

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

**SPECIAL EXCEPTION  
4630**

**DECISION**

Application:	Car Wash
Applicant:	Reza Emam and Mohammad Emam t/a Star Wash Car Wash and Alternative Compliance
Opposition:	None
Hearing Date:	June 3, 2009
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

**NATURE OF REQUEST**

(1) Special Exception 4630 is a request to use 0.6887 acre of C-S-C (Commercial Shopping Center) zoned land for a 7-bay Car Wash. Applicants also request alternative compliance from the provisions of the Landscape Ordinance (AC-09004). The subject property is located at the southeast quadrant of the intersection of Laurel-Bowie Road and Mallard Drive, and is identified as 12005 Laurel Bowie Road, Laurel, Maryland.

(2) The Technical Staff recommended approval of the Application with conditions. (Exhibit 14) The Planning Board also recommended approval with conditions. (Exhibit 34)

(3) At the close of the hearing the record was left open to allow Applicant to submit a picture of one of the other Gas Stations that it operates to give some indication of what it intends to build on the subject property if the request is approved. (T. 38) That item was received on June 9, 2009, and the record was closed at that time. (Exhibit 44 (a)-(f))

**FINDINGS OF FACT**

**Subject Property**

(1) The subject property is a rectangular-shaped parcel improved with the remnants of a Gas Station that operated pursuant to S.E. 3215. The Gas Station ceased operation in 2004 and the underground tanks have been removed.

(2) Access to the site is provided via Mallard Drive, a commercial roadway with a 70 foot right-of-way. Applicants intend to close any access to MD 197. (T. 20)

(3) The subject property is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance because it contains less than 10,000 square feet of woodland, is less than 40,000 square feet in size, and does not have a previously approved Tree Conservation Plan. (Exhibits 9 and 31)

(4) The Application is subject to the requirements of the Landscape Manual. Applicants have submitted a Landscape Plan; however they request alternative compliance to Section 4.7 (Buffering Incompatible Uses) of the Landscape Manual.

### **Surrounding Property/Neighborhood**

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

- To the north, across Mallard Drive, a 24-hour convenience store and small shopping center in the C-S-C Zone
- To the south, undeveloped homeowner's association land and single-family residences in the R-55 Zone
- To the east, the Montpelier Executive Center office building in the C-O Zone
- To the west, a wide median separating the travel lanes of Laurel-Bowie Road (MD 197)

(Exhibit 8)

(6) The neighborhood boundaries are defined as follows: to the north, Baltimore-Washington Parkway/Patuxent River; to the south and west, Laurel-Bowie Road (MD 197); and, to the east, Patuxent Research Refuge.

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

(7) The subject property lies within an area governed by the 1990 Master Plan for Subregion I. The Master Plan recommended retail commercial land uses for the subject property. The accompanying Sectional Map Amendment rezoned the property from the C-G Zone to the C-S-C Zone.

(8) The 2002 General Plan placed the property in the Developing Tier. The vision for this 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.

### **Applicant's Request**

(9) Applicants wish to construct a 7-bay Car Wash at the subject property. The subject property was the former site of an Exxon Gas Station that was approved pursuant to S.E. 3215 in October 1980. The Gas Station closed in 2004. The site is

improved with a building that housed the Gas Station, paved parking and circulation areas, and the gasoline pump area. The underground tanks have been removed. Applicants intend to install three (3) automatic wash bays and four (4) self-service bays (referenced on the Site Plan as “detail” bays) that are anticipated to service no more than eighteen cars at a time. (T. 9, 29) Applicants operate four other car washes in Frederick and Hagerstown, Maryland, and intends to construct a similar facility if the instant request is approved. They submitted photos of one of the existing car washes. (Exhibit 44 (a)-(f))

(10) The Car Wash will operate daily from 6 a.m. to 10 p.m. (T. 12) The water used on site will be reclaimed – recycled and filtered – with approximately 80% reused in the Car Wash operation. (Exhibit 37; T. 13)

(11) Applicants requested alternative compliance from Section 4.7 (Buffering Incompatible Uses) of the Landscape Manual to permit a reduced bufferyard between the subject property and residentially zoned property to the south and a commercial office building to the east. It is proposing a six-foot high sight-tight fence and 77 plant units to the east, and the same size fence with 29 plant units to the south. The Planning Director recommended approval of the request for reasons noted below. (Attachment to Exhibit 14)

(12) Applicants’ civil engineer testified that the Site Plan was amended to add a three-foot landscaped wall on the north and west side of the property, to show that the outdoor lighting will be designed to minimize glare and any spillage onto neighboring properties, and to show the sign detail. (Exhibits 32 and 36; T. 4-5).

(13) Information contained in the Institute of Transportation Engineers (ITE) Trip Generation Report (7<sup>th</sup> Edition) reveals that a 7-bay self service car wash should generate 44 evening peak hour vehicle trips and 165 Saturday peak hour trips. (Exhibit 22) Staff assumed that the use should generate 15 weekday AM peak hour trips. Staff also noted that the intersections in the area were recently reviewed and were found to be operating at Level of Service (LOS) “D” or better. While Staff concluded that the instant request would not lower the level of service of the intersections in the area it disagreed with Applicants’ initial analysis as to the queuing of vehicles on site. Applicants’ witness, accepted as an expert in transportation planning, satisfactorily addressed Staff’s concerns. He first noted that the maximum number of queued vehicles on site “would never exceed 18 [and] there will be 29 queuing spaces available on site.” (Exhibit 39) He then opined that this is sufficient queuing space to insure little impact on Mallard Drive, reasoning as follows:

[I]n the revised report – the revised letter, which is dated June 2<sup>nd</sup> - ... we did that street event simulation in accordance with the way [Staff] did it so we’d be looking at the same information.... It shows the anticipated alignment of cars waiting to get into the service bays. With the additional landscaping area .... the size of the site reduced a little bit by a bay from eight to seven, and previously in the old plan we had 32 stacking spaces available. With the additional landscaping area, the stacking that’s available has been reduced to 29 spaces and that includes the cars that are in the bay.

In order to determine the amount of queuing that's required ... it was assumed that an average of a five-minute time period would be needed for each vehicle. If you do that, you have 12 increments in a one-hour time period....

Normally a facility is designed to accommodate 95% of the occasions or the events that could occur during that one-hour period.... [A]t 95.74% of the occasions the maximum queue on the site would be 10 vehicles. Ok? If you look at the bottom line, it shows on zero occasions where 100% of the time we would not anticipate more than 18 cars on the site. Now, that's a little different than what the Staff mentioned in their referral. Staff mentioned that we could have one event every year or in some cases every two years where we would not have sufficient queuing ... and that's the part that we disagree with the Staff on.... [W]hen Staff ... mentioned that this site would generate 160-something trips during the peak period, ... they mentioned the discrepancy between their numbers and our numbers. We completely agree with the Staff as far as the number of trips the car wash would generate, but if it's 165 trips – in this case it was a Saturday peak time – 165 trips equates to 82 cars – not 165 cars. So, when you do the queuing analysis, you base it on the number of cars coming to the facility, not the number of trips....

(T. 23-25)

(14) Applicants' witness, accepted as an expert in land use planning, explained why he believes the request satisfies the requirements of the Zoning Ordinance, reasoning as follows:

One of the purposes of commercial zones is generally to encourage retail development to locate in concentrated groups of compatible commercial areas which have similar trading areas and frequency of use. I would argue that the car wash is generally compatible. People that go to the car wash are likely to go to some of the neighborhood commercial uses that generally fill small shopping centers since there's certainly a convenience center across the street....

The gas station ... was built in the early 80s and persisted until the mid-2000s, so there's a long-established record of automotive use. Secondly, there is some buffer with the separation of this use from the rest of the retail uses by Mallard Drive. There is a new bufferyard in between this use and the adjacent office building, so the operations of the car wash aren't going to be on top of and in conflict with the other uses. I would argue that the most proximate retail use – the convenience store – the 7-11 – is the most compatible because it has a much more transient usage – people aren't going to come and park and maybe visit several stores from one parking space, but at the 7-11 they're likely to come in and go out and as such it's more automotive-related....

For those reasons I find that this use really would not be detrimental to the use of adjacent properties specifically because of the separation from the residential use – because of the separation and the wooded buffer and the lack of the vehicular connection. The other thing to consider with regard to the development is that the neighborhood, as you can see from Exhibit 42, is substantially developed already.... I would even add the creation of the new use at this site requires it to be brought into compliance with new provisions which didn't exist in the 1980s – very specifically landscaping and buffering. Another substantial consideration ... would be the public safety benefits which accrue from the elimination of the two entrances onto Route 197.

(T. 36-37)

(15) The witness also provided a land planning analysis that detailed why he believes the Application satisfies all applicable provisions of the Zoning Ordinance. (Exhibit 41)

### **Technical Staff and Other Agency Comment**

(16) The Technical Staff recommended approval noting that there are no specific special exception requirements for a Car Wash. Staff opined that the use “is compatible, subject to the provision of required screening measures, within the current zone” and it “will not substantially impair the integrity of any validly approved master plan or functional master plan, or ... the General Plan.” (Exhibit 14)

(17) The Planning Director recommended approval of AC-09004, adopting the reasoning of the Alternative Compliance Committee:

In order to justify the reduction in the width of the Section 4.7 bufferyard adjacent to the residentially-zoned property to the south, the applicant is proposing to install a six-foot-high sight-tight fence and provide 29 plant units in excess of the requirement of the *Prince George's County Landscape Manual*. Along the east property line, the applicant proposes a 54-foot setback, a six-foot-high sight-tight fence and planting 77 plant units in excess of the requirement of the *Prince George's County Landscape Manual*. The Alternative Compliance Committee finds that the proposed combination of fencing and plantings will result in buffers that are equal or better than normal compliance with the *Prince George's County Landscape Manual*.

(Attachment to Exhibit 14)

(18) The National Park Service requested that the proposed sign not be illuminated to ensure a “park-like” appearance to those traveling on the Baltimore-Washington Parkway (the “Parkway”). However, woodlands adjacent to the Parkway restrict visibility of the site so the illuminated 8x6 sign should not adversely impact the Parkway.

(19) The Planning Board recommended Approval of the Application reasoning, in part, as follows:

The Board finds that the critical issue for a car wash is the queuing of vehicles on the site, and further concludes that sufficient queuing space is provided.... The site plan, with the approved request for alternative compliance and departures, along with recommended conditions, will be in conformance with all zoning requirements and regulations.... This application is subject to the land use recommendations of the 1990 master plan for Subregion I for retail commercial land uses.... The proposed use is compatible with all uses within the current zone, subject to the screening requirements [recommended]....

(Exhibit 34, pp 3-4)

(20) The Planning Board further recommended that several conditions be met concerning signage, the dumpster enclosure, lighting, and a fence. (Exhibit 34) Applicant revised its Special Exception Site Plan to address all of the conditions with the exception of the material used to enclose the dumpster. (Exhibit 32 (a)) However,

Applicant made the recommended change in said material on its Landscape Plan. (Exhibit 32 (b))

### **APPLICABLE LAW**

(1) There are no specific special exception requirements for the requested Car Wash. However, the Application must satisfy the provisions of Section 27-317 of the Prince George's County Zoning Ordinance.

Section 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 Tree Conservation Plan.

(2) The Application must also meet the general and specific purposes of the commercial zone in which the property is located. The general purposes for all commercial zones are set forth in Section 27-446(a) of the Zoning Ordinance, which provides as follows:

(a) The purposes of Commercial Zones are:

- (1) To implement the general purposes of this Subtitle;
- (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;
- (3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;
- (4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;
- (5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;
- (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;
- (7) To increase the stability of commercial areas;
- (8) To protect the character of desirable development in each area;
- (9) To conserve the aggregate value of land and improvements in the County; and
- (10) To enhance the economic base of the County.

(3) The specific purposes of the C-S-C Zone, found in Section 27-454(a)(1) of the Zoning Ordinance, are as follows:

- (1) The purposes of the C-S-C Zone are:
  - (A) To provide locations for predominantly retail commercial shopping facilities;
  - (B) To provide locations for compatible institutional, recreational, and service uses;
  - (C) To exclude uses incompatible with general retail shopping centers and institutions;

and

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

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

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

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

### **CONCLUSIONS OF LAW**

(1) The general purposes of the Zoning Ordinance are found in Section 27-102. The instant application satisfies the following purposes for the reasons provided:

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

The use is one that serves the needs of all County residents that rely on the automobile as a means of transportation.

*To implement the General Plan, Area Master Plans, and Functional Master Plans*

The 1990 Master Plan for Subregion I recommends retail-commercial land uses for the subject property. Accordingly, this purpose is satisfied since the Applicant proposes a commercial use of the subject property that is infill development, compatible with surrounding commercial uses.

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

Development of the subject property in the manner proposed by the Applicant will have no negative impact on the public facilities within the area since the Car Wash will be located at a previously-developed site, traffic facilities are adequate to serve the site, and schools will not be impacted.

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

The Applicant proposes to add additional landscaping and the reuse of the former gas station will be an aesthetic improvement. This purpose is, therefore, met.

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

The use ensures that a certain number of jobs will be provided and that taxes will be paid into the County's coffers, thereby furthering this purpose.

*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 Car Wash would have negligible impact on the roadway in the area, giving the fact that the Applicants will be closing access to MD 197.

Accordingly, the provisions of Section 27-317(a)(1) are met.

(2) The Application also is in harmony with the purposes of the C-S-C Zone in particular, and the purposes of the commercial zones, in general, since the proposed Car Wash will be a convenient commercial use to the traveling public and is compatible with the other commercial uses in the area. (Sections 27-446 and 454)

(3) The instant Application does not require the grant of a variance. Therefore, the use is in conformance with the applicable provisions of the Zoning Ordinance, if the Alternative Compliance request is approved. (Section 27-317 (a)(2))

(4) The use generally conforms to the Master Plan's vision of retail-commercial development since Applicant is proposing a commercial use and has designed it in a manner that will be aesthetically pleasing. (Section 27-317(a)(3))

(5) The site has been designed in a manner that provides for the safe internal flow of traffic, and will reduce the queuing of waiting vehicles. It is designed in an attractive



manner with adequate landscaping. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area. (Section 27-317(a)(4))

(6) The Applicant will provide a service to the traveling community in an aesthetically pleasing manner. It is situated within an existing commercial area and will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(7) The proposal is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance, as discussed *supra*. (Section 27-317(a)(6))

### **DISPOSITION**

Special Exception 4630 and Alternative Compliance (AC-09004) are Approved, subject to the following conditions:

- (1) The Special Exception Site Plan shall be revised to add the following language (shown on the Landscape Plan):

“Trash Enclosure with board-on-board fence placed on Concrete Pad. Fence to be of NON-WOOD material with natural color”.
- (2) Prior to the issuance of permits Applicants shall file a request with the Department of Environmental Resources to revoke S.E. 3215 pursuant to the provisions of Section 27-328 of the Zoning Ordinance. A copy of this request shall be sent to the Office of the Zoning Hearing Examiner.

NOTE: The Special Exception Site Plan and Landscape Plan are Exhibits 32(a) and (b).