

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

**SPECIAL EXCEPTION
4673**

DECISION

Application:	Vehicle Parts or Tire Store with installation facilities and a Parking Lot located in a residential zone serving a Use in a Commercial Zone
Applicant:	Africa Women's Health & Social Empowerment Assoc., LLC/The Tire Depot
Opposition:	None
Hearing Dates:	November 17, 2010
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 4673 is a request for permission to use approximately 0.3049 acre of land (10,641 square feet) in the C-S-C (Commercial Shopping Center) Zone and R-55 (One-Family Detached Residential) Zone for a Vehicle Parts or Tire Store with installation facilities and to locate a parking lot for said use on residentially-zoned land. The subject property is located at the intersection of Scott Key Drive and Foster Street, east of Marlboro Pike, and is identified as 6208 Marlboro Pike, District Heights, Maryland.

(2) The Technical Staff recommended approval with conditions. (Exhibit 21) The Planning Board also recommended approval with conditions. (Exhibit 25) The City of District Heights ultimately noted its support of the request as amended. (Exhibit 25, pp. 9-10)

(3) No one appeared in opposition to the instant request at the hearing held by this Examiner.

(4) At the close of the hearing the record was left open to allow the Applicant to submit a revised Site & Landscape Plan, and a copy of the sealed and stamped survey of the subject property. The last of these items was received on November 17, 2010, and the record was closed at that time. (Exhibits 39(a)-(c))

FINDINGS OF FACT

(5) The subject property is approximately 0.30 acre in size and consists of Lot 15 (zoned C-S-C) and parts of Lots 2 and 3 (zoned R-55). (Exhibit 39(c)) It is improved with a 10,771 square-foot, two-story brick building that formerly housed the District Heights Volunteer Fire Department.¹

(6) The subject property is exempt from the requirements of the Woodland and Wildlife Conservation Ordinance (formerly known as the Woodland Conservation and Tree Preservation Ordinance) because the site is less than 40,000 square feet in size and there is no previously approved Tree Conservation Plan. (Exhibit 8)

Master Plan/Sectional Map Amendment/General Plan

(7) The subject property lies within an area discussed in the 2009 Marlboro Pike Sector Plan for Planning Area 75A. The 2009 Sector Plan envisioned a commercial land use for the C-S-C zoned property and residential medium land use for the R-55 zoned lots. The 2009 Sectional Map Amendment retained the C-S-C and R-55 zoning of the property.

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

Neighborhood/Surrounding Uses

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

- North – across Foster Street, single-family residential development in the R-55 Zone
- South – commercial development (i.e., pizza shop, barber shop, video store, etc.) in the C-S-C Zone
- East and southeast– contiguous to the subject property’s parking lot is a vacant Crestar Bank building and its parking lot; across County Road, opposite the parking lot, single-family detached homes in the R-55 Zone
- West – across Marlboro Pike, strip commercial development (i.e., beauty supply store, vacant tune-lube facility, church, etc.) in the C-S-C Zone

(10) The Neighborhood is defined by the following boundaries: Cabot Street to the north; Marlboro Pike to the south; County Road to the east; and Delano Lane to the northwest. The neighborhood is a mix of residences and strip-commercial uses. (Exhibit 21)

¹ The Technical Staff Report contains an excellent summary of the historic use of the subject property. (Exhibit 21)

Applicant's Proposal

(11) Applicant purchased the property that formerly housed the District Heights Volunteer Fire Station (the "fire station") and its adjoining parking lot. The portion of the site that is improved with the former fire station is zoned C-S-C and is 8,113 square feet in size. Immediately behind that portion on the north side is a 20-foot wide alley. Across from the alley is a former parking lot for the fire station that is zoned R-55 and is 5,167 square feet in size. The fire station was a permitted public use and could legally use the adjacent parking. However, Applicant's requested use is a private commercial use; as such an additional Special Exception is required to allow parking for the commercial use on residentially zoned land.

(12) Applicant is proposing an adaptive reuse of the fire station (no additional construction) to legally operate a vehicle parts and tire store with installation, as well as the parking to serve it. Applicant obtained a Use and Occupancy permit in 2008 to operate an Auto Parts & Tire Store, a use permitted by right in the zone. However, it also initiated a tire installation facility on site before learning that such a use required approval of a Special Exception.

(13) The second floor of the former fire station is currently used for vehicle parts and tire storage. However, Applicant intends to limit this use to the first floor and the former bays used for fire equipment; the second floor is proposed to be used as an auditorium, which is a permitted use in the zone.

(14) Applicant agreed to extend new curb and gutter on the north side of Scott Key Drive and bring it toward the intersection of Scott Key and Marlboro Pike in order to facilitate safer pedestrian crossings in the area. (T. 7-8) Applicant also agreed to add vegetative screening along the western side of the existing building and along the area of the parking lot closest to Foster Street.

(15) Signage will be located along Marlboro Pike to direct parking to the rear of the site. The existing building includes a 12 x 15 foot metal grate on which Applicant proposed to affix an awning sign. Applicant requested approval of a departure from sign design standards since the Sign Ordinance would require the entire grate to be included in calculating the size of the sign (and the sign was larger than permitted). The Planning Board denied the departure (Exhibit 31), and Applicant must, therefore, remove the metal grate prior to erecting its awning sign.

(16) The recorded deed for the property (Liber 5455, Folio 739) reflects an exchange of land between the former fire station and the former Perpetual American Savings and Loan Associations regarding the parking lot that both used. (Exhibit 21, pp 2-3) Staff recommended that a condition be imposed to require Applicant to change the property lines shown on the Site Plan to be in accord with the deed. Applicant's witness, accepted as an expert in land use planning, testified that the surveyors for the site noted a mistake in the original deed and prepared and certified a boundary survey that reflects the actual boundary. (Exhibit 39(c))

(17) Applicant's witness explained that Applicant did revise its Site Plan to address most of the conditions suggested by the Planning Board, but preferred not to be bound by a few. (T. 11-24) It did not wish to provide documentation that the site be further inspected by a licensed fire protection engineer since the County's Fire Prevention Unit has inspected the property and signed off as to its compliance with fire safety regulations, and further inspection will be required at the time of Use and Occupancy permit review. (Exhibit 34; T. 19-21) There is existing downward-facing lighting to the rear of the existing building that Applicant intends to utilize. Finally, as discussed *supra*, Applicant's surveyor will only certify what exists on site and believes that the recorded deed deviates slightly from the existing site boundaries. Accordingly, Applicant does not want to amend the Site Plan's property lines to reflect what is in the incorrect deed.

Agency Comment

(18) The Community Planning Division of the Prince George's County Planning Department noted that a portion of the site lies within an "activity node" Guideline Area, discussed in the Sector Plan. These are areas in which it is expected that major investments and redevelopment will occur. Accordingly it is expected that such development will have "high quality design." (January 20, 2010 memo from Campbell to Alam, attached to Exhibit 21). The Plan also recommends clusters of commercial development supported by residential development.

(19) The Transportation Planning Section of the Prince George's County Planning Department noted that the proposed uses should result in a net decrease of 108 vehicular trips during the AM and PM peak hours. It opined that "since the proposed use is less traffic-intensive than the zoning would normally permit, the approval of the special exception would appear to pose minimal transportation adequacy issues." (February 26, 2010 memo from Masog to Alam, attached to Exhibit 21) This Section did observe that the sidewalks along Marlboro Pike are in poor condition and pedestrians often have to enter into the vehicular travel lanes.

(20) The Technical Staff ultimately opined that the proposed use generally is consistent with the vision of the 2002 General Plan and conforms to the general land use recommendations of the 2009 Sector Plan. It recommended approval, with conditions, reasoning as follows:

The quality and character of the existing neighborhood will be substantially enhanced by the proposed public improvements of curbing and sidewalks and by the proposed landscaping at Scott Key Drive and Foster Street. The renovation of existing public infrastructure will also promote safe pedestrian connectivity, minimize the opportunities for vehicle/pedestrian conflicts, and provide better pedestrian and vehicular safety at the intersection of Scott Key Drive and Marlboro Pike. By these features, this proposal is in conformance with the goals of the General Plan for the Developing Tier. This proposed use also meets the

goal of using vacant public facilities to serve the community by allowing a viable business to occupy the site of a formerly vacant and obsolete public facility....

In addition to the above improvements, the applicant is proposing additional landscaping along the 111 feet of frontage of the rear parking lot, to buffer the residential uses across Foster Street. Additional plant units are proposed to be incorporated along the west side of the building to further breakup and soften the views of the existing concrete building. With the incorporation of the proposed landscaping, curb/gutter, and sidewalk improvements, the overall appearance and safety of the property is significantly improved for the benefit of residents or workers in the area.

(Exhibit 21, p. 18)

(21) The Planning Board echoed Staff's comments and recommendations. However, it chose not to recommend that the parking spaces adjacent to Foster Street be removed to provide better circulation. (Exhibit 21) Applicant addressed most of the Planning Board's conditions in its revised Site Plan, with the exceptions noted *supra*.

City of District Heights

(22) The City of District Heights was initially opposed to the Application due to Applicant's failure to comply with the Zoning Ordinance as well as its failure to immediately satisfy several fire safety violations. The Planning Board's resolution states that the City of District Heights Vice Mayor appeared at its hearing and testified that the City was no longer opposed to the request so long as the Applicant operates within the proscriptions of the approved Special Exception Site Plan. (Exhibit 25, p. 10)

LAW APPLICABLE

(1) A Vehicle Parts and Tire Store with Installation and a Parking lot serving a Use in an adjacent Commercial Zone are permitted as Special Exception uses, respectively, in the C-S-C and R-55 Zones in accordance with Sections 27-317(a), 27-392 and 27-417.01 of the Zoning Ordinance.

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

- (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.

(3) Section 27-392(a) of the Zoning Ordinance governs the request for a parking lot on residentially zoned property to serve a use in an adjacent commercial zone. This Section provides as follows:

(a) A parking lot which serves a use in an adjacent commercial or industrial zone may be permitted, subject to the following:

(1) The land proposed for the lot shall either immediately adjoin, or be directly across the street from, the commercially or industrially zoned land to be served;

(2) The parking lot shall contain not more than one hundred (100) parking spaces, or twenty percent (20%) of the minimum number of spaces required by Part 11, whichever is less;

(3) The parking lot shall be necessary in order to comply with the minimum requirements of Part 11; and

(4) The District Council may require additional landscaping and screening to protect adjacent properties against intrusion.

(4) Section 27-417.01 provides as follows:

(a) A vehicle parts and tire store, including installation facilities, may be permitted, subject to the following:

(1) All sales and installation operations shall be conducted within a wholly enclosed building, with no outdoor storage;

(2) Installation activity on any motor vehicle shall be completed within forty-eight (48) hours or less. No vehicle may be stored on the property for longer than this period; and

(3) The demolition or junking of motor vehicles is prohibited.

(5) 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 listed in Section 27-102(a) and Special Exception 4673 is in harmony with the applicable purposes, for the reasons provided:

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

By continuing to operate a Vehicle Parts and Tire Store (with installation) specifically sanctioned in the Sector Plan, the Applicant is addressing certain needs of the travelling public, thereby promoting the health, safety, convenience and welfare of the present and future inhabitants of the County. Morals and comfort are not impacted by the Applicant's proposal.

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

The 2009 Sector Plan supports a commercial use of the subject property (Lot 15). The longstanding parking lot at Lots 2 and 3 does not substantially impair the Plan's recommendation of residential-medium use since parking is also a residential use.

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

Approval of the request will allow the sales and installation of certain vehicle parts to adequately service the public's needs. The use is likely to generate fewer vehicular trips than other uses permitted by right in the C-S-C Zone. Public facilities will be adequate to serve the use.

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

The Applicant's proposal is an adaptive reuse of an existing building and parking lot. Applicant is proposing additional landscaping for the parking lot. Thus, this purpose is met.

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

While landscaping is not required, Applicant will be providing screening and landscaping for buffering and for aesthetic purposes. No adverse impact will result from the requested use of the subject property.

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

The continued use of the site with no additional construction will protect the County from fire and other potential dangers. The property is not in a floodplain.

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

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

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

The Site Plan is in conformance with the setback and parking requirements of the Zoning Ordinance, since the Planning Board approved the Departure from Design Standards for the loading space. (Exhibit 29) The site is not overcrowded.

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

The use will not attract vehicular trips that will result in an unacceptable level of service on the adjacent roadways. It, therefore, meets this purpose.

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

By continuing the use that has successfully operated on site for a few years, Applicant is furthering the social and economic stability of Prince George's County.

(Section 27-317(a)(1))

(2) The general purposes of the Commercial Zones are listed in Section 27-446 and Special Exception 4673 is in harmony with these purposes:

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

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

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

The property is in the C-S-C Zone. As such, the property is in an appropriate location for commercial uses. Also, the Applicant's proposal is to serve the needs of the area residents by providing a vehicle parts/installation use that has operated on the site for a few years.

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

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

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

The subject property is almost completely surrounded by similarly developed properties in the C-S-C Zone. Thus, no adjacent property will be impacted by noise, glare, noxious matter or other objectionable influences due to the operation of the proposed use. Fire code conformance will be assured at the time of issuance of the use and occupancy permit.

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

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

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

As stated above, the Master Plan proposed commercial use of the subject property.

The request is therefore in compliance with the Master Plan.

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

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

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

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

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

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

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

Continued use of the property ensures that the economic base of the County will be enhanced.

(Section 27-446)

(3) The specific purposes of the C-S-C Zone are listed in Section 27-454(a)(1) and Special Exception 4673 is in harmony with these purposes:

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

The Sector Plan and Sectional Map Amendment retained the property in the C-S-C Zone and anticipated continued commercial use thereof. Therefore, the proposed use is in harmony with this purpose of the C-S-C Zone.

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

The proposed use will further this purpose of the C-S-C Zone since it is compatible with the surrounding uses.

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

The requested use would not be incompatible with general retail since it serves a need for the traveling public and will be landscaped in an attractive manner. Further, the use is a permitted special exception use in the C-S-C Zone.

(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.

(Section 27-454(a)(1))

(4) The parking lot will satisfy one purpose of the R-55 Zone. As an adaptive reuse of an existing parking lot it will preserve open space. (Section 27-430(a)(1)(C)) Moreover it has also been recognized as a permitted Special Exception use in the R-55 Zone.

(5) The Parking Lot meets the strictures of Section 27-392 since it is directly across the street from the commercially zoned land to be served, it contains 56 parking spaces, there is no other available parking area for the Vehicle Parts and Tire Store, and additional landscaping is provided to buffer the adjacent residential properties.

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

(7) The proposed Vehicle Parts and Installation Use will not impair the integrity of the approved Master Plan since it recommends commercial use for the subject property.

(Section 27-317(a)(3))

(8) The proposed use of the subject property, surrounded primarily by commercial uses on commercially-zoned properties, will have a positive effect on the health, safety and welfare of residents or workers in the area. (Section 27-317(a)(4))

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

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

(11) I understand Staff's initial concern that the Site Plan use the boundary description in the deed. However, it is more important that it reflect on site conditions. For that reason I would accept the boundaries proffered by the licensed surveyor. I also believe Applicant should meet the fire safety inspection conditions generally imposed on all property owners, and not be required to undergo an *additional* inspection by an outside body.

DISPOSITION

Special Exception 4673 is APPROVED, subject to the following conditions:

1. Prior to the issuance of a Use and Occupancy Permit Applicant shall revise the Special Exception Site and Landscape Plan as follows:
 - a. A Note shall be added to state that Applicant shall be responsible for maintaining landscaping within the public utility easement (PUE) and public right-of-way.

- b. A Note shall be added indicating that no tire installation shall occur outside the building or on the driveway located at the intersection of Scott Key Drive and Marlboro Pike.
 - c. A Note shall be added indicating that queuing on the public street shall be prohibited.
 - d. Revise Note 21 to remove reference to the Shed Area and the "Total Existing Building Area".
 - e. Revise Note 27 to add that the existing lighting consists of downward facing fixtures and any replacement lighting will be at the same location and will also consist of downward facing fixtures.
- 2. The metal grate structure shall be removed from the building and the proposed canopy sign, meeting the requirements of the Zoning Ordinance, shall be placed directly on the building. The Special Exception Site and Landscape Plan shall be revised to show a detail of the awning sign.
 - 3. Prior to the issuance of a Use and Occupancy Permit the Revised Special Exception Site and Landscape Plan shall be submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record.

(Note: The Special Exception Site and Landscape Plan is Exhibit 39(c))