

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

**SPECIAL EXCEPTION  
4612**

**DECISION**

Application:	Gas Station
Applicant:	Safeway, Inc.
Opposition:	None
Hearing Date:	April 1, 2009
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4612 is a request for permission to use approximately 0.60 acres of land, in the C-S-C (Commercial Shopping Center) Zone within the proposed Brandywine Crossing Shopping Center, located on the east side of US 301 (Crain Highway) at the northeast corner of its intersection with Timothy Branch Drive, also identified as 15820 Crain Highway, Brandywine, for a Gas Station.
- (2) The Technical Staff Report, Exhibit 8, recommended approval of the instant Application, with conditions, and the Planning Board did not elect to hear the Application, and in lieu thereof, adopted the recommendations of the Technical Staff. (Exhibit 11)
- (3) No one appeared in opposition and at the conclusion of the evidentiary hearing, the record was left open for the inclusion into the record of several documents. Upon receipt of the documents, the record was closed on July 13, 2009.

**FINDINGS OF FACT**

**Subject Property**

- (1) The subject property identified as Outparcel 6 and located within Phase II of the Brandywine Crossing Shopping Center, is currently undeveloped and vacant. It has been cleared and graded for development. The subject property is a part of a larger area (31.46 acres) of C-S-C zoned land proposed for development as an integrated shopping center. Parts of the Brandywine Crossing Shopping Center located to the east and south of the subject property have already been developed with a mix of big box stores and a series of pedestrian oriented small stores.

## **Zoning History**

(2) The September 1993 Approved Master Plan and Sectional Map Amendment for Subregion V, Planning Areas 81A, 81B, 83, 84, 85A, and 85B retained the property in the Planned Industrial/Employment Park (I-3) Zone. The subject property was rezoned, as part of a 52.78-acre parcel, from the Light Industrial (I-1) and I-3 Zones to the Commercial Shopping Center (C-S-C) Zone pursuant to approval by the District Council of Zoning Map Amendment A-9980-C (Zoning Ordinance No. 16-2006), effective October 4, 2006. Preliminary Plan of Subdivision 4-97124 (Brandywine 301 Industrial Park) was approved by the Planning Board with conditions on April 16, 1998 (PGCPB Resolution No. 98-48). The subject property, also known as Outparcel 6, was recorded in land records in November 2007 (PM224@54). On July 10, 2008, the Planning Board approved Preliminary Plan of Subdivision 4-07112 (Brandywine Crossing Phase II) (PGCPB Resolution No. 08-106) with conditions. Proposed Parcel 6, the subject property, has not yet been recorded. The subject property was originally included in Detailed Site Plan DSP-06077, but was removed from the limit of the DSP pending Special Exception approval. The area of the Special Exception is slightly smaller than the area of Outparcel 6, at .60 acre.

## **Master Plan**

(3) The 1993 Approved Subregion V Master Plan shows employment-industrial land use for the site, located in Employment Area C. The Master Plan describes Employment Area C as a “large, light and heavy industrial employment park which has direct access to a regional highway and railroad systems. It has long been planned to be developed with a mix of industrial land uses that can take advantage of the location...It is one of the last large, uncommitted, general industrial areas remaining in the first tier of suburban jurisdictions surrounding Washington, D.C.” The Master Plan further states: “Every effort should be made to ensure that only high image development takes place along the regional highway corridor.” (p. 81) The property was rezoned to the C-S-C Zone in 2006; the land use proposed by the instant Application conforms to the C-S-C Zone.

The Community Planning South Division, in a memorandum dated June 12, 2008, indicated that the following Master Plan guidelines apply:

1. Commercial areas as they are developed, renewed, and/or expanded should be subjected to high standards of site design and should be designed in relation to surrounding areas so as to provide safe, visually pleasing vehicle and pedestrian access. Site plan review should be required for all new commercial development.
3. Façades, architectural screening (walls, fences, parapets, etc.) and a unified landscape treatment should be consistent and help create an identifiable activity center.
8. All proposals for the development, renewal and/or expansion of commercial uses should include an analysis of the potential impacts on nearby commercial centers, and on the local transportation system.

10. Innovative site design and/or ample landscaping should be used within and around new, renewed and/or expanding commercial areas, to enhance the aesthetic qualities of the areas and to break up the otherwise monotonous, barren look of parking areas.
12. Off-street parking facilities should be designed to allow on-site vehicular circulation, in order to eliminate the need to back onto highways and to prevent the blocking of public rights-of-way. No departure from design standards should be granted which conflict with this guideline.
13. Adequate off-street loading and unloading space should be provided and located where public ways will not be blocked.
14. Signs at all commercial centers should be designed and sited so as to minimize the visual impact on the surrounding area and access road.
15. A gas station or other freestanding structure, locating in a new commercial, renewed and/or expanded area, should be an unobtrusive element in an overall site plan and should be of similar architectural design, building material, texture, and design to other buildings in the area.

The Community Planning South Division further notes that the proposed Gas Station site is at a prominent location and that the proposed building, site, and landscaping design need to conform to the above-stated guidelines for commercial development.

The Prince George's County Approved General Plan places this property in the Developing Tier. The vision of the Developing Tier is to maintain a pattern of low- to moderate-density suburban residential communities, district commercial centers, and employment areas that are increasingly transit serviceable.

According to the Community Planning South Division, the proposed commercial land use is not inconsistent with the range of uses in the possible future community center identified in the 2002 Prince George's County Approved General Plan in the Brandywine area. The policy for Centers is to promote the development of mixed residential and nonresidential uses at moderate to high densities and intensities in context with surrounding neighborhoods with a strong emphasis on transit-oriented design. In this regard, future development plans should set aside an area for a future transit station to serve commuters and propose a pedestrian component that provides sidewalks for persons living or working in adjoining areas.

### **Neighborhood and Surrounding Uses**

- (4) The neighborhood in which the subject property is located is defined by the following boundaries:

North: Brandywine Road  
South: Cedarville Road  
East: Popes Creek Railroad right-of-way  
West: US 301/MD 5

This neighborhood was defined by the Technical Staff and accepted by the Applicant.

The subject property is surrounded by the following uses:

North: Undeveloped property in the C-S-C Zone  
South: Brandywine Crossing Shopping Center in the C-S-C Zone  
East: Brandywine Crossing Shopping Center in the C-S-C Zone  
West: US 301 (Crain Highway)

The neighborhood can be generally characterized as being under construction. Target and Costco are open and operating; construction on other pad sites in the shopping center is nearly complete. Across US 301, the Chaddsford subdivision is also under construction with some sections completed. Existing development along the US 301 Corridor consists of a variety of uses, arranging from old roadside commercial development such as Gas Stations and a Motel, vacant rural parcels, the former Montgomery Wards' warehouse (currently utilized as a furniture outlet), a pre-manufactured barn and shed sales operation, a car dealership, and the Brandywine Auto parts collection of vehicle salvage and storage yards.

### **Applicant's Proposal**

(5) The Applicant proposes to construct a Gas Station and an 850 square foot Food and Beverage Store (a permitted use) located to the rear of the Gas Station. The Food and Beverage Store will be located in line with the pedestrian oriented small store mall across Timothy Branch Drive. The six (6) multi-pump dispensers for gasoline are proposed to be covered with a 22 foot high canopy.

### **LAW APPLICABLE**

(1) A Special Exception for a Gas Station in the C-S-C Zone is permitted pursuant to §27-461(b)(1)(B) in accordance with §27-358 of the Zoning Ordinance. All Special Exceptions must be found to comply with the general criteria of §27-317.

(2) Section 27-358 states:

- (a) A gas station may be permitted, subject to the following:
  - (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;
  - (2) The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located;
  - (3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417;

(4) The storage or junking of wrecked motor vehicles (whether capable of movement or not) is prohibited;

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

(6) Access driveways shall be defined by curbing;

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

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

(9) Repair service shall be completed within forty-eight (48) hours after the vehicle is left for service. Discarded parts resulting from any work shall be removed promptly from the premises. Automotive replacement parts and accessories shall be stored either inside the main structure or in an accessory building used solely for the storage. The accessory building shall be wholly enclosed. The building shall either be constructed of brick (or another building material similar in appearance to the main structure) and placed on a permanent foundation, or it shall be entirely surrounded with screening material. Screening shall consist of a wall, fence, or sight-tight landscaping material, which shall be at least as high as the accessory building. The type of screening shall be shown on the landscape plan.

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

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

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

(2) The location and type of trash enclosures; and

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

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

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

(1) Is necessary to the public in the surrounding area; and

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

(3) Section 27-317 states:

(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 Tree Conservation Plan.

### **Burdon 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 would 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 would be a benefit to the community. If he shows to the satisfaction of the Board 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. 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 would 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 would 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 A2d 1253 (1995).

(6) The District Council is approving Special Exception 4447 for a Gas Station, articulated its legislative intent that the “necessary to the public in the surrounding area” provisions in §27-358(d)(1) is tantamount to a finding that a proposed Gas Station is “convenient, useful, appropriate, suitable, proper, or conducive” to providing fuel to the motoring public. Thus the Zoning Ordinance requires a standard less strict than that expressed in Brandywine Enterprises, Inc v. County Council, 117 Md. App. 525, 700 A2d 1216 (1997) and more stringent than that expressed in Baltimore County Licensed Beverage Assoc., Inc. v. Kwon, 135 Md. App. 178, 761 A2d 1027 (2000)

## CONCLUSIONS OF LAW

### General Requirements

(1) Section 27-317(a) requires that the proposed Use and Site Plan be in harmony with the general purposes of the Zoning Ordinance (§27-102), the general purposes of the Commercial Zones (§27-446(a), and the specific purposes of the C-S-C Zone (§27-474(a)(1)).

(2) The general purposes of the Zoning Ordinance are listed in §27-102(a). The instant Application is in harmony with the purposes of the Zoning Ordinances 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 proposed Gas Station will be located at a major intersection, and will thus promote the health and safety of the present and future inhabitants of the County by providing for a safe and convenient accommodation of the shopping public.

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

Among the goals of the General Plan for the Developing Tier is to reinforce planned commercial centers as community focal points; by allowing for the construction of a retail-friendly commercial use which complements the retail and restaurant uses in a planned activity center, the approval of this Application would reinforce a planned community center. By these features, this proposal is in conformance with the goals of the General Plan for the Developing Tier.

More specifically, the subject site is located both along a Corridor, and in a Center, both of which are areas to which the County’s growth is principally to be directed. Specifically, the Plan directs growth in Centers and Corridors to locate their mix of critical land uses (live/work/shop) in

closer proximity to one another. The location of a Gas Station in close proximity to food shopping, restaurants and other frequently-used stores and services will promote the combination of trips that will allow for a more efficient use of the existing road network.

Although the Subregion V Master Plan, when it was approved, did not consider this area for commercial development, it nevertheless contained guidelines to enhance the quality of activity centers which are now applicable to this proposal. The application of these guidelines, which were cited by the Technical Staff's community planner, will enhance the quality of the subject site, the surrounding development, and therefore the neighborhood generally.

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

Because this Application proposes the construction at a site which is being developed in accordance with provisions of its prior subdivision approval to assure the adequacy of local public facilities, approval of it would promote the creation of a community which will be developed with adequate public facilities.

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

Approval of the subject Application would recognize the needs of the County's workers by reinforcing an appropriate mix of retail and service uses at an integrated shopping center, and so would abet the orderly growth and development of the County, making the subject Application in harmony with this Purpose of the Ordinance.

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

The subject Gas Station will be in harmony with this Purpose when developed in conformance with the various regulations in the Zoning Ordinance to ensure the provision of adequate light, air and privacy, both for the occupants of the subject site and for its neighbors. These principles include the provision of sufficient distance and buffering between the proposed use and neighboring uses, and conformance with height limitations in order to allow for access to light and air.

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

The subject Gas Station would be in harmony with this Purpose when developed in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings, including conformance with the Tables of Permitted Uses for the various zones as laid out in the Ordinance, and in conformance with the provisions of the Landscape Manual which provide for the screening of service functions and the buffering of incompatible adjoining uses.



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

The instant Gas Station would be in harmony with this Purpose when developed in conformance with regulations established in the body of the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the floodplain regulations, stormwater management regulations, the Fire Prevention Code, the Building Code, and the Tables of Permitted Uses for the various zones.

**(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.

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

The subject Gas Station would be in harmony with this Purpose because it would augment the tax base of the County directly and through the employment provided to its workers.

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

The instant Gas Station would be in harmony with this Purpose when developed in accordance with various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that provides for the compatibility of uses, height limits, and setbacks.

**(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;***

The subject Gas Station would be in harmony with this Purpose because of several factors. First, as noted above, the Gas Station is to be located on a site which is being developed in accordance with provisions of its prior subdivision approval to assure the adequacy of local public facilities. Secondly, it will be developed in accordance with the regulations established in the body of the Zoning Ordinance (and other County ordinances) which are intended to lessen the danger and congestion of traffic on roads, such as the requirements for the provision of adequate off-street parking, and the separation of entrances from nearby intersections.

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

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose.

Additionally, the instant Gas Station would promote the economic and social stability of the County by contributing to the tax base, by providing a useful and convenient service to the surrounding community, and by virtue of its location at a planned activity center.

- (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;*

The subject Gas Station will have minimal additional impact to the natural features in the County. The proposed use will not itself generate noise pollution, and the use will be in compliance with the County's Woodland Conservation policies by virtue of its Tree Conservation Plan. No steep slopes or scenic vistas will be affected. By conformance to these principles and regulations, the approval of this restaurant would be in harmony with this Purpose.

The final two Purposes,

- (14) *To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and*
- (15) *To protect and conserve the agricultural industry and natural resources.*

are not directly applicable to the approval of this Gas Station. §27-317(A)(1)

- (3) The instant Application is also in harmony with the purposes of the Commercial Zones, §27-446(a):

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

As noted by the foregoing discussion, the subject Application will implement the general purposes of the Zoning Ordinance.

- (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 location of this Gas Station at this location will provide a useful and convenient site for a needed service, and will give the residents and businesses of the County another choice for this necessary commodity.

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

Because the requested use involves creation of a compatible service commercial use at a planned Center, this purpose is not directly applicable to the instant Application.

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

The existing Gas Station implements this purpose by its compliance with the provisions of the Landscape Manual that provide for buffering between it and its residential neighbors.

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

As previously discussed, the subject Application will improve traffic efficiency by its location in a concentration of complementary uses which will allow for efficiency of use of the street network through combination of vehicle trips.

- (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;*

Because the subject Application will contribute to the land use provided for in the General Plan, it will fulfill this purpose for Commercial Zones.

- (7) *To increase the stability of commercial areas;*

By allowing for the establishment of a complementary service commercial use which will appropriately supplement the general retail character of the neighboring commercial uses, approval of this Application will increase the stability and viability of the developing commercial area.

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

Because the subject land use will be developed and operated in accordance with the provisions specifically provided in the Ordinance to promote the safe and orderly layout and operation of Gas Stations, the approval of this Application will fulfill this purpose.

The final two purposes,

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

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

are fulfilled by allowing for the development of a new commercial use that will augment the tax base and provide additional employment for residents of the County. §27-317(A)(1)

- (4) The instant Application is also in harmony with the purposes of the C-S-C, §27-454(a)(1):

- (A) *To provide locations for predominantly retail commercial shopping facilities;*

While the subject Application proposes the creation of a service commercial use, it is not in conflict with this Purpose. The establishment of this Gas Station – which does not propose visually disruptive auto repair services – will complement the neighborhood-oriented convenience retail which is proposed for the front of the Activity Center, as well as the community- and regionally-oriented retail at the rear of the Center.

**(B) *To provide locations for compatible institutional, recreational, and service uses;***

As described above, the subject use – when developed in accordance with the provisions of the ordinance that promote a safe and orderly operation – fulfills this purpose by being a compatible service use.

**(C) *To exclude uses incompatible with general retail shopping centers and institutions; and***

Because this use is compatible with general retail uses, it fulfills this purpose.

**(D) *For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.***

This purpose is not applicable to the instant Application. §27-317(A)(1)

(5) Special Exception commercial uses such as Gas Stations are presumed compatible with other commercial uses provided the established setbacks, lot coverage, landscaping, minimum acreage, traffic and parking improvements and all other regulations can be met. The instant Application is in compliance with the regulations and requirements of the Zoning Ordinance and no variances or departures are requested. There is no evidence to support a finding that this presumption of compatibility has been rebutted and that this Application is not in concert with the purposes of the Zoning Ordinance. §27-317(a)(2)

(6) The proposed use will not substantially impair the integrity of the Subregion V Master Plan or the Subregion V Sectional Map Amendment as found by the Technical Staff (Exhibit 8) §27-317(a)(3)

(7) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area. The proposed use is located on a heavily traveled arterial and therefore site access, from an access road and traffic are the most significant quality-of-life issues, and the Technical Staff found no concerns in this regard. (Exhibit 8) §27-317(a)(4)

(8) The proposed Gas Station will not be detrimental to the use or development of adjacent properties or the general neighborhood and it will be developed in concert with the remainder of the Brandywine Crossing Shopping Center. §27-317(a)(5)

(9) TCPI/026/91 and TCPII/133/91 were previously approved for Brandywine Crossing. No new environmental impacts were identified as a result of the proposed development. (Exhibits 44 & 45) §27-317(a)(6)

### **Gas Station**

(10) The subject property has 208 feet of frontage on, and direct vehicle access to, Timothy Branch Drive (95 feet right-of-way). (Exhibit 32(b), Note 12(A)) §27-358(a)(1)

(11) The subject property is not located within 300 feet of any lot on which a school, playground, library or hospital is located. (Exhibit 32(b), Note 12(B)) §27-358(a)(2)

(12) Exhibit 32(b), Note (E) states that “There will not be any display or rental of cargo trailers, trucks, or similar uses.” §27-358(a)(3)

(13) Exhibit 32(b), Note 12 (C) states that “There will not be any storage or junking of wrecked motor vehicles.” §27-358(a)(4)

(14) Exhibit 32(b) provides a two-way, 43 foot wide access driveway off of Timothy Branch Drive (95 feet right-of-way). This access driveway begins approximately 87 feet from the point of curvature of US 301. §27-358(a)(5)

(15) All access driveways are defined by curbing as required. Exhibit 32(b) §27-358(a)(6)

(16) Exhibit 32(b) provides a five (5) foot wide sidewalk along Timothy Branch Drive by the Food and Beverage Store. §27-358(a)(7)

(17) Note 12(H), Exhibit 32(b) states “Gas Pumps and Other Service Appliances have been located a minimum of 25 feet behind the street lines.” §27-358(a)(8)

(18) Note 12(I), Exhibit 32(b) states “No repair services shall be conducted at this site.” §27-358(a)(9)

(19) With the conditions of approval, the Technical Staff has found that the design, architecture and building materials proposed will be architecturally compatible with the Safeway and the remainder of the shopping center. (Exhibit 43) §27-358(a)(10)

(20) The Revised Site and Landscape Plans, Exhibit 32(a)-(e) are in compliance with §27-358(b) however, a note should be added specifying that there shall be no vending machines.

(21) The Applicant has agreed that upon abandonment of the Gas Station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the property owner. For the purposes of this proposal,

the term “abandonment” shall mean non-operation of a Gas Station for a consecutive period of 14 months after gasoline retail operation cease. §27-358(c)

(22) The hours of operation shall be limited to 5 am – 12 am (midnight) seven (7) days a week. (Exhibit 32(b))

(23) Mr. Joseph Cronyn, Applicant’s needs analyst, prepared Exhibit 30, an analysis of the need for a gasoline fueling facility proposed in conjunction with a Safeway, both being located in the Brandywine Crossing Shopping Center. Mr. Cronyn opined that, based on the evidence analyzed, there is a need for the proposed Gas Station as it will be “reasonably convenient and useful to the public.”

(24) The Applicant argues that the instant Application is dissimilar from most Gas Stations applications as it is being offered as a auxiliary service to a Safeway supermarket, is located within an integrated shopping center with no direct access to US 301, and its location, acreage, signage, marketing, and pricing (a price reduction for Safeway patrons) are not appropriate for a standard highway oriented Gas Station. As a “niche market” Gas Station, the instant Application will not directly compete against standard Gas Stations. As such, Mr. Cronyn’s analysis departs from the standard needs methodology which relies heavily on pass by (commuter) traffic and instead analyzes the consumers captured by the Safeway food shoppers who are “delivered” to the Safeway Gas Station.

(25) A reasonable market area has been defined by Garner Road and Piscataway Creek on the west, Prince George’s County/Charles County line on the south, Croom Road (MD 382) on the east and Van Brady Road on the north. (Exhibit 30, p.8)

(26) The subject property is located within a market area that is rapidly transiting from rural agricultural to a burgeoning residential area. The Maryland-National Capital Park and Planning Commission Planning Department predicts a rapid residential expansion from 6,387 persons in 2005 to 12,467 persons in 2015 to 19,906 persons by 2030. The residential development pipeline includes the Villages at Timothy Branch (1,200 d.u.), Lakeview at Brandywine (260 units), and Brandywine Village/Chadds Ford (1,137 units) in the immediate vicinity of the subject property. The market areas’ aggregate income is calculated at \$240.43 million in 2008 and \$402.56 million by 2015.

(27) Mr. Cronyn has analyzed existing area gas sales and supply data to support his proposition that the existing Gas Stations service primarily pass by/commuter vehicles while the instant proposal will largely capture the local, Safeway food shopper market. While it is admitted that this large residential base does not currently exist, with the rapid residential construction occurring with the market area, a substantial need will be generated in the near future and this need will be unmet by existing Gas Stations. (Exhibit 30) No evidence has been provided to refute Applicant’s proof.

**Parking Regulations**

(28) As required for an 850 square foot Food and Beverage Store, four (4) parking spaces, including one (1) handicapped accessible space, are provided. (Exhibit 32(b))

**Landscape Manual**

(29) The Landscape Plan, Exhibit 32(c), is in accordance with the requirements of Sections 4.2, Commercial and Industrial Landscape Strip, 4.3, Parking Lot Requirements, and 4.4, Screening Requirements, of the Landscape Manual, and in accordance with the recommendations of the Urban Design Section to provide additional evergreen trees along the northern boundary line to screen the dumpster from US 301.

(30) The Landscape Plan, Exhibit 32(c), includes the following Note: "The northern property line will be eliminated under a new preliminary plan and therefore a buffer will not be required." This is merely speculative as to future events. Should future events eliminate any of the current landscape requirements, a revised Landscape Plan for the instant Special Exception will need to be approved.

(31) The proposed Gas Station meets all setback, height and width requirements of the C-S-C Zone.

**Signage**

(32) The Site Plan indicates one (1) free-standing monument sign within the Special Exception boundary, located adjacent to Timothy Branch Road at the Food and Beverage Store. Dimensions were provided and it appears the sign conforms to all applicable requirements. The six (6) foot-high sign is designed to compliment the Safeway building architecture. The details proposed the same store veneer base that is on the Safeway building, the proposed Food and Beverage Store, and the proposed trash enclosure. (Exhibit 32(b) & (e))

**DISPOSITION**

Special Exception is Approved, subject to the following conditions:

- (1) Prior to the issuance of building permits, the Applicant shall obtain a Detailed Site Plan approval from the Planning Board or its designee. The Detailed Site Plan shall be reviewed to determine the compatibility of the site, landscape, and architectural design for the proposed Gas Station with the adjacent buildings and the surrounding development. Unless amended, the Approved Special Exception Site Plan (Exhibit 32) will control. The square footage of the Food and Beverage Store shall be calculated in the Detailed Site Plan as part of the overall shopping center, to ensure that the required number of loading spaces has been provided.

- (2) If an amendment to the Approved Site Plan (Exhibit 32) is required and is limited to the removal of a small portion of the Special Exception acreage by a change in the northern boundary of the Special Exception area due to the approved resubdivision of Outparcel 6, such a limited amendment may be administratively approved by the Planning Board or its designee without the filing of a new Special Exception.
- (3) Additional architectural features such as faux windows with a canopy, brickwork or some other feature similar to those found on the Safeway store shall be included on the rear and side elevations of the Food and Beverage Store building to break up the mass.
- (4) The top portion of the canopy pillars at the fueling area shall be brick (to match the brick of the Food and Beverage Store building) rather than the exterior insulation finishing system (EIFS).
- (5) The material of both the canopy of the fueling area and freestanding sign shall be identified on the Site Plans.
- (6) A note shall be added to the Site Plan specifying that there shall be no vending machines.
- (7) The Site Plan shall be amended to indicate the distance from the point of curvature of US 301 and the access drive off of Timothy Branch Drive.
- (8) Prior to the issuance of building permits, the Applicant shall revise the Special Exception Site and Landscape Plans to reflect the Detailed Site Plan (DSP) and any architectural conditions attached to the approval of the Detailed Site Plan. The Applicant shall submit the revised Special Exception Site and Landscape Plans to the Office of the Zoning Hearing Examiner or its designee for review and approval.
- (9) If necessitated by the subdivision of Outparcel 6, Revised Site and Landscape Plans accurately reflecting property boundaries, acreage, landscaping and any other changes occurring from the subdivision approval, shall be submitted to the Office of the Zoning Hearing Examiner for review and approval.

The Approved Site and Landscape Plans are Exhibit 32(a)-(e).