

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

**SPECIAL EXCEPTION
4703**

DECISION

Application:	Check Cashing Business
Applicant:	ACE Cash Express, Inc.
Opposition:	None
Hearing Date:	May 15, 2013
Hearing Examiner:	Maurene Epps Webb
Disposition:	Approval with Condition

NATURE OF REQUEST

(1) Special Exception 4703 is a request to use 1,659 square feet of a 17,500 square foot Shopping Center located on a 2.14-acre property in the C-M (Miscellaneous Commercial) and R-55 (One-Family Detached Residential) Zones¹ for a Check Cashing Business. The subject property is located on the east side of Baltimore Avenue (US 1), between Chestnut Ridge Drive and Locust Grove Drive, and identified as 14265-A Baltimore Avenue, Laurel, Maryland. The property does not lie within the municipal boundaries of the City of Laurel.

(2) The Technical Staff recommended that the Special Exception application be approved with conditions. (Exhibit 11) The Planning Board chose not to schedule a public hearing on the application and adopted Staff's recommendation as its own. (Exhibit 16)

(3) No one appeared in opposition to the instant request.

(4) At the close of the hearing the record was left open to allow Applicant to submit additional information. The last of these items was received on May 29, 2013 and the record was closed at that time.

FINDINGS OF FACT

Subject Property

(1) The subject property is improved with the Oak Crest Plaza shopping center. The shopping center is an approximately 17,500 square feet, one-story retail-commercial

¹ The majority of the 2.14 acre property is in the C-M Zone. However, a small portion to the east of the site that was previously approved for stormwater management is in the R-55 Zone.

structure with multi-use units. The Technical Staff provided an excellent review of the zoning history of the site. (Exhibit 11, pp. 4-5)

(2) The Environmental Planning Section noted that no regulated environmental features are shown therein and no streams, wetlands or associated 100-year floodplain are found to occur on the property. (Exhibit 11, pp. 58-59) The subject property is exempt from the requirements of the Woodland and Wildlife Habitat Preservation Ordinance because it contains less than 10,000 square feet of woodland and has no previous Tree Conservation Plan approvals. (Exhibit 8) It is exempt from most of the requirements of the Landscape Manual because it does not involve the construction, enlargement or extension of a building. (Exhibit 9) The property does not lie within the boundaries of the Chesapeake Bay Critical Areas. It is also exempt from the requirements of the Tree Canopy Coverage Ordinance because it will not require a permit for 1,500 square feet or greater of disturbance. (Exhibit 11, p. 47)

Surrounding Property/Neighborhood

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

- To the north, across Chestnut Ridge Drive, commercial development in the C-M Zone and vacant properties in the R-55 Zone;
- To the south, across Locust Grove Drive, commercial developments in the C-S-C Zone and residential single-family developments in the R-55 Zone;
- To the east, single-family detached development in the R-55 Zone; and
- To the west, across Baltimore Avenue (US1), various retail commercial developments in the City of Laurel

(4) The neighborhood has the following boundaries:

- North – Cherry Lane
- South – Contee Road
- East – B&O Railroad tracks
- Northwest – Baltimore Avenue (US 1)

Master Plan/Sectional Map Amendment

(5) The subject property lies within an area governed by the 2010 Subregion I Master Plan. The Master Plan recommends that in the future the land be developed with high-density, mixed-use development. However, the Master Plan also noted that within the Developing Tier one strategy is to “[e]ncourage the revitalization and redevelopment of existing, underutilized commercial areas....” (2010 Subregion I Master Plan, p. 13) The property is located within Focus Area 4 along the US1/Baltimore Avenue Corridor. Several policies address development along Corridors. Staff noted that Policy 2 (and Strategy 2.7) would require that the visual quality along the US 1 Corridor be enhanced, and that signage conform in scale and character. (Exhibit 11, pp. 44-45)

(6) The 2010 Sectional Map Amendment retained the property within the C-M Zone.

(7) The property lies within the Developing Tier, discussed in the 2002 General Plan. Page 36 of the General Plan notes that “[t]he 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.” Staff noted that approval of the instant request “does not violate the General Plan’s growth goals for the year 2025....” (Exhibit 11,p. 5)

Applicant’s Request

(8) The Applicant wishes to relocate its Check Cashing Business from 602 Washington Boulevard South, Laurel, Maryland to the subject property because its landlord decided to redevelop that site.² Applicant relocated to the 2.14 acre Oak Crest Plaza Shopping Center (“shopping center”). (Exhibit 11, p. 4) At the hearing, Applicant asked to revise the Special Exception boundaries to be coterminous with the unit occupied by Applicant (i.e., 14625-A/aka Unit 4A Baltimore Avenue, Laurel, Maryland). (Exhibit 35; T. 29-33) However, I believe that the Site Plan should either remain as is, or slightly reduced to continue to show parking and access to a roadway because the Shopping Center is existing and fully developed (so new construction that would necessitate the amendment of the Special Exception is unlikely to occur); Applicant must show its parking and access (to ensure that the use meets applicable Code requirements); and, conditions can be added to ensure that minor changes to the sign or tenancies would not require further review.

(9) A Vice President of Ace Cash Express testified that the business’ corporate office is in Texas, but it is licensed to do business in the State of Maryland. (T. 22) A copy of the license was submitted into the record. (Exhibit 34) She provided the following clarification of the business:

[T]he customer that we service in Maryland at our locations is an unbanked customer. And most of our customers are repeat customers. They’re loyalty customers Our customers follow us because of the customer service...t transparency and the products that we provide. So in general, our company has been established ever since 1968. We operate in 34 states....

(T. 36-37)

The witness stated that they currently have two (2) employees. The floor plan submitted notes that there may be as many as three (3) employees.

(10) The following businesses are located in the shopping center: Duron Paints & Wallcoverings, Mattress Warehouse, Sulvia Dominican Hair Salon, and Dan’s Fan City. (Exhibit 19) Approximately 11 parking spaces are required for the check Cashing

² This location is not within the municipal boundaries of the city of Laurel. (Exhibit 23, p. 2)

Business, and approximately 49 more for the remaining uses in the Shopping Center. 102 spaces are provided. (Exhibit 19) Approximately 2,000 square feet of green space is required and approximately 2,225 square feet is provided. The total lot coverage is approximately 57,510 square feet or 61.7%.

(11) Applicant's witness, accepted as an expert in the field of land use planning prepared an analysis in which he concluded that the request is in conformance with all applicable purposes of the Zoning Ordinance. (Exhibit 23) He offered the following in support of his conclusion:

The Applicant's proposed use is consistent with the goals of the Master Plan. The Subject Property is part of an existing commercial strip center facing Route 1 in Laurel. The approved Master Plan applicable to the Subject Property is the Subregion I, Master Plan and Sectional Map Amendment.... In the Economic Development & Urban Design Elements section of the Master Plan, a historical background of Subregion 1 is provided which indicates that Subregion I has an extensive commercial stock, which includes several strip retail centers that have numerous unleased spaces at a time when leasing activity has slowed. The Applicant's proposed use within a strip retail center conforms to the economic development vision for Subregion I.

In addition, the Master Plan included an extensive review of existing and proposed land use in Subregion I. The adopted and approved Master Plan retained the Subject Property in the C-M Zone and the Applicant's proposed use [is] permitted in that zone with the approval of a Special Exception. Therefore, the proposed use will not substantially impair the integrity of the Master Plan or the General Plan....

The Applicant's proposed use will utilize existing vacant commercial space with ample existing parking available. The center has approved parking areas with established entrances to allow for efficient ingress and egress directly to Route 1 without impacting residential neighborhoods. It will also remove a vacant storefront from the corridor and thereby promote a vibrant commercial core in the Laurel area. The existing center is oriented to Route 1 and does not adversely impact residential areas

The Applicant's proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood in that it is the relocation of an existing use in the area to a vacant tenant unit space within an existing circa 1987 commercial strip center. The Applicant's business is not characterized by any extraordinary traffic flows and its customers are already in the background traffic for the area since its existing location is less than one mile away. The use has operated efficiently and safely for over 10 years in the immediate area and there have been no adverse impacts on adjacent commercial uses or the surrounding neighborhood. To the contrary, the Applicant has been a good corporate neighbor in the area and by occupying vacant space in the same general area of its existing location it will be able to serve its current customers and help maintain the vibrancy of the commercial corridor by reducing the vacancy rate in the corridor. ...

(Exhibit 23, pp. 3-4)

(12) Applicant noted that the Site Plan has been revised to address all of the conditions recommended by Staff, with the exception of Condition No. 2 (concerning the existing sign). Applicant submitted pictures of said sign as well as the sign permit issued by the Department of Environmental Resources ("DER"). (Exhibits 24(a) and

(b)) Research indicates that the Shopping Center was constructed around 1987, and sign permits have been granted for the subject property over the years since. (Exhibits 25 and 26; T. 14-17) Applicant does not own the land on which the sign is located. Given these circumstances it does not appear to be reasonable to condition approval upon the Applicant's negotiating an agreement between the Shopping Center's owner and DER concerning the sign's removal at some point in the future.

(13) Applicant submitted a floor plan for the use. (Exhibit 32) It also provided a copy of the pricing for services currently used at its facilities. (Exhibit 33)

Agency and Town Comment

(14) The Technical Staff reviewed the Application and recommended approval with conditions. (Exhibit 11) The Countywide Planning Section opined that the request "will have no impact on public facilities". (Exhibit 11, p. 57) The Transportation Planning Section reviewed the request and offered the following observations:

The site is located within an integrated retail shopping center on US 1. There are several small retail spaces within the 17,500 square foot shopping center. The applicant plans to occupy an existing vacant tenant bay, no new construction will take place. No additional traffic impacts from this proposed use are expected, since it will be located in an existing shopping center. The applicant's former location was less than one mile north of Oak Crest Plaza. It is not anticipated that a large amount of new trips will be generated by the relocation of the check cashing business to 14265-A Baltimore Avenue. This use is no more intensive than general retail, which attract pass-by and diverted trips from nearby roadways. Small shopping centers between 10,000 and 25,000 square feet are assumed to have a pass-by trip rate of 50 percent according to the 2012 "Transportation Review Guidelines." These would represent trips already on the road. There are no apparent traffic issues that would be posed by relocating the check cashing business to another retail center along US 1. It is important to remember that adequacy of transportation facilities is not an issue in the review of this use; review is strictly within the required findings of health, safety, and welfare.

There are four commercial driveways that provide access to the existing shopping center, one on US 1, two on Locust Grove Drive, and one on Chestnut Ridge Drive. On-site circulation and access to the site is adequate. The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area. It will not be detrimental to the use or development of adjacent properties based on any traffic related impacts....

(Exhibit 11, pp. 48-49)

(15) The Department of Public Works and Transportation offered the following comment:

This site does not impact any County-maintained roadways. US 1 is State-maintained..., therefore, coordination with the Maryland State Highway Administration is required.

The proposed Site Plan is consistent with approved Stormwater Concept Plan No. 35751-2011, dated December 20, 2011.

(Exhibit 11, p. 50)

(16) The City of Laurel provided a letter that indicated the use operated successfully when it was at its prior location:

The subject use was grandfathered in its previous location within the General Commercial Zone.

By no act of the tenant, the property was redeveloped for a Walgreens drug store, which caused/forced the relocation of three businesses that were located on this parcel.

I am not aware of any zoning violations that existed on that property.

The subject use could have continued indefinitely provided that its building footprint was not expanded

(Exhibit 20)

APPLICABLE LAW

(1) A Check Cashing Business is permitted in the C-M Zone upon grant of a Special Exception. In order to receive special exception approval, the Applicant must satisfy the provisions of Sections 27-317 and 27-341.01 of the Prince George's County Zoning Ordinance.

(2) 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 Type 2 Tree Conservation Plan; and
- (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).

(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.

(3) Section 27-341.01 provides as follows:

- (a) A check cashing business may be permitted, subject to the following:
 - (1) Hours of operation shall be limited to the hours of 9:00 a.m. to 8:00 p.m.,
 - (2) A schedule of fees/charges shall be posted and immediately visible to persons upon entering the Check Cashing Business. A copy of the fee schedule shall also be made available to all persons upon entrance to the Check Cashing Business;
 - (3) No other business shall share floor space with the Check Cashing Business;
 - (4) Security lighting and cameras shall be provided on all open sides of the Check Cashing facility providing surveillance of the area within 100 feet from the exterior of the building;
 - (5) At least one (1) security employee (with no other duties) must be on the premises when the Check Cashing Business is open for business; and
 - (6) Cashiers must work behind bullet resistant glass.

(4) The use must not conflict with the following applicable provisions of the C-M Zone found in Section 27-459 (a) of the Zoning Ordinance.

(a) **Purposes.**

- (1) The purposes of the C-M Zone are:
 - (A) To provide locations for miscellaneous commercial uses which may be disruptive to the harmonious development, compactness, and homogeneity of retail shopping areas;
 - (B) To provide these locations, where possible, on nonresidential streets; and
 - (C) To provide concentrations of these uses which are relatively far apart.

Special Exceptions

(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 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 banking services.

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

These Plans recognized the C-M zoning of the property, thereby confirming the commercial character of the area. Staff noted that the proposal does not conform with the goal of high-density, mixed-use land use for the area, the Plan did recognize existing commercial uses lining US1, and the use of a formerly vacant property would be in keeping with the General Plan's policy of retention and enhancement of existing businesses.

To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business

The Application will allow for the relocation of a viable check cashing business that was located approximately one mile away, and that operated without incident at that location. The use will be in an area recommended for miscellaneous commercial use by the Master Plan, thereby satisfying this purpose.

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.

To prevent the overcrowding of land

This use does not require any variance from bulk regulations and, therefore, will not lead to the overcrowding of the site.

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 requested use will provide adequate parking and access to the site will be via several County roads that will not be negatively impacted by the type of vehicular trips drawn to the instant use. Thus, this purpose is met.

Further, the use will not detract from the purposes of the C-M Zone found in Section 27-459(a) since the Check Cashing Business is compatible with the remaining uses in the Shopping Center, any vehicles coming to the business will primarily be part of the background traffic in the area; the use is occupying a formerly vacant space thereby increasing the stability of the area; and, primary access is via a nonresidential street.

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

(2) The use will be in conformance with all applicable provisions of the Zoning Ordinance. (Section 27-317(a)(2))

(3) The proposed use will not substantially impair the Master Plan since the plan recognized a commercial use of the property and this relocation of a viable business furthers a strategy of encouraging the revitalization and redevelopment of existing, underutilized commercial areas within the Developing Tier in Subregion I. (Section 27-317(a)(3))

(4) The Application will not adversely affect the health, safety or welfare of residents or workers in the area since the use is relocating into an existing retail unit and no changes will be made to the site. The use is compatible with the other uses within the Shopping Center. The use is oriented towards a nonresidential street – US 1. (Section 27-317(a)(4)) For the same reasons, the Application will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-317(a)(5))

(5) Since the property contains less than 10,000 square feet of woodland, and does not have a previously approved Tree Conservation Plan, it need not satisfy Section 27-317(a)(6) of the Zoning Ordinance.

(6) There are no regulated environmental features on site. (Section 27-317 (a)(7))

(7) The property is not located within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(8) A note has been included on the Site Plan that indicates the hours of operation; that a schedule of fees shall be posted and available; that no other business shall share space with the check cashing business; that there will be at least one (1) dedicated security person; and, that employees will work behind bullet resistant glass. Security lighting and cameras are shown on the Site Plan. (Section 27-341.01)

DISPOSITION

Special Exception 4703 is Approved with the following conditions:

1. Prior to the issuance of permits, Applicant may submit a revised Special Exception Site Plan to the Office of the Zoning Hearing Examiner for review, approval and inclusion in the record. The revised site plan must include within its highlighted boundaries the actual unit in which the Check Cashing Business is located, any parking associated with the use, and the access to a roadway.
2. If Applicant chooses not to revise the Site Plan, the following occurrences shall be deemed not to require the amendment of the Special Exception:
 - a. The placement of a permanent sign on the building in which the Check Cashing Business is located; and
 - b. Any change in tenancies in the other units that do not require Special Exception approval.

[Note: The Special Exception Site Plan is Exhibit 19]