the Zoning Ordinance to implement the General and Master Plans and to

provide for the efficient and desirable use of land in accordance with those Plans, nor will it substantially impair the integrity of the General Plan, the approved Master Plan for Bowie and Vicinity, or the various Functional Master Plans of the County, including the Green Infrastructure Plan and the Countywide Master Plan of Transportation. §27-317(a)(3)

(6) The continued conformance of the subject Special Exceptions with the principles laid out in the purposes of the Zoning Ordinance, and its continued compliance with the provisions of the Zoning Ordinance (including the specific criteria for approval of a Special Exception for a Commercial Recreational Attraction in §27-342) represent a high level of protection against adverse effects to the public health, safety and welfare. These statutory protections are amply augmented by the Site Plan's design, which provides for substantially extended wooded buffers between all neighboring residences and any of the developed areas of the park. Furthermore, the requested modifications will leave the residents and workers in the area with equal or greater protection than they will be left with from other permitted uses; the regulations in the R-A Zone, for instance, provide for no height limit for agricultural buildings such as silos or water towers. §27-317(a)(4)

(7) The scale and character of the surrounding development, much of which has occurred after the development of the park, indicates that the approval of the subject Special Exception preserved a suitable and healthy environment for the surrounding neighborhood, and thus that the subject use has not been detrimental to the development of adjacent properties or the general neighborhood.

While the proposed modifications will tend to increase the perception of the presence of the park in the surrounding neighborhood, the scale of the changes proposed is minor and the substantial protections which remain in place, both statutory in the case of noise impacts, and the physical protections of horizontal separation and wooded buffers, will ensure that the modifications will not cause the impact of the currently-approved Special Exceptions to rise to the level of being detrimental to the use or development of the adjacent properties or the general neighborhood. §27-317(a)(5)

(8) The proposed amendment of Conditions does not change or amend the approved Conceptual Site Plan or create any additional impact to woodlands or to regulated environmental areas different from previous approvals. §27-317(a)(6) and (7)

(9) As the requested modifications do not propose any change in the existing Special Exception Site Plan/"concept plan," the approval of the subject request will not affect the conformance of the existing Special Exceptions to the criteria of §27-342(b)(1) through (6), nor the criteria of §27-342(b)(8) through (10). The criterion in §27-342(b)(7), however, provides that, "in addition to other criteria for approval of Special Exceptions, the Council shall be guided by how well the proposed project meets the purposes of this Section."

(10) The purposes of the specific criteria for Special Exceptions for Commercial Recreational Attractions are laid out in §27-342(a) as follows:

- (1) *To promote the health, safety, and welfare of the citizens of Prince George's County by providing standards under which major projects dedicated to*

***entertainment, amusement, recreation, culture, education, and history may be developed;***

The promotion of the health, safety and welfare of citizens generally has been discussed above in connection with the purposes of the Zoning Ordinance as a whole.

- (2) *To promote tourism within Prince George's County, the State of Maryland, and the Washington Metropolitan Area;***

The approval of the requested modifications will allow the park to remain competitive with the other parks in the Mid-Atlantic region, and thus to continue to promote tourism within Prince George's County, the State of Maryland and the Washington Metropolitan Area.

- (3) *To encourage high quality entertainment facilities to be provided in Prince George's County;***

As the subject Application addresses an existing facility, the approval of the subject request will not impair this Purpose of §27-342.

- (4) *To afford reasonable flexibility in the design of these projects;***

The approval of the requested modification to Condition 1 will afford additional flexibility in the design of the park, and will thus be in keeping with this Purpose of §27-342.

- (5) *To assure that these attractions will be located in areas with adequate street access;***

The approval of the requested modifications will not affect the existing street access.

- (6) *To assure that these projects will be compatible with surrounding areas through the effective use of development controls, such as screening, landscaping, open spaces, and the staging of development;***

The approval of the requested modifications will not affect the development controls referred to in this condition, such as ample screening, landscaping, and extensive open space.

- (7) *To assure that the projects are developed in an orderly and attractive manner;***  
**(8) *To assure that public facilities are adequate to service the projects; and***  
**(9) *To avoid scattered and unbalanced development of commercial recreational attractions at less desirable locations and without adequate controls.***

As the subject Application addresses an existing facility, the approval of the instant request will not impair the final three purposes of §27-342.

(11) Mr. Scott Harvey, the Applicant's expert acoustical engineer, and Dr. Robert Dooling, the Applicant's expert in the field of bird hearing and the impacts of noise on bird hearing and comparative psychoacoustics, testified at length as to the impact of the requested amendment of

Conditions relative to noise impacts on surrounding properties including Belt Woods. (T.p. 88-99, 165-192). Although Ms. Pamela Cooper has requested that the testimony of both witnesses be stricken from the record as they obtained observation and noise readings from the Belt Woods without having obtained a written permit from the State Department of Natural Resources, this request is denied as being far more draconian than the perceived infraction. (Exhibits AC-67 & 69) Any alleged violations of COMAR may proceed in a separate and more appropriate forum.

(12) Ms. Cooper submitted various studies, treatises and/or white papers evaluating the impact of noise on various avian populations which coincidentally included references to studies performed by Dr. Dooling. In both Mr. Harvey's and Dr. Dooling's expert opinions, the proposal amendments to Conditions will not adversely impact the avian population in Belt Woods.

### **DISPOSITION**

S.E. 2635 and 3400 are approved subject to the following Conditions:

1. In general, no structure, including any observation tower, shall be constructed higher than 200 feet in height measured from grade. However, roller coasters and other attractions may exceed 200 feet in height. The exact height of such an attraction shall be determined based upon the review and approval of the appropriate Site Plan.
2. A noise study shall be submitted with the Detailed Site Plan for each new ride or activity that will demonstrate to the satisfaction of the Planning Board that noise levels from any sounds (including any crowd noise) will not exceed 65 dBA at all property lines, except as permitted in Condition 19 herein.
3. Prior to the approval of any Detailed Site Plans, the Applicant shall provide a updated conceptual landscaping, planting, and screening plan to be approved by the Planning Board or designee that includes the area of the proposed attractions. The Conceptual Site Plan shall demonstrate the relationship and function of plantings (such as screening of parking or rides); compliance with Conditions 14 and 15 below; and existing vegetation to be preserved.
4. All activities which will charge a separate admission to the park will include a traffic analysis showing compliance with Sections 27-342 (b)(1)(B) of the Zoning Ordinance at the time of Detailed Site Plan submission.
5. The area in which the Six Flags management shall have discretion to freely locate rides movable rides shall be the area enclosed by a dashed line and labeled "General Activity Area."
6. The Six Flags management shall have discretion within the area defined in Condition 5 (General Activity Area) to freely locate movable rides, rides without substantial foundations, food stands, concession and/or ticket stands, or similar facilities, but not rides or structures with substantial foundations. The determination of Six Flags to install rides or improvements authorized by this Condition shall not require the filing of a Conceptual Site Plan revision or Detailed Site Plan of any nature.

7. The entrance to the site from Central Avenue shall be designed in a manner to minimize the impact on through traffic movement along Central Avenue.
8. If attendance is significantly higher than projected and extensive use is made of the “Overflow Parking” area, additional parking shall be provided in accordance with this Conceptual Site Plan.
9. All future on-site parking areas shall be screened from Central Avenue.
10. All future animal display areas shall be enclosed by two (2) fences. The inner fence shall be at least 30 feet from any adjoining residential property.
11. All fencing shall be maintained in good physical repair, and any trees near the fencing shall be trimmed to prevent them from coming into contact with the fence.
12. All green areas and landscape strips within the existing parking compound and landscape buffers along the property lines approved by the general Conceptual Landscape Plan on December 7, 1982, shall be preserved and maintained.
13. The Applicant shall provide information on the adequacy of on-site drainage, sewage and water for all new improvements along with the Detailed Site Plan application for the new improvements.
14. Each Detailed Site Plan shall provide information indicating the type of glare and light that can be expected to be generated by the proposed uses(s) and that such lighting will have no adverse impact on adjoining properties.
15. The facility, where feasible, shall incorporate barrier-free design to provide accessibility for handicapped patrons.
16. Traffic to and from the subject property shall be monitored for a reasonable time after each new attraction opens, to determine if Level of Service “D” is exceeded in the vicinity of the site entrance. If such a traffic level is exceeded, the Applicant shall bear the cost of improving the design of the entranceway, by adding or widening lanes or making other modifications. All such modifications shall be reviewed and approved by the appropriate County or State authority.
17. There shall be no development other than that in existence, in operation, or shown on either an approved Detailed or Conceptual Site Plan as of the effective date of this Ordinance within 100 feet of the Special Exception property line (as revised pursuant to Sections 27-319(f) and 27-320 of the Zoning Ordinance), once such line is legally established. Notwithstanding the above, for the purposes of new additional development, if, after the Special Exception property line has been revised pursuant to Sections 27-319 (f) and 27-320 of the Zoning Ordinance, the property owner(s) of property contiguous to the said revised Special Exception property line establishes, on its property, through a legally enforceable agreement, a non-disturbance setback area contiguous to the

said revised Special Exception property line, then the 100 foot restriction line shall be measured from the outer boundary of the non-disturbance setback area and not from the revised Special Exception property line.

18. The Applicant's Detailed Site Plans shall include a safety plan for patrons, employees, surrounding property residents and animals.

19. (a) Except as permitted herein, noise levels from any sound (including any crowd noises) shall not exceed 65 dBA at all new property lines of the Special Exception as determined by the submission of a new site plan pursuant to Sections 27-319 (f) and 27-320 of the Zoning Ordinance. However, noise levels from any sound emanating from all rides and attractions (including any crowd noise) shall not exceed 65 dBA at the property line of the Special Exception as approved by Zoning Ordinance No. 29-1985 until such time as a Use and Occupancy permit is issued for a home (not including a "model home" until or unless such "model home" is used for occupancy as a home) built on the property constituting the subject matter of Zoning Map Amendment Application A-9761-C (the R-S zoned land to the west and north of the new property line of the Special Exception [as revised pursuant to Sections 27-319 (f) and 27-320 of the Zoning Ordinance]). Once such a Use and Occupancy permit has been issued, the noise levels from any sound emanating from the above rides and attractions (including any crowd noise) shall not exceed 65 dBA at the closest boundary line of the applicable approved Specific Design Plan on which the home has been constructed.

(b) Notwithstanding the above, if, after the new property lines of the Special Exception have been determined pursuant to Sections 27-319 (f) and 27-320 of the Zoning Ordinance, the property owner(s) of the property contiguous to the said revised Special Exception property line establishes on its property through a legally enforceable agreement, a non-disturbance setback area contiguous to the said revised Special Exception property line, then noise levels specified in this condition shall be measured from either the line established by the immediately preceding paragraph of this condition, or the outer boundary of the non-disturbance setback area, whichever shall be farthest from the revised Special Exception property line.

20. During the Fright Fest Halloween Festival, the operators of the park may at their discretion, allow the park to remain open and operational for a total of eight (8) nights on Fridays and/or Saturdays until midnight. In addition, between May 1<sup>st</sup> and June 15<sup>th</sup>, the park operators may allow the park to remain open and operational until midnight for a total of six (6) nights in order to host events which will be restricted to celebrate after prom and graduation for high school students. During these nights, operations at the park shall cease at midnight with the exception of those actions necessary to expeditiously close the park with the exception of the above, on all other days, operation of the park shall close at 10:30 p.m. with the exception of those actions necessary to expeditiously close the park

21. All permits shall be reviewed and approved by the Maryland-National Capital Park and Planning Commission (designated staff) prior to issuance.

22. Fireworks displays shall be limited to six (6) evenings per season. The days for such fireworks shall be within the discretion of the park operators.



23. Except as provided in Condition 6, a Detailed Site Plan application shall be required to be approved after a public hearing before the Planning Board. The procedure regarding notice of the hearing shall be as follows: A minimum of 30 days notice of such hearing shall be given to all parties of record. Permanent parties of record shall include the presidents of the Kettering Civic Association, Kettering Townhouse Condominium Association, Canterbury Citizens Association, Kingsford Citizens Association, Enterprise Estates Citizens Association, Woodmore Meadows Homeowner's Association and the City of Bowie and any civic association formed for the rolling Meadows Community, i.e., any development of the property forming the subject matter of A-9761. All other parties of record shall include those persons who register with the Clerk of the Council as described below.

Within 30 days of the final approval of this Condition, the Applicant shall mail, by certified mail, return receipt requested, a notice to all persons who testified before the Zoning Hearing Examiner in Case No. S.E. 2635 on April 26, 1984; May 1, 1984; May 10, 1984; and on May 15, 1984. This notice shall advise said persons of their responsibility to register, within ninety days of the final approval of the condition, with the Clerk of the Council in writing, if they wish to remain parties of record for a period of five more years from the date of final approval of the condition. The date of final approval shall be deemed to be the date on which the Council's resolution approving this condition is mailed to all current parties of record.

No later than ninety days prior to the expiration of each fifth year following these registrations the Applicant shall notify all those persons registered with the Clerk of the Council of the requirement to re-register for five more years. Such persons must re-register in writing prior to the expiration of said five year period.

In any event, the presidents of the aforementioned citizens organization and the City of Bowie shall remain permanent parties of record. It shall be the responsibility of the Applicant to maintain an updated record of current presidents of the aforementioned citizens organizations and annually provide the Clerk of the Council with such information.

24. The parking compound for the Special Exception property (as revised pursuant to Sections 27-319 (f) and 27-320 of the Zoning Ordinance) shall consist of all those spaces as shown on the Conceptual Site Plan as of the effective date of this Ordinance and overflow parking as authorized in S.E. 2635. That parking which is currently constructed is sufficient for all rides, attraction and improvements shown on the approved conceptual site plan as of the effective date of this Ordinance, pursuant to Section 27-342 (b)(2)(A) of the Zoning Ordinance.

25. Both entrances shall allow inbound traffic from both directions on MD Rt. 214, and they shall operate freely, without gates.

26. All toll collection facilities shall be located to avoid obstructing the orderly flow of traffic on Central Avenue.

27. Message signs shall be installed along MD Rt. 214 as required by the State Highway Administration to guide traffic into both entrances.

28. Pedestrian walkways shall be provided within the parking compound.
29. The Applicant shall establish a citizen's advisory committee, to advise it about how to operate the Special Exception use in a manner compatible with the surrounding community. The following shall apply to this committee:
  - (a) At a minimum, the committees' membership shall include members of the Kettering Civic Federation, the Kingsford Civic Association, the Enterprise Estates Civic Association, and the Kettering Townhouse Condominium Association, and representatives of the City of Bowe, the Planning Commission, and the County's Department of Environmental Resources.
  - (b) On a finding, by majority vote of the full committee, that any condition stated herein has been violated, the committee may petition the Director of Environmental Resources for Modification of Conditions, revocation, or other appropriate action.
30. All lights shall be focused on the parking areas and access road areas. Access road lighting shall be of low intensity and shall conform in height to existing entrance road lighting.
31. Except for parking, access and appropriate signage, no rides, attractions, or other development shall be placed within 800 feet of the current right-of-way line of Central Avenue.
32. There shall be no use of sound amplification equipment, other than authorized emergency equipment, after 10:30 p.m. with the exception of those days on which the park is allowed to remain open until midnight. On those days the use of sound amplification equipment is allowed until midnight.
33. The Applicant shall submit Detailed Site Plans for each of the new attractions shown on the Conceptual Site Plan.
34. Information regarding compliance with Condition 1 to 33 of this approval as applicable shall be provided at the Detailed Site Plan stage for each of the new attractions shown on the Conceptual Site Plan. The Detailed Site Plan application for each new Attraction shall reference the Attraction Number on the Conceptual Site Plan. The location of Attractions #36 and #40 shall be reviewed by DER at the Detailed Site Plan stage to insure no interference with the stormwater management ponds. During the Detailed Site Plan stage, Attraction #43 may be relocated to the water ride area if it is determined that it is appropriate to locate all water-related attractions in one area.