

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

**SPECIAL EXCEPTION  
4670**

**DECISION**

Application:	Food or Beverage Store
Applicant:	7-Eleven, Inc.
Opposition:	None
Hearing Date:	December 15, 2010
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4670 is a request for permission to use approximately 0.4945 acres of land in the C-M (Commercial Miscellaneous) Zone located on the northern side of Lanham Severn Road (MD 564) at its intersection with Princess Garden Parkway, also identified as 9002 Lanham Severn Road, Lanham, Maryland for a Food or Beverage Store.
- (2) A variance from §25-128 of the Tree Canopy Coverage Ordinance is also being requested.
- (3) The Applicant's request for Authorization to Build within a Planned Right-of-Way was withdrawn during the evidentiary hearing.
- (4) The Technical Staff recommended approval of both Special Exception 4670 and the variance request, Exhibits 14 and 46, and the Planning Board did not elect to conduct a public hearing on the request and in lieu thereof adopted the recommendation of the Technical Staff. (Exhibit 20)
- (5) At the conclusion of the hearing, the record was kept open for the inclusion into the record of several documents, and upon receipt of which the record was closed on February 1, 2011.

**FINDINGS**

**Subject Property**

- (1) The subject property is roughly rectangular in shape and is improved with a 5,631 square foot commercial building which was constructed in approximately 1950. The existing structure is divided into two (2) separate units (9002 and 9002-B Lanham Severn Road). The exterior of the structure appears to have been recently updated with a new façade and canopies. There is one freestanding sign located along the northern property line which will remain. (Exhibit 37)

(2) The size of the subject property has decreased from its original size as the result of widening of Lanham Severn Road (MD 564) and Princess Garden Parkway.

(3) The subject property is completely paved with no existing woodlands on site. Twenty eight parking spaces, including two (2) handicapped parking spaces and two (2) loading spaces are provided. Two (2) driveway entrances provide direct access to Lanham Severn Road (MD 564) and Princess Garden Parkway.

### **Surrounding Uses**

(4) The subject property is surrounded by the following uses: to the north and east is the Darcars Lanham Ford auto dealership, to the south are Lanham Severn Road (MD 564), Annapolis Road (MD 450) and various commercial uses and fast food restaurants (McDonalds, Jerry's Subs and Pizza), and to the west is Princess Garden Parkway and various seven  $\pm$  story office buildings and a hotel, all in the C-M Zone.

### **Neighborhood**

(5) The neighborhood is bounded on the north by Good Luck Road, on the east by Cipriano Road, on the south by Lanham Severn Road (MD 564) and Annapolis Road (MD 450), and on the west by the Capital Beltway (I-95/495).

(6) The immediate neighborhood is generally commercial with existing residential units built between 1940 and 1970 located to the north and northwest. The subject property fronts on a major arterial roadway (Lanham Severn Road (MD 564) and Annapolis Road (MD 450) and is intended to help service the convenience needs of the residential community in the surrounding area as well as the traveling public along Lanham Severn Road (MD 564), Annapolis Road (MD 450) and Princess Garden Parkway.

### **History**

(7) The property is located on Tax Map 44 in Grid B3 and is known as Lot E. The property was the subject of final plat of subdivision BB7 @ 24, recorded in land records on June 16, 1939. Historical zoning records indicate that the property was situated in the C-2 (General Commercial, Existing) Zone at the time of the 1949 Sectional Map Amendment. Information derived from the Maryland Department of Assessments and Taxation indicates that the existing building was constructed in approximately 1950. Use and Occupancy Permit No. 5699-U was issued on June 26, 1962 for the Lanham Inn Restaurant and Bar. Commercial interior alteration permits were approved for both units in the building on January 24, 2006. The larger of the two (2) units was previously occupied by Mattress Warehouse (Permit No. 452558-2005-CU), while the smaller unit was previously occupied by Hertz Rent-A-Car (Permit No. 45259-2005-CU).

**Master Plan and Sectional Map Amendment**

(8) The 2009 Glenn Dale-Seabrook-Lanham and Vicinity Approved Sector Plan and Sectional Map Amendment recommends a commercial land use for the subject property. The Applicant's proposed use of a retail Food or Beverage Store is in conformance with the commercial land use recommendations of the 2009 Glenn Dale-Seabrook-Lanham and Vicinity Approved Sector and Sectional Map Amendment.

(9) The 2002 Prince George's County Approved General Plan locates the subject property within 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. This Application is consistent with the 2002 General Plan Development Pattern policies for the Developing Tier.

**Applicant's Proposal**

(10) The Applicant is seeking approval of a Special Exception for the use of a Food or Beverage Store (7-Eleven) in the C-M Zone. No increase in gross floor area is being proposed through the subject Special Exception Application. The Applicant is proposing an interior alteration that would designate 3,200 square feet of the existing building for a Food or Beverage Store. The remaining 2,431 square feet of the existing building will be retained in a separate unit (9002-B Lanham Severn Road).

(11) The Applicant is also seeking approval of a variance from the requirements of Subtitle 25, Division 3: The Tree Canopy Ordinance. Specifically, §25-128 requires that 10% of the gross tract area, or 2,154 square feet, of the subject property be in tree canopy and the Applicant is requesting a Variance from this provision.

**LAW APPLICABLE****Food or Beverage Store**

(1) A Food or Beverage Store is permitted by Special Exception in the C-M Zone in accordance with §27-355. Additionally, all Special Exceptions must meet the requirements of §27-317.

(2) Section 27-355 provides:

- (a) A food or beverage Store may be permitted, subject to the following:
  - (1) The applicant shall show a reasonable need for the use in the neighborhood;
  - (2) The size and location of, and access to, the establishment shall be oriented toward meeting the needs of the neighborhood;
  - (3) The proposed use shall not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses;

(4) In the I-1 and I-2 Zones, the proposed use shall be located in an area which is (or will be) developed with a concentration of industrial or office uses;

(5) The retail sale of alcoholic beverages from a food or beverage Store approved in accordance with this Section is prohibited; except that the District Council may permit an existing use to be relocated from one C-M zoned lot to another within an urban renewal area established pursuant to the Federal Housing Act of 1949, where such use legally existed on the lot prior to its classification in the C-M Zone and is not inconsistent with the established urban renewal plan for the area in which it is located.

(3) Section 27-317 provides:

(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.

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

(1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or

(2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(4) "T[he] 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.

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 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 factions 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, 275 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); Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

"...[T]he 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 at the particular location proposed would have any adverse effects above and beyond those inherently association with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981); 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)." Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

## Variance

(5) A Variance from the Tree Canopy Ordinance may be approved provided the following findings are found:

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(d) Variances

(1) An applicant may request a variance from this Division as part of the review of a TCP where owing to special features of the site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an applicant. To approve a variance, the approving authority shall find that:

(A) Special conditions peculiar to the property have caused the unwarranted hardship;

(B) Enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;

(C) Granting the variance will not confer on the applicant a special privilege that would be denied to other applicants;

(D) The request is not based on conditions or circumstances which are the result of actions by the applicant;

(E) The request does not arise from a condition relating to land or

building use, either permitted or nonconforming, on a neighboring property; and

(F) Granting of the variance will not adversely affect water quality.

(2) Notice of a request for a variance shall be given to the State of Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.

(3) Variances shall be approved by the Planning Board, Zoning Hearing Examiner, and/or the District Council for all tree conservation plans that are associated with applications heard by them. The Planning Director may approve variances for tree conservation plans that are not associated with applications heard by the Planning Board, Zoning Hearing Examiner and/or the District Council. The Planning Director's decisions are appealable to the Planning Board.

(4) Variances granted under this Subtitle are not considered zoning variances.

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## CONCLUSIONS

### General Requirements

(1) Section 27-317(a)(1) 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 Zone, §27-446, and the specific purposes of the C-M Zone, §27-459.

(2) The instant Application is in harmony with the general purposes of the Zoning Ordinance, §27-102, 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 establishment of a Food or Beverage Store in an established commercial area will be in harmony with the purpose of protecting and promoting the public health, safety, morals, convenience and welfare of the inhabitants of the County by providing for a convenient and generally-accessible location for convenience commercial goods in an existing commercial center in which these goods are currently generally not available.

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

The Prince George's County General Plan proposes different land use, infrastructure development and preservation policies for the different broad areas of the County which are either more urban, more suburban, or more rural. To effectively direct these policies, the General Plan classified the County into three tiers; the subject site and its neighborhood were classified in the Developing Tier. The Plan also created areas where denser growth was to be especially targeted, known as Centers and Corridors. The subject site is located in the Annapolis Road Corridor.

The General Plan's Vision for the Developing Tier is, "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."<sup>1</sup> By allowing for the location of a commercial use in an existing commercial center, this proposal would be in conformance with the General Plan's vision for the Developing Tier.

The subject site is located in a Corridor, which is an area ultimately designated for more intensive growth. The General Plan directs that, "Developing Tier Corridors: Generally" contain less intense residential and nonresidential land uses, than the Developed Tier Corridors and with a mix of uses that are more community-oriented in scope."<sup>2</sup>

The Glenn Dale-Seabrook-Lanham Sector Plan identifies the site as being in an existing commercial center, designated as "Lanham Shopping Center and Vicinity," and does not propose any changes in land use or zoning: The existing and proposed land uses are identified as "Commercial," and the previously-existing C-M Zone was not changed by the accompanying Sectional Map Amendment.

The Master Plan did identify a number of design recommendations for a number of commercial centers, including the Lanham Shopping Center area. The Plan text does indicate that, "...recommendations reflect a series of short-term actions focusing mainly in landscaping and pedestrian improvements. Major redevelopment of thee sites is not envisioned. All graphics depict *possible* [emphasis in original] improvements and should not be taken as mandatory site design or development plans."<sup>3</sup>

The Plan identifies a number of design issues, and suggests a number of possible improvements: The Plan notes, "difficult exits out of retail – no left turns onto Annapolis Road," and "poor connectivity across Annapolis Road into retail area,"<sup>4</sup> (but does not offer any potential improvement to rectify these situations). It further notes, "poor connectivity between uses," "not pedestrian friendly," and "lack of sidewalks within retail and along sections of Annapolis Road,"<sup>5</sup> to ameliorate this, the Plan recommends to, "provide sidewalks to connect retail uses within the shopping center."<sup>6</sup> The entire frontage of the subject site is currently improved with sidewalks.

In its recommendations for Commercial and Employment Areas, the Sector Plan lays out a number of Goals and supporting policies and strategies. The first Goal is to "retain and attract an appropriate range of neighborhood-serving commercial uses;"<sup>7</sup> the policy identified to support this goal is to "promote commercial uses that adequately serve community residents and provide distinct

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<sup>1</sup> *Prince George's County Approved General Plan*, p. 36.

<sup>2</sup> *Ibid.*, p. 50.

<sup>3</sup> *Approved Glenn Dale, Seabrook, Lanham and Vicinity Sector Plan and Sectional Map Amendment*, p. 101.

<sup>4</sup> *Ibid.*, p. 105.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, p. 256.

shopping and activity destinations that are integral and compatible parts of residential neighborhoods.”<sup>8</sup> While the subject site is a part of the Lanham Shopping Center commercial center, it is also located within “Living Area 1”, one of eleven neighborhoods identified in the Sector Plan, and an area virtually identical to the neighborhood defined for the instant Application. The subject use would be the only retail commercial use located within the neighborhood, and thus would promote the Plan’s goal of providing a neighborhood-serving commercial use.

Functional Master Plans which are relevant to the subject Application include the Green Infrastructure Plan and the Countywide Master Plan of Transportation.

The Application conforms to the Green Infrastructure Plan as there are no parts of the County’s Green Infrastructure Network which will be affected by the subject proposal.

The Master Plan of Transportation identifies Lanham-Severn Road and Annapolis Road as arterial roadways, and identifies Princess Garden Parkway as a collector roadway; while the Sector Plan indicates that it would be desirable for additional intersection/interchange improvements to be designed and constructed for the interchange of Lanham-Severn Road with Annapolis Road, neither the Sector Plan nor the Master Plan of Transportation proposes any specific improvement.

Because the proposed Food or Beverage Store is not in conflict with the General Plan, the Sector Plan or the applicable Functional Master Plans, approval of the subject Application will be 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;*

While the approval of a Special Exception does not require a test of the adequacy of public facilities, the Applicant proffered a traffic study which indicates that the adjacent intersection of Annapolis Road with Princess Garden Parkway will continue to operate at an acceptable level of service in both the morning and evening peak hours, and that both site entrance points will not experience undue delays in traffic movements. As such, the subject Application is in harmony with this Purpose.

- (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 will recognize the needs of the County’s residents and workers by permitting a new occupancy of an existing structure in an existing neighborhood with a use that would serve the workers and residents of that neighborhood, and so would abet the orderly growth and development of the County, making the subject Application in harmony with this Purpose of the Ordinance.

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<sup>8</sup> Ibid.



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

The subject use will be in harmony with this Purpose because it will not change the existing conditions at a site which is 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 setbacks 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 Food or Beverage Store will be in harmony with this Purpose because it will be located in a building that was developed in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings. These principles include conformance with the Tables of Permitted Uses and Regulations for the various zones as laid out in the Ordinance.

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

The subject Food or Beverage Store will be in harmony with this Purpose because it is 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, 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 the instant Application.

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

The subject Food or Beverage Store will be in harmony with this Purpose because it will be a local business operated principally for the benefit of the local workers and residents of Prince George's County. The business will contribute to the tax base of the County directly and through the employment provided to its workers. Its establishment will aid the surrounding businesses and neighbors by providing convenience products, and will entice a number of patrons to stop in the area who may then also patronize neighboring businesses.

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

The subject Food or Beverage Store will be in harmony with this Purpose because it will be located in an existing building which 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 provide for the compatibility of uses in the same zoning district, the provision of sufficient distance between the proposed use and neighboring uses, and limitations on land use density (either directly through lot coverage and height restrictions or indirectly through requirements for providing sufficient vehicular parking).

***(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 Food or Beverage Store will be in harmony with this Purpose because of several factors.

First, the proposed Store 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.

The second factor contributing to the proposed use's harmony with the Purpose of lessening the danger and congestion of traffic on the streets is the location of the site in an existing commercial area, on a road which serves as a significant thoroughway, and which offers the opportunity for vehicle trips to serve multiple uses: the Applicant's traffic study indicates that 65% of the trips to the site would be by vehicles already on the adjacent roads, and a further 11% would be by cars which were already on the road generally.

The final factor is that the traffic generated by the proposed use would not cause the local road network to operate at an unacceptable level of service.

***(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 is prima facie evidence of the Application's harmony with this purpose.

Beyond that, however, the subject Food or Beverage Store will promote the economic and social stability of the County by contributing to the tax base, by providing a desirable service to the surrounding community, and by virtue of its location in the midst of a neighborhood of compatible uses.

- (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 subject Food or Beverage Store will be located on a developed site, it will have no additional impact to the natural features in the County. The use will not itself generate noise or air pollution, and the use will be in compliance with the County's Woodland Conservation policies in that no woodland will be lost because of this Application. No steep slopes or scenic vistas will be affected. By conformance to these principles and regulations, the approval of this Food or Beverage Store will 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 the instant Application, except that approval of this use in an existing, developed location will lessen in a small way the pressure for sprawling development onto undeveloped agricultural lands that form a great part of the scenic beauty of the County. §27-317(a)(1)

(3) The instant Application is also in harmony with the general purposes of the Commercial Zone, §27-446, as follows:

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

The harmony of the proposed use with the purposes of the Zoning Ordinance generally has been discussed above.

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

The proposed use is located in an area which was planned for Commercial land use and thus fulfills the purpose of filling in the sufficient space in an appropriate location.

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

As noted above, the proposed use is in harmony with this Purpose because it is located in an area with a concentration of compatible commercial uses.

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

As described above, the proposed use is in harmony with this Purpose as this Purpose echoes the general Purposes (5), (6), (11) and (13), above.

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

This Purpose echoes general Purpose (11), above. The site's location in a commercial district concentrates the commercial traffic in that district and lessens congestion 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;*

By the site's location in an area of planned commercial uses, it promotes the efficient and desirable use of land and is thus in harmony with this purpose.

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

By its location in an existing facility, the establishment of this use will be in harmony with this Purpose by increasing the stability of the existing commercial district.

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

By virtue of its location in an existing, established commercial district, the proposed use will be in harmony with this Purpose by complementing the existing uses and avoiding conflicts with incompatible uses.

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

By virtue of its location in an existing building, the proposed use will be in harmony with this Purpose by preventing blight and maintaining the value of the land and improvements on this site and those of its neighbors.

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

By establishing a new business, the proposed use will be in harmony with this Purpose.  
§27-317(a)(1)

(4) The Application is also in harmony with the purposes of the C-M Zone, §27-450, as follows:

(A) *To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas;*

Because the proposed use is itself a retail use, it will not be disruptive to the harmonious development, compactness, and homogeneity of a retail shopping area. Further, the Sector Plan's designated commercial center in which the subject site is located, the Lanham Shopping Center and Vicinity area, is primarily zoned C-M, though the C-M zoned portion of the Center tends to be used in significant proportion by uses which are ordinarily found in retail commercial zones: three hotels, four restaurants, and a large office building constitute a supermajority of the uses occupying the rest of the C-M zoned land in Lanham Shopping Center and Vicinity area.

(B) *To provide these locations, where possible, on nonresidential streets; and*

The subject Food or Beverage Store is located at the intersection of two streets of high functional classification and is further located approximately 260 feet from the nearest residentially-zoned land on Princess Garden Parkway, and as such is in harmony with this Purpose.

(C) *To provide concentrations of these uses which are relatively far apart.*

The proposed use is in harmony with this Purpose as the concentration of C-M zoned land at the Lanham Shopping Center and Vicinity area (if not of miscellaneous commercial uses, *per se*) is approximately a mile and a half distant from the center of the strip of miscellaneous commercial uses which line the southern/eastern side of Lanham-Severn Road along the Penn Line.

§27-317(a)(1)

(5) Commercial uses such as Food or Beverage Stores and Gas Stations are presumed compatible with residential and other commercial uses provided the established setbacks, lot coverage, landscaping, minimum acreage, traffic and parking impacts and all other regulations can be met. The subject Application is in compliance with the regulations and requirements of the Zoning Ordinance. Although a Variance is sought from the Tree Canopy Ordinance, the Tree Canopy Ordinance provides for such a process, approval of which equates to a finding of compliance with the Tree Canopy Ordinance albeit as modified. The Environmental Planning Division of the Maryland-National Capital Park and Planning Commission has recommended approval of the necessary variance. There is no evidence to support a finding that this presumption has been rebutted and that the Application is not in concert with the purposes of the Zoning Ordinance. § 27-317(a)(2)

(6) The integrity of the 2009 Glen Dale-Seabrook-Lanham and Vicinity Approved Sector Plan will not be impaired as the Sector Plan recommends commercial miscellaneous land uses designed to meet the needs of the surrounding community and the proposed Food or Beverage Store implements this recommended commercial development. §27-317(a)(3)

(7) A finding of adequacy of transportation facilities is not a requirement for Special Exception Applications. However, given the increase in traffic at the site's driveway entrances and adjacent intersections, the Transportation Planning Section recommended that a traffic study be conducted. In addition to the customary capacity analysis that is required with a typical traffic study, the Transportation Planning Section also requested the evaluation of potential queuing problems at the site entrance along Annapolis Road (MD 450) as well as an evaluation of on-site circulation. The Applicant was also requested to solicit accident data from the State Highway Administration (SHA) and from the Department of Public Works and Transportation (DPW&T) for the immediate area of the site. Based on the results of the submitted traffic analyses, the Transportation Planning Section has determined that the critical intersections will operate adequately in accordance with the "Guidelines for the Analysis of the Traffic Impact of Development Proposals" (*Guidelines*). Therefore, the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area. §27-317(a)(4)

(8) Commercial uses have operated on the subject property for several decades and have had no detrimental effects on the use or development of adjacent properties or the general neighborhood throughout that time period. The surrounding properties are already developed and have been used for automobile sales and service for many years, a use that is considered to be more intensive than the proposed Food or Beverage Store for the purposes of the Prince George's County Landscape Manual. The proposed use will help serve the convenience needs of the residential community that is situated just north of the subject property along Princess Garden Parkway, as well as the traveling public along Annapolis Road (MD 450). Thus, the proposed use will not be detrimental to the uses or development of adjacent properties or the general neighborhood. §27-317(a)(5)

(9) No woodland currently exists on the property. The existing building occupies 26.2 percent of the total net lot area of the property, while the remaining 73.8 percent of the site consists of paved surfaces. On June 19, 2009, a standard letter of exemption from the Woodland Conservation Ordinance was issued by the Environmental Planning Section because the property is less than 40,000 square feet in size and has no previously approved Tree Conservation Plans. (Exhibit 6) §27-317(a)(6)

(10) The subject property is entirely paved with no land area for either preservation or restoration of environmental features as none exist. §27-317(a)(7)

(11) As the subject property is in the C-M Zone the requirements of §27-317(b) are not applicable.

### **Food or Beverage Store**

(12) "Need" has been judicially held to mean "expedient, reasonably convenient and useful to the public." Lucky Stores, Inc. v. Board of Appeals for Montgomery County, 312 A2d 758, 270 Md 513 (1973), Brandywine Enterprises, Inc. v. County Council for Prince George's County, 117 Md App 525, 700 A2d 1216 (1997). "Need" is not defined in the County Zoning Ordinance.

(13) A dictionary is a good starting point in the work of statutory construction, in conjunction with plain meaning of the words used and the statutory objectives and purposes of the enactment. Once a reasonable interpretation is reached, the hearing authority's determination will be upheld provided it is supported by substantial evidence.<sup>9</sup> License Commissioners v. Toye, 354 Md 116, 729 A2d 407 (1999)

(14) "Neighborhood" is also not defined in the County Zoning Ordinance. "Neighborhood" is defined as "the area or region around or near some place or thing," "vicinity," "a district or locality, often with reference to its character or inhabitants," "a number of persons living near one another or in a particular locality." Random House Unabridged Dictionary, Seventh Edition, 1983.

(15) "Neighborhood" is similarly defined as "the immediate vicinity; the area near or next to a specified place," "people living in a particular vicinity, usually forming a community within a larger group and having similar economic statuses and said interest" and "the condition of being close together." Black's Law Dictionary, Seventh Edition, 1999.

(16) Land Planners have customarily defined "neighborhood" within the context of planning principles for the purpose of addressing the change/mistake rule in piecemeal rezoning applications as being that area within which the property is located and its boundaries created by major topographic events such as rivers and ravines and by major man created structures such as multi-lane highways and similar structures.

(17) The courts have also traditionally defined "neighborhood" within the context of rezoning applications. "The concept of a neighborhood is a flexible one, and will vary accordingly to the geographic locations involved, it being axiomatic that in a rural or semi-rural area the 'neighborhood' will be larger and more fluid than in a city or suburban area." Montgomery v. Board of County Commissioners for Prince George's County, 263 Md 1, 280 A2d 901 (1971)

(18) What constitutes a neighborhood is not and should not be precisely and rigidly defined but may vary from case to case and "the greatest deference must be allowed the zoning authority's judgment regarding the size of the neighborhood to be drawn" so long as "the neighborhood delineated by the authority must be reasonable." Howard County v. Dorsey, 45 Md App 692, 713, 416 A2d 23, 34 (1980), Woodlawn Area Citizen's Association v. Board of County Commissioners of Prince George's County, 241 Md 187, 216 A2d 149 (1966)

(19) The terms "neighborhood" and "vicinity" as used in zoning laws requiring a showing of "need" are flexible and relative terms which must vary from case to case. In Neuman v. City of Baltimore, 251 Md 92, 246 A2d 583 (1968), a special exception for a nonresident medical practitioner's office within a residential apartment complex requiring a showing of need in the vicinity of the premise for a physician, was upheld on evidence showing "a population density within

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<sup>9</sup> See the requirements of "need for public accommodation" in order to obtain a liquor license.

a reasonable distance of the Fountainview Apartments intense enough to make it expedient, reasonably convenient and useful to the public that a doctors' practice" operate from an office within the apartment complex. The court found that need for the services of a physician within a neighborhood must be considered as elastic and relative.

(20) There was no suggestion in Neuman that the words "neighborhood" and "need" include the power to suppress competition, or indeed any consideration other than the public health, safety, morals and general welfare.

(21) The courts have dismissed attempts to have zoning ordinances using the words "need" and "general neighborhood" without further definition declared invalid as an attempted delegation of legislative power without sufficient guides and standards.

We have already observed, however, in *Neuman* that these words have received a judicial gloss, sufficiently definite "to protect the people against any arbitrary or unreasonable exercise of power" in zoning cases, *Heath v. Mayor & City Council of Baltimore*, 187 Md. 296, 303, 49 A.2d 799, 803 (1946), but, at the same time, giving sufficient "flexibility necessary to enable the administrative officials to carry out the legislative will," *Pressman v. Barnes*, 209 Md. 544, 555, 121 A.2d 816, 822 (1956). See *Givner v. Commissioner of Health*, 207 Md. 184, 113 A.2d 899 (1955) and *McBriety v. Mayor & City Council of Baltimore*, 219 Md. 223, 148 A.2d 408 (1959).

See Lucky Stores, Inc. v. Board of Appeals of Montgomery Co., 270 Md 513, 312 A2d 758 at 767 (1973)

(22) Contrary to the instant Application, a Special Exception for a Gas Station based on a demonstration of need by the population of the neighborhood of the proposed Gas Station has been denied by the County when the Applicant failed to provide market studies or reports showing the number of residents within the general trading area, the average number of cars per household and the average number of gallons of gasoline consumed per vehicle in Maryland, and failed to provide a survey of the general market area supporting a need for the use and convenience of area residents. The court indicated that had such evidence been produced, the Board's denial would not have been supported by a preponderance of the evidence and the court would have reversed the Board's conclusions. American Oil Co. v Board of Appeals of Montgomery Co., 270 Md 301, 310 A2d 796 (1973).

(23) In accordance with the courts determination that a "market area" for "need" is different from a "neighborhood" for "change or mistake", a review of the previous District Council and Zoning Hearing Examiner decisions show a pattern and practice of not limiting a market area for a "need" or "necessity" argument to the "neighborhood" utilized for planning purposes.

(24) A review of the legislative history of the specific Special Exception requirements for a Food or Beverage Store supports the intention of the legislative body to differentiate between the judicial determination of "neighborhood" in a rezoning application and a more genetic usage of



"neighborhood" in a "need" or "necessity" analysis. Prior to 1985, the specific Special Exception requirements for a Food or Beverage Store differed from zone to zone. Included in the requirements for the C-M Zone were (1) the use shall contain less than 3,800 square feet of gross retail space and (2) there shall be no similar use within the general vicinity of the subject property. CB-93-1984 deleted "no similar use within the general vicinity" and substituted therefore (1) reasonable need in the neighborhood, (2) location, size and access to be oriented toward meeting the needs of the neighborhood and, (3) the proposed use shall not unduly restrict the availability of land or upset the balance of land use in the area for other trade or commercial uses and consolidated all zones together. The preamble to CB-93-1984 states that the need criteria was not intended to restrict competitive commerce but to help reserve land for those uses which are expressly permitted. Since the express purpose of adopting CB-93-1984 was to preserve the availability of land in the areas for permitted uses, neighborhood cannot be read to be an assemblage of properties smaller than the properties in the area. And neighborhood must, therefore, be synonymous with area.

(25) The un rebutted testimony of the Applicant, as supported by their expert witness and as adopted by the Technical Staff (March 15, 2010 Referral Request from Dr. Joseph Valenza) (Exhibit 14) is that in this Application, the proposed Food or Beverage Store would be located at the intersection of Lanham Severn Road (MD 564) and Princess Garden Parkway, directly across from a large office building and other commercial uses. Just north of the subject property is a large residential community comprised of detached single-family dwellings that were built between 1940 and 1970 with an average density range of two to five dwelling units per acre. The proposed use will help serve the convenience needs of this existing community as well as the traveling public along the MD 450/MD 564 corridor. §27-355(a)(1)

(26) The subject property has existing driveway entrances on both Princess Garden Parkway and along Lanham Severn Road (MD 564)/Annapolis Road (MD 450). The driveway entrance along Lanham Severn Road (MD 564)/Annapolis Road (MD 450) will offer residents, workers, and the traveling public a convenient access point into the property. Customers from the nearby subdivisions along Princess Garden Parkway who wish to use the Food or Beverage Store will be able to safely access the property from Princess Garden Parkway without the need to compete with the regional traffic along Annapolis Road (MD 450). §27-355(a)(2)

(27) The Applicant proposes an interior alteration in order to convert a portion of an existing building into a new Food or Beverage Store. As such, no grading or other earthwork is being proposed through the subject Special Exception Application. By converting a portion of an older existing building that was constructed in 1950 into a new 7-Eleven convenience store, the Applicant's proposal may help to facilitate other new uses in a building that is currently vacant. Further, the Applicant's proposed use of a Food or Beverage Store is consistent with the 2009 Glenn Dale-Seabrook-Lanham and Vicinity Approved Sector Plan and Sectional Map Amendment which recommends a commercial land use for the subject property. The proposed use will not unduly restrict the availability of land, or upset the balance of land use, in the area for other allowed uses. (See Note 8, Exhibit 37) §27-355(a)(3)

(28) As the subject property is located solely within the C-M Zone, §27-355(a)(4) is not applicable.

(29) There shall be no retail sales of alcoholic beverages on the subject property. §27-355(a)(5)

### Traffic

(30) Although ordinarily not required for similar Special Exception Applications, the Applicant prepared a Traffic Impact Analysis (Exhibit 39) to address concerns raised by the Technical Staff during their initial review of the instant Application. The State Highway Administration reviewed the Traffic Impact Analysis and, by letter dated September 16, 1010, concurred with the findings of the Analysis. (Exhibit 40)

(31) The Transportation Planning Section also reviewed the Applicant's Traffic Impact Analysis and provided the following comment:

Using trip data from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 8<sup>th</sup> Edition, the potential trip generation is documented in the following table:

<b>Comparison of Estimated Trip Generation, SE-4670, 0.4945 acres</b>								
Zoning or Use	Units or Square Feet	AM Pk. Hr. Trips			PM Pk. Hr. Trips			Daily Trips
		In	Out	Total	In	Out	Total	
<b>Existing Zoning</b> C-M (Commercial-Miscellaneous)	Medical office (highest use under current zoning)	20	5	25	10	22	32	345
<b>Proposed Use</b> Convenience Store (7-Eleven)	3,200 square feet	107	107	214	86	82	168	2,546
Less Pass By	76 %	81	81	162	65	62	128	1,935
	Net "new" trips	<b>26</b>	<b>26</b>	<b>52</b>	<b>21</b>	<b>20</b>	<b>41</b>	<b>611</b>
<b>Difference</b>		+6	+21	+27	+11	-2	+9	+266

The trip generation comparison depicted in the table above shows an increase in vehicular traffic if this application is approved.

### Traffic Study review

The Applicant's August 13, 2010 study identified the following intersections as ones on which the application will have the most impact:

<b>EXISTING CONDITIONS</b>		
<b>Intersection/Link</b>	<b>(LOS/CLV) AM</b>	<b>(LOS/CLV) PM</b>
MD 450 @ Princess Garden Parkway	A/992	C/1278
MD 450 @ Site Access **	N/A	N/A
Princess Garden Parkway @ Site Access **	N/A	N/A
**Unsignalized intersections are analyzed using the Highway Capacity Software. The results show the level-of-service and the intersection delay measured in seconds/vehicle. A level-of-service "E" which is deemed acceptable corresponds to a maximum delay of 45 seconds/car. For signalized intersections, a CLV of 1450 or less is deemed acceptable as per the guidelines.		

It is customary to include background developments in most intersection analyses; however, there were no background developments that were found to be in the impact area for the MD 450 @ Princess Garden Parkway intersection. The analyses did include a one percent growth in through traffic over a two-year period.

Using the ITE Trip Generation Manual, 8<sup>th</sup> Edition, the traffic study has indicated that the proposed development (3,200 square feet) will be adding 52 (26 in and 26 out) AM peak-hour trips and 41 (21 in, 20 out) net new PM peak-hour trips at the time when the proposed development becomes operational. The 3,200-square-foot portion of the existing building is the subject of this special exception application. The remaining 2,431 square feet of the existing building was previously used as a specialty retail center as defined in the ITE manual. The manual assumes a trip rate for similar uses as 2 AM and 7 PM peak-hour trips. Based on the new trips being generated as well as current trips, the intersections were re-analyzed and the following results were determined:

<b>TOTAL TRAFFIC CONDITIONS</b>		
<b>Intersection/Link</b>	<b>(LOS/CLV) AM</b>	<b>(LOS/CLV) PM</b>
MD 450 @ Princess Garden Parkway	B/1012	D/1305
MD 450 @ Site Access **	42.4 seconds	24 seconds
Princess Garden Parkway @ Site Access **	7.6 seconds	10.8 seconds
**Unsignalized intersections are analyzed using the Highway Capacity Software. The results show the level-of-service and the intersection delay measured in seconds/vehicle. A level-of-service "E" which is deemed acceptable corresponds to a maximum delay of 45 seconds/car. For signalized intersections, a CLV of 1450 or less is deemed acceptable as per the guidelines.		

Based on the results of the traffic analyses, all of the critical intersections will operate adequately as defined in the Guidelines.

**Parking /Loading**

(32) Twenty-eight parking spaces are designated on the Amended Revised Site Plan, Exhibit 37, including two (2) parking spaces for the physically handicapped. The total parking required for the proposed Food or Beverage Store is 21 parking spaces. With the proposed Special Exception use requiring twenty-one of the provided twenty-eight parking spaces on the subject property, any future and tenants of the currently vacant portion of the building (9002-B Lanham Severn Road) will be restricted to those uses that are within the low parking generation group (one (1) parking space for every 500 square feet of gross floor area) unless a Departure from Parking and Loading Standards is approved. As both 9002 and 9002-B exceed 2,000 square feet of gross floor area, one (1) loading space is required for each unit. The Amended Revised Site Plan, Exhibit 37, provides the required two (2) loading spaces.

**Landscape Manual**

(33) The dimensions of the standard parking spaces shown on the Amended Revised Site Plan, Exhibit 37, were establish prior to 1970 and are dimensional in accordance with that Ordinance as being 200 square feet in area without addressing specific height and width dimensions.

(34) The Applicant proposes an interior alteration only in order to convert a portion of an existing building into a new retail Food or Beverage Store. The existing building was constructed in 1950 and the subject Application proposes no increase in the gross floor area of the existing building. Therefore, the subject Application is exempt from the requirements of the Prince George's County Landscape Manual.

(35) The Amended Revised Site Plan, Exhibit 37, meets the height, bulk and setback requirements and regulations for the C-M Zone and no variances from these requirements are needed.

**Sign Regulations**

(36) All proposed signage is in accordance with the Sign Ordinance. (Exhibit 37)

**DISPOSITION**

Special Exception 4670 is **APPROVED** subject to the following condition:

- (1) If any alterations are proposed to the façades of the existing building besides building-mounted signage, color architectural elevations with materials labeled shall be submitted by the Applicant prior to signature approval of the Special Exception Amended Revised Site Plan. If no exterior alterations besides building-mounted signage are proposed, a general note shall be added to the Site Plan stating this prior to signature approval.