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

SPECIAL EXCEPTION
4654
VARIANCE
4654

DECISION

Application:	Gas Station and Variance
Applicant:	Dash-In Food Stores, Inc.
Opposition:	None
Hearing Date:	March 13, 2013
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4654 is a request to use approximately 0.71 acres of land, in the C-S-C (Commercial Shopping Center) Zone, for a Gas Station. A Variance is also requested as the western driveway entrance from Woodyard Road is located at a point less than 20 feet from the point of curvature of the curb return at the intersection of Woodyard Road with Woody Terrace. The subject property is located on the south side of Woodyard Road (MD 223), at its intersection with Stuart Lane and Woody Terrace, and is identified as 8906 Woodyard Road, Clinton, Maryland.

(2) The Planning Board (Exhibit 19 (b)) and the Technical Staff (Exhibit 16) both recommended approval of S.E. 4654 and the Variance, with conditions.

(3) At the conclusion of the evidentiary hearing the record was left open for the inclusion into the record of several documents. Upon receipt of the documents, the record was closed on April 15, 2013.

FINDINGS OF FACT

Subject Property

(1) The subject property is currently improved with a 2,074 square foot Gas Station with three (3) service bays, two (2) concrete pump islands, four (4) gasoline pump dispensers, one (1) canopy, three (3) underground storage tanks, one (1) freestanding sign, and 20 surface parking spaces. It is a corner lot with direct vehicular access to Woodyard Road (MD 223), Stuart Lane, and Woody Terrace.

Zoning History

(2) **July 19, 1967** – Special Exception No. 1576 was approved by the District Council for an Automobile Filling Station in the C-1 Zone. (Zoning Resolution No. 310-1967)

May 2, 1978 - The property was placed in the C-S-C Zone via the District Council's adoption of the Clinton-Tanglewood Sectional Map Amendment.

March 19, 1980 – The Board of Zoning Appeals approved Appeal No. 5723 granting Variances for the minimum driveway apron widths, the driveway locations being within the 20-foot point of curvature from an intersection, the sidewalk widths, the construction of gasoline pump islands within 25 feet of the front street line, construction within established building lines, and the waiver of the required landscaped strips along Woodyard Road (MD 223) and Stuart Lane. Variances are valid for a two-year period unless used. Since the Applicant did not develop the site in accordance with the approved Site Plan within the two-year time period, new Variances were required to be approved.

July 17, 1980 - A revised Site Plan was approved by the Planning Board for the construction of a 72-square-foot sales kiosk and the installation of a new canopy. (PGCPB Resolution No. 80-53) However, the Applicant never proceeded to modify the site in accordance with the approved revised Site Plan.

June 23, 1983 - The Planning Board approved (with conditions) a revision of the Site Plan for the enlargement of pump islands, construction of a kiosk, and the installation of a canopy. (PGCPB Resolution No. 83-130)

August 10, 1983 – The Board of Zoning Appeals granted another list of similar Variances for the property through their approval of Appeal No. 6882.

October 24, 1983 – The District Council granted a permit for landscaping and structures within the planned right-of-way. (Zoning Ordinance No. 76-1983)

December 9, 1993 – The Planning Board approved a minor change to the approved Site Plan to permit retrofitting of the pump islands, the removal of the kiosk, and the construction of an 188-square-foot building addition that would enclose an existing sheltered area used for exterior vending machines, pay telephone, and access to the public restrooms. (PGCPB Resolution No. 93-329)

June 20, 1996 – The Planning Board approved a minor change to relocate the existing freestanding sign and to convert the existing parking space provided for the physically handicapped to a van-accessible space. (PGCPB Resolution No. 96-214)

November 1, 2010 – The Planning Director approved Alternative Compliance AC-10018 for the subject property from Sections 4.2 and 4.3(a) of the 1990 Prince George's County Landscape Manual along Woody Terrace.

August 7, 2012 – The Planning Director approved Alternative Compliance AC-10018-01 for the subject property from Section 4.6(c)(2), Buffering Development from Special Roadways, along Woodyard Road (MD 223) and from Section 4.7, Buffering Incompatible Uses, along the southwestern property line adjacent to an existing public utility structure/tele-communications tower, of the 2010 Prince George's County Landscape Manual.

Master Plan and Sectional Map Amendment

(3) The 1993 Approved Master Plan and Sectional Map Amendment for Subregion V designated the subject property and its surrounding properties for "Commercial Area" land use and retained the subject property in the C-S-C Zone.

(4) The 2009 Approved Master Plan and Sectional Map Amendment for Subregion V also recognized the subject property and its surrounding properties as "Commercial Areas" and retained the subject property in the C-S-C Zone.

(5) The 2002 Prince George's County General Plan locates the subject property at a corridor node (Branch Avenue Corridor) in the Developing Tier. The vision for corridor nodes is a mix of residential and nonresidential land uses at moderate to high densities and intensities with a strong emphasis on transit-oriented development.

Neighborhood and Surrounding Uses

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

North - Pea Hill Branch

West - Brandywine Road (Maryland Route 381)

East - Branch Avenue (Maryland Route 5)

South - Surratts Road

(7) The subject property is surrounded by the following uses: to the east, across Stuart Lane, is a Chinese restaurant and a County-owned park-and-ride lot both in the C-S-C Zone; to the south is a McDonald's Restaurant and a cellular telephone tower; to the west, across Woody Terrace, is a retail

development with a freestanding TD Bank adjacent to Woodyard Road and a Walgreen's pharmacy with an Office Depot behind it; and to the north, across Woodyard Road, is the large Woodyard Crossing shopping center, anchored by a Lowe's building supply store, a WalMart, and a Safeway grocery, with a number of in-line stores as well as freestanding stores. The freestanding operations directly across Woodyard Road from the subject site include a TMobile telephone store, a Bank of America, a Verizon telephone store, Starbucks, Chipotle and Wendy's restaurants, an Exxon Gas Station and a dental office.

(8) Access to the site is available from all three surrounding streets, but a median prevents south/westbound traffic on Woodyard Road from directly accessing the subject property, or from turning onto Stuart Lane. A median break with a traffic signal exists at Woody Terrace to allow left turns from Woodyard Road onto Woody Terrace, and left turns from Woody Terrace onto south/westbound Woodyard Road, but no through movements into the Woodyard Crossing Shopping Center. The main, full-movement access to and from Woodyard Crossing is from Pine View Lane, one block further to the west.

(9) Beyond the commercial developments which immediately surround the subject property, the character of development in the neighborhood is substantially varied, ranging from highway-type commercial development along Woodyard Road, such as Gas Stations and strip shopping centers of various sizes, to small office buildings (more typically containing medical offices), banks, freestanding restaurants and similar uses. Further west, towards old Clinton, are the post office, fire station and the B. K. Miller liquor store. A few nonconforming single-family residences remain along the south side of Woodyard Road between the subject site and old Clinton. There are a few churches along Brandywine Road.

(10) To both the north and the south of the Woodyard Road corridor, the character of development in the neighborhood is generally single-family residential, with a few churches and an elderly care facility mixed in, as well as some townhouses in the Summit Creek development ¾ of a mile to the south, along Surratts Road.

Applicant's Proposal

(11) The Applicant is proposing to raze and rebuild the existing Gas Station located at the corner of Woodyard Road (MD 223), Woody Terrace, and Stuart Lane in Clinton. The project will entail the complete removal of all existing structures on the property and the new construction of a 2,580-square-foot Food or Beverage Store, a canopy, and six (6) multi-product fuel pump dispensers that provide a total of 12 fueling positions. A Gas Station requires approval of a Special Exception Application in the C-S-C Zone, while a Food or Beverage Store is a permitted use. The Food or Beverage Store will be relocated to be closer to the southern boundary of the subject property. The pump islands will be reoriented to be parallel to Woodyard Road and will be covered by a canopy. Currently, five (5) vehicular entry points exist; one of the entrances on Stuart Lane will be closed in the proposed reconstruction. A Variance is also being requested regarding the point of curvature at

the intersection of Woodyard Road with Woody Terrace. The Planning Board has approved DSDS 663 and AC-10018 and AC-10018-01 for the subject property. (Exhibit's 28(a)(b) and 31)

LAW APPLICABLE

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

(2) Section 27-358 states:

(a) A Gas Station may be permitted, subject to the following:

(1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;

(2) The subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, or hospital is located;

(3) The use shall not include the display and rental of cargo trailers, trucks, or similar uses, except as a Special Exception in accordance with the provisions of Section 27-417;

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

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

(6) Access driveways shall be defined by curbing;

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

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

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

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

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

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

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

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

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

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

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

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

(3) Section 27-317 states:

(a) A Special Exception may be approved if:

(1) The proposed use and Site Plan are in harmony with the purpose of this Subtitle;

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;

(4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(6) The proposed Site Plan is in conformance with an approved Tree Conservation Plan.

(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).

(4) A Variance is permitted in accordance with the following findings in accordance with §27-230(a):

(a) A Variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:

(1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;

(2) The strict Application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and

(3) The Variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

Burdon of Proof

(5) The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Special Exception use. The Special Exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Special Exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Plan.

The Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an Application for a Special Exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested Special Exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(6) The appropriate standard to be used in determining whether a requested Special Exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A2d 1253 (1995).

(7) The approval of Special Exception 4654 for a Gas Station is in accordance with the District Council's legislative intent that the "necessary to the public in the surrounding area" provision in §27-358(d)(1) is tantamount to a finding that a proposed Gas Station is "convenient, useful, appropriate, suitable, proper, or conducive" to providing fuel to the motoring public. Thus the Zoning Ordinance requires a standard less strict than that expressed in Brandywine Enterprises, Inc v. County Council, 117 Md. App. 525, 700 A2d 1216 (1997) and more stringent than that expressed in Baltimore County Licensed Beverage Assoc., Inc. v. Kwon, 135 Md. App. 178, 761 A2d 1027 (2000).

CONCLUSIONS OF LAW

General Requirements

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

(2) The instant Application is in harmony with the general purposes of the Zoning Ordinances as follows:

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

The proposed redeveloped Gas Station is located at a signalized intersection in the immediate vicinity of an interchange, and will thus promote the health and safety of the present and future inhabitants of the County by continuing to provide for a safe and convenient accommodation of the shopping public.

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

The relevant Plans which apply to the instant Application are the 2002 General Plan (as amended), the 1993 and the 2009 Master Plans and Sectional Map Amendments for Subregion V, and a number of Functional Master Plans, including the Green Infrastructure Plan, the County Master Plan of Transportation, the Public Safety Facilities Master Plan, the Historic Sites and Districts Plan, and the Water Resources Functional Master Plan.

General Plan

The General Plan classified the subject site in the Developing Tier. Furthermore, the General Plan has placed this site within the Branch Avenue Corridor. Among the goals of the General Plan for the Developing Tier are to: (1) maintain low- to moderate-density land uses; and (2)

reinforce planned commercial centers as community focal points. By allowing for the renewal of an existing commercial use which is located at a Planned Activity Center, the approval of this Application would maintain a moderate-density land use at a planned Commercial Center. By virtue of these features, this proposal is in conformance with the goals of the General Plan for the Developing Tier.

Master Plan

The 1993 Master Plan classified the subject property as "Commercial Areas" land use, and the associated SMA had retained its previous C-S-C zoning. The site is located in close proximity to the Major Community Activity Center which is centered between the Woodyard Crossing and Clinton Park Shopping Centers located on the north side of Woodyard Road and on either side of Branch Avenue. While the 1993 Master Plan provided for a "strong emphasis on providing for local retail activity in and around a hierarchy of activity centers…"[1,] it also recognized that, "less than half of the total supportable commercial development will actually be located in these centers. The remainder will be provided at other locations within the Subregion…" [2]

Accordingly, the Master Plan provided that the area surrounding the subject site was one of "two large areas…proposed to accommodate the majority of other non-activity center businesses serving general retail and service commercial markets in Clinton:

- The Woodyard Road corridor between MD 5 and Old Branch Avenue is recommended for general retail and office land uses in the C-S-C Zone."[3]

The Master Plan included a number of Guidelines for development in Commercial Areas and Activity Centers; a number of these guidelines are relevant to the subject Application:

5. *Business proprietors and property owners should be encouraged to make necessary improvements to their properties to maintain an aesthetically pleasing environment.*

15. *A Gas Station or other freestanding structure, locating in a new commercial, renewed or expanded area, should be an unobtrusive element in an overall site plan and should be of similar architectural design, building material, texture and design to other buildings in the area."*[4]

In accordance with the first referenced guideline, the subject Application seeks to make the existing Gas Station more aesthetically pleasing by renewing the construction, upgrading the landscaping and improving the interior vehicular circulation.

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1 *Approved Master Plan and Sectional Map Amendment for Subregion V (February, 1993), p. 63.*
2 *Subregion V Master Plan(February 1993), p. 57.*
3 Ibid., p. 73.
4 Master Plan, pp. 63 – 64.

In accordance with the second guideline, the proposed building will be set back further from Woodyard Road than the existing structure, and will be constructed of masonry similar to the adjoining TD Bank, Office Depot and McDonald's structures, in order to complement and be a less obtrusive component of the local built environment.

Other Applicable Functional Master Plans

The Application conforms to the Green Infrastructure Plan as there are no Regulated Areas (or even Evaluation Areas) of the County's Green Infrastructure Network which will be affected by the subject project.

While the Mary Surratt House and the Christ Church and Cemetery sites are located within the defined neighborhood of the project, no Historic Sites or Districts are in visual contact or otherwise in the vicinity of the subject project.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the subject Application.

No proposed sites for Public Safety facilities are in the area affected by the instant Application.

The Countywide Master Plan of Transportation classifies Woodyard Road as an arterial roadway, with a variable right-of-way of unspecified width but with a minimum of 120'. While the existing right-of-way exceeds 120' (varying from approximately 134' to 136' in front of the subject site), and the Master Plan's recommendation did not change from 1993 to 2009 (the latter being the foundation of the November, 2009 Countywide Master Plan of Transportation) and the number of existing lanes is commensurate with the Master Plan of Transportation's recommendation of 4 to 8 lanes (7 currently exist across the site's frontage), it is nevertheless unclear from the Plan what the extent of additional right-of-way should be. In an extended discussion of the question in a memorandum of December 27, 2012, Tom Masog of MNCPPC's Transportation Planning Section concluded that an appropriate width for the ultimate the right-of-way should be the 44.73' dimension from the baseline of the right-of-way as shown on SHA Plat 33836 which was dedicated by the 2006 plat for "Parcels A, B, C, Clinton Gardens Shopping Center," recorded in Plat Book REP 210 at plat 84.

In conclusion, because the proposed Gas Station reconstruction is not in conflict with the General Plan, the Master 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;

As the instant Application proposes the renewal of a long-existing use at a site which is being developed in accordance with provisions of the laws which assure the adequacy of local public facilities, approval would be in harmony with this Purpose of promoting the conservation of a community which will be developed with adequate public facilities.

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

Approval of the subject Application would recognize the needs of the County's workers by renewing an existing use in a developed area, and so would abet the orderly growth and development of the County, making the subject Application in harmony with this Purpose of the Ordinance.

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

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

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

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

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

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

(8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;

Because the subject use is commercial in nature, this Purpose is not directly applicable to the instant Application.

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

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

(10) To prevent the overcrowding of land;

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

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

The approval of the subject Gas Station would be in harmony with this Purpose as it is a renewal of an existing station in a developed area. The proposed use will add only four (4) new fueling positions, and as such will not add materially to the existing traffic on the streets. Approval of the instant Application will be in accordance with the provisions of the Subdivision Ordinance which assures the adequacy of local public facilities. Additionally, it will be developed in accordance with the regulations established in the Zoning Ordinance (and other County Ordinances) which are intended to lessen the danger and congestion of traffic on roads, such as the requirements for the provision of adequate off-street parking, and the separation of entrances from nearby intersections.

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

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance is prima facie evidence of the Application's harmony with this Purpose. Furthermore, the instant Gas Station would promote the economic and social stability of the County by contributing to the tax base, by continuing to provide a useful and convenient service to the

surrounding community, and by virtue of its location in the close proximity of a planned Activity Center.

(13) To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;

As the instant Gas Station is a renewal of an existing Gas Station, approval of the subject Application will have no impact to the natural features in the County: It will not itself generate noise pollution, and the use will be in compliance with the County's Woodland Conservation policies by virtue of its exemption from the requirement for Tree Conservation Plan because no woodland exists on the site. (Exhibit 8) No steep slopes or scenic vistas will be affected. By conformance to these principles and regulations, the approval of this Application would be in harmony with this Purpose.

The final two Purposes,

(14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and

(15) To protect and conserve the agricultural industry and natural resources.

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

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

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

As noted by the foregoing discussion, the instant proposal will implement the general purposes of the Zoning Ordinance.

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

The approval of this facility at this location will allow the Gas Station to continue to provide a useful and convenient site for a needed service.

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

As the proposed Gas Station renewal involves the replacement of a compatible service

commercial use (with a permitted retail component) in the immediate vicinity of a planned Activity Center, this purpose is not directly applicable to the subject Application.

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

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

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

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

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

Because the subject Gas Station is in accordance with the land use provided for in the Master Plan, it will fulfill this Purpose.

(7) To increase the stability of commercial areas;

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

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

Because the subject station will: (1) be redeveloped and operated in accordance with the provisions specifically provided in the Ordinance to promote the safe and orderly layout and operation of Gas Stations, and (2) be compatible with the materials, scale and character of the architecture of the surrounding development, the approval of this Application will fulfill this Purpose.

The final two purposes,

(9) To conserve the aggregate value of land and improvements in the County; and
(10) To enhance the economic base of the County.

are fulfilled by allowing for the redevelopment of an existing commercial use that will enhance the tax base and provide additional employment for residents of the County. §27-317(a)(1)

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

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

While the subject Application proposes the renewal of a service commercial use (with its permitted retail component), it is not in conflict with this Purpose. The reconstruction of this Gas Station – which does not propose visually disruptive auto repair services – will complement the broad varieties of retail uses which are found in the segment of the neighborhood along Woodyard Road, and which are intended to be a center of commercial activity not only for the Clinton Community but for the entire Subregion.

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

The subject use – when redeveloped in accordance with the provisions of the Ordinance that promote a safe and orderly operation – fulfills this Purpose by being a compatible service use.

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

The proposed use fulfills this Purpose as it is compatible with general retail uses.

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

This Purpose is not applicable to the subject Application. §27-317(a)(1)

(5) The Applicant has obtained approval of AC-10018-01 for the proposed landscaping, (Exhibit 28(a)), and of DSDS 663 (Exhibit 31), and the proposed redevelopment of the site meets the standard zoning requirements of the C-S-C Zone. With the approved Departure, the Variance request, and the recommended conditions of approval, the proposed use will be in substantial conformance with all of the applicable requirements and regulations of this Subtitle. §27-317(a)(2)

(6) Both the 1993 Subregion V Master Plan and Sectional Map Amendment and the 2009 Subregion V Master Plan and Sectional Map Amendment recommend a commercial land use for the subject property, and the proposed use conforms to the General Plan's vision for the Developing Tier for a nonresidential land use.

The Application conforms to the Green Infrastructure Plan as there are no Regulated Areas (or even Evaluation Areas) of the County's Green Infrastructure Network which will be affected by the instant Application.

While the Mary Surratt House and the Christ Church and Cemetery sites are located within the defined neighborhood of the project, no Historic Sites or Districts are in visual contact or otherwise in the vicinity of the subject project.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the instant Application.

No proposed sites for Public Safety facilities are in the area affected by the instant Application.

The Countywide Master Plan of Transportation classifies Woodyard Road as an arterial roadway, with a variable right-of-way of unspecified width but with a minimum of 120'. While the existing right-of-way exceeds 120' (varying from approximately 134' to 136' in front of the subject site), and the Master Plan's recommendation did not change from 1993 to 2009 (the latter being the foundation of the November, 2009 Countywide Master Plan of Transportation) and the number of existing lanes is commensurate with the Master Plan of Transportation's recommendation of 4 to 8 lanes (7 currently exist across the site's frontage), it is nevertheless unclear from the Plan what the extent of additional right-of-way should be. In an extended discussion of the question in a memorandum of December 27, 2012, Tom Masog of MNCPPC's Transportation Planning Section concluded that an appropriate width for the ultimate the right-of-way should be the 44.73' dimension from the baseline of the right-of-way as shown on SHA Plat 33836 which was dedicated by the 2006 plat for "Parcels A, B, C, Clinton Gardens Shopping Center," recorded in Plat Book REP 210 at plat 84.

Thus, the proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or the General Plan. §27-317(a)(3)

(7) A Gas Station has been in continuous operation on the subject property since the District Council's approval of Special Exception No. 1576 in 1967, and it has had no adverse effects on the health, safety, or welfare of residents or workers in the area. As part of the redevelopment of the site, the Applicant will be installing new full-cutoff optic outdoor lighting consisting of six (6) 16-foot-high lamp posts, four (4) outdoor building lights, and 18 new canopy lights that will provide patrons with a bright safe atmosphere while not causing glare onto adjacent properties.

In consideration of the findings required for a Special Exception, the Transportation Planning Section reviewed the site for health, safety, and welfare issues within the immediate area of the property, as well as for Master Plan consistency. The Applicant proposes the replacement of eight

(8) fueling positions with twelve fueling positions on a site which is to contain a Gas Station and a Food or Beverage Store. The Transportation Planning Section found that the site is a subdivided lot, and the replacement of the Gas Station does not raise any off-site transportation adequacy issues. Further, the Transportation Planning Section found that the Application and the Variance request would pose no issue regarding the required Special Exception or other findings.

Regarding the frontage improvements along Woodyard Road (MD 223), the Transportation Planning Section stated that this type of sidewalk is necessary in this part of Clinton. It is needed to support pedestrian access to existing transit services and to support access to a future transit line and station along Branch Avenue (MD 5), as recommended in the 2009 Approved Countywide Master Plan of Transportation.

State Highway Administration has jurisdiction over any access point onto MD 223, which is a state roadway, and DPW&T has jurisdiction over any access points onto Stuart Lane and Woody Terrace, which are both county-maintained roadways. In a memorandum dated April 3, 2012, DPW&T stated that they have no objection to the Variance request from Section 27-358(a)(5) of the Zoning Ordinance.

The Applicant has been in negotiations with SHA since the Application was accepted on September 23, 2009, and the closure of the driveway entrances along MD 223 has been discussed in great detail. SHA had concerns that both of the existing driveway entrances along MD 223 could and currently do accommodate two-way traffic because of the wider width of each entrance. As a result, they have requested that each one of the existing driveway entrances be reduced in width to accommodate only one-way traffic, and new curb and gutter installed to create a right-in/right-out driveway configuration. In an email dated May 7, 2012, SHA stated the following concerning the driveway entrances along MD 223:

> "The Access Management Division is satisfied with the Site Plan showing improvements along MD 223. A permit issued by this office is required for improvements within the requested right-of-way dedication area."

At this time, the location of the driveway entrances along MD 223 have been deemed acceptable by SHA, and the driveway entrance along Woody Terrace and Stuart Lane have been deemed acceptable by DPW&T. Once constructed, the right-in/right-out driveway entrances along MD 223 will result in safer access points than what currently exists along MD 223. For these reasons the proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area. §27-317(a)(4)

(8) In approving the original Special Exception Application in 1967, the District Council found that the use would not be detrimental to the use or development of adjacent properties or the general neighborhood. On July 17, 1980, June 23, 1983, December 9, 1993, and June 20, 1996, the Planning Board heard and approved minor revisions for the property, each time finding that the use would not

be detrimental to the use or development of adjacent properties or the general neighborhood. These findings continue to be valid as no evidence to the contrary has been presented or adduced in the instant Application. §27-317(a)(5)

(9) In memorandums dated October 6, 2009 and October 25, 2010, the Environmental Planning Section (M-NCPPC) stated that the site is exempt from the Woodland and Wildlife Habitat Conservation Ordinance and that no other environmental issues relate to the Applicant's proposal. Because the site is less than 40,000 square feet in size and has no previous approved tree conservation plans, a standard exemption letter from the Woodland Conservation Ordinance was issued by the Environmental Planning Section on March 27, 2012 (Exhibit 8) §27-317(a)(6)

(10) There are no regulated environmental features on the subject property that would require preservation and/or restoration. §27-317(a)(7)

Gas Station

(11) All of the streets surrounding the property have right-of-way widths of at least seventy feet, and the subject Site Plan proposes direct vehicular access to all of them. The subject site has an aggregate of 488.64' of frontage on these streets. More than 150' of frontage exists on both Woodyard Road and Stuart Lane individually. §27-358(a)(1)

(12) No lots containing schools, libraries, hospitals or outdoor playgrounds exist within 300' of the subject site. The nearest such facility appears to be Surrattsville High School, located almost a mile away as the crow flies. §27-358(a)(2)

(13) No display or rental of any vehicles is proposed at the subject site. §27-358(a)(3)

(14) No storage or junking of any vehicles is proposed at the subject site. §27-358(a)(4)

(15) The Site Plan (Exhibit 36(d)) indicates that the proposed access driveways onto County-maintained roadways are all at least 30' wide; and, the lesser-width one-way driveways to and from Woodyard Road are in accordance with the requirements of the State Highway Administration. The one-way entrance into the site from Woodyard Road is closer than the twenty foot requirement, for which a Variance is requested. §27-358(a)(5)

(16) The Site Plan (Exhibit 36(d)) indicates that the access driveways are to be defined by curbing. §27-358(a)(6)

(17) The Site Plan (Exhibit 36(d)) indicates a 6' wide sidewalk will be constructed along the site's Woodyard Road frontage to connect with and extend the existing pedestrian facilities along Stuart Lane and Woody Terrace. §27-358(a)(7)

(18) The Site Plan (Exhibit 36(d)) indicates that the gas pumps will be approximately 40.8' behind the closest street line. §27-358(a)(8)

(19) No repair service is proposed. §27-358(a)(9)

(20) The architectural details of the proposed structure are designed to harmonize with the masonry character of the adjacent bank, retail stores and McDonald's. §27-358(a)(10)

(21) Topography of the subject lot and fifty feet into the abutting streets and lots has been shown on the Site Plan. (Exhibit 36(d)) §27-358(b)(1)

(22) The location and details for the construction of a trash enclosure have been shown on the Site Plan. (Exhibit 36(d)) §27-358(b)(2)

(23) No exterior vending machines or a vending area are proposed; sales will be inside the proposed Food or Beverage Store. §27-358(b)(3)

(24) Upon the abandonment of a Gas Station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the owner of the property. §27-358(c)

(25) The Maryland Courts of Appeals have opined that the term "necessary" should be construed, "…the proper standard is one that addresses whether the Gas Station is 'convenient, useful, appropriate, suitable, proper or conducive, to the public in the surrounding area…" The continued existence of a Gas Station use at the subject site which has existed for more than 45 years is ample evidence that the use has been convenient, useful, appropriate, suitable and proper. Its location in a commercial area in the immediate vicinity of the interchange of an arterial roadway with a freeway is suitable and appropriate, as it is convenient and useful to the substantial traffic (2011 ADT: 46,751 vehicles per day) which passes the site from the Clinton and Tippett communities en route to Branch Avenue and the rest of the metropolitan area beyond. §27-358(d)(1)

(26) As the proposed use is a renewal of a use which has existed on the subject property since 1967, as it is in the midst of a developed area of commercial uses which has grown up around the subject site and its historic use, as it will be constructed to a high standard of site planning and architectural detail, as it is modest in scale, and as it does not propose vehicle repair or vehicle storage and the attendant visual disruption caused by these activities, the existing and proposed reconstructed use will not upset the balance of land use or restrict the availability of land for other trades and commercial uses. §27-358(d)(2)

(27) The subject property is compromised by its size and narrowness. Modern Gas Stations are now typically sited on parcels of an acre to an acre-and-a-half in area in order to accommodate sufficient vehicular circulation around the pump islands, to afford sufficient space for the

underground storage tanks at a location which affords sufficient access to fuel delivery trucks so that they do not block traffic at the site or on public rights-of-way, and to allow for sufficient parking for the Food or Beverage Store; the subject property contains only 0.71 acres, which was more typical of Gas Stations constructed forty and fifty years ago.

The location of the subject driveway entrance is prevented by the narrowness of the site from being located further to the east by the need to direct entering traffic around the pump islands. Were it located in a conforming location, it would create a traffic hazard by virtue of a conflict between entering vehicles and vehicles parked at the northwesternmost pump station. Another alternative would be the combination of the two one-way entrances at a point in the center of the site's frontage. This location, however, would also be prone to creating a traffic hazard of entering cars projecting out into Woodyard Road while conflicts from vehicles exiting the pump stations are resolved. §27-230(a)(1)

(28) The strict Application of the provisions of §27-358(a)(5) would result in either the creation of traffic hazard from conflicts between entering vehicles and vehicles parked at a pump station, or the creation of a traffic hazard from conflicts between entering vehicles and exiting vehicles. Either of these situations would present peculiar and unusual practical difficulties to the owner, as well as hazards to the public safety. §27-230(a)(2)

(29) The development proposed is in accordance with the recommendations of the General Plan and the Master Plan, and therefore the approval of the requested Variance will not impair their purpose, intent or integrity. §27-230(a)(3)

Parking/Loading

(30) Based on the gross floor area of the proposed Food or Beverage Store (2,580 square feet), a total of 18 parking spaces and one (1) loading space are required to serve the property. The Applicant proposes to provide 18 parking spaces, and one (1) loading space will be provided that is 12 feet wide by 33 feet in length.

The 18 parking spaces will consist of nine (9) standard-size parking spaces (9.5 by 19 feet), two (2) parallel spaces (8 by 22 feet), six (6) compact spaces (8 by 19 feet), and one (1) van-accessible space for the physically handicapped (16 by 19 feet).

Landscape Manual

(31) The Application to modernize an existing Gas Station involves new construction and is subject to the requirements of the 2012 Prince George's County Landscape Manual.

On November 1, 2012, the Planning Director approved Alternative Compliance AC-10018 for the subject property from Sections 4.2 and 4.3(a) of the 1990 Prince George's County Landscape manual (along Woody Terrace). (Exhibit 28(a))

On December 13, 2010, the 2010 Prince George's County Landscape Manual became effective and the site was subject to Section 4.6(c)(2), Buffering Development from Special Roadways, along Woodyard Road (MD 223), which is categorized as a historic roadway. In addition the impact designation of the use on the abutting property (a public utility structure) was altered through the adoption of the new Landscape Manual and the site is now subject to Section 4.7 along the property line abutting the public utility structure. Further, the Applicant submitted revised plans that shifted the proposed building further to southwest and into a required landscape bufferyard that was shown on the previously approved Alternative Compliance plan. As a result, approval of a revised Alternative Compliance Application was required.

On August 7, 2012, the Planning Director approved Alternative Compliance AC-10018-01 for the subject property from Section 4.6(c)(2), Buffering Development from Special Roadways, along Woodyard Road (MD 223); and from Section 4.7, Buffering Incompatible Uses, (along the South western property line adjacent to an existing public utility structure/telecommunications tower) of the 2010 Prince George's County Landscape Manual. (Exhibit 28(b))

(32) This Application is subject to the Tree Canopy Coverage Ordinance as it proposes a disturbance of 1,500 square feet or greater. The Special Exception area of 0.71 acres is zoned C-S-C and is required to provide ten percent, or 3,093 square feet, of Tree Canopy Coverage. A Tree Canopy Coverage worksheet has been provided on the Landscape Plan specifying that the requirement is being met through proposed on-site tree planting for a total of 3,800 square feet.

Zone Standards

(33) The Applicant's proposal is in compliance with the requirements of the C-S-C Zone.

Signage

(34) The Applicant is proposing building, canopy, and freestanding signage that is prototypical franchise-style for Dash-In and Shell. The building signs and window stickers will be the red and green Dash-In logos, while the canopy sides and canopy signage will be the red and yellow logos that are typical for Shell. The freestanding sign will be a combination of both, and will include four (4) types of gasoline price signs and four (4) seasonal sign panels.

The signage is within the allowed square footage and height (freestanding sign) and DSDS 663 has been approved by the Planning Board. (Exhibit 31) However, the canopy will be set back less than 30 feet from the street line and, therefore, the total area of all signs on the canopy cannot exceed one (1) square foot for each lineal foot of canopy width, in accordance with Section 27-

613(c)(3)(F) of the Zoning Ordinance. As a result, Sheet SGN-2 of the submitted plans needs to be revised to demonstrate that the total area of all signs on the canopy shall not exceed one (1) square foot for each lineal foot of canopy width.

Although the square footage of the freestanding sign is within the allowed limits, Sheet SGN-3 of the submitted plans needs to be revised to demonstrate that the total permitted sign area for the freestanding sign is 172.16 square feet, not 200 square feet.

In its memorandum dated November 20, 2012, the Urban Design Section stated that, given the prominent location of the freestanding sign, a brick base should be provided to achieve consistency in terms of building materials, and quality with the proposed building. The Urban Design Section also recommended that a brick wall be used to provide sight-tight screening for both the trash receptacle and any mechanical equipment.

DISPOSITION

SE 4654 and a Variance for SE 4654 are Approved, subject to the following Conditions:

1. Prior to certification of the Special Exception Site Plan, the following revisions shall be made:

    a. Revise Sheet SGN-2 to demonstrate that the total area of all signs on the canopy shall not exceed one (1) square foot for each lineal foot of canopy width.

    b. Revise Sheet SGN-3 to demonstrate that the total permitted sign area for the freestanding sign is 172.16 square feet, not 200 square feet.

2. The following revisions shall be made to the architectural elevations and the Site Plans as required, and be reviewed and approved by the Urban Design Section (M-NCPPC) prior to certification of the Special Exception Site Plan:

    a. Provide a brick base for the proposed freestanding sign. The brick to be applied at the sign base shall be the same brick as on the proposed building.

    b. Provide a brick wall to provide sight-tight screening for both the trash receptacle and any mechanical equipment.

    c. Provide red-colored fabric canopies on top of each insert brick panel on the rear elevation of the proposed convenience store and on the top of the windows on both the right and left elevations.

3. If deemed necessary by the District Council, prior to the approval of a building permit, the Applicant shall submit written evidence to the Permit Review Sections (M-NCPPC) which demonstrates that any proposed structures that are located within the ultimate right-of-way of Woodyard Road (MD 223) have been validated through the District Council's approval of a structure within the right-of-way in accordance with Section 27-259 of the Zoning Ordinance.

4. Prior to issuance of a building permit, Stormwater Management Concept Plan 41637-2008-00 shall be renewed by the Department of Public Works and Transportation (DPW&T) and revised to be consistent with the layout shown on the special exception Site Plan.

The Approved Site Plan is Exhibit 36(d) and the Approved Landscape Plan is Exhibit 36(e).

The proposed Gas Station will be located at a major intersection, and will thus promote the health and safety of the present and future inhabitants of the County by providing for a safe and convenient accommodation of the shopping public.

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

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

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

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

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

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

Because the subject use is commercial in nature, this Purpose is not directly applicable to this

Application.

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

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

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

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance will be prima facie evidence of the Application's harmony with this Purpose. Additionally, the instant Gas Station would promote the economic and social stability of the County by contributing to the tax base, by providing a useful and convenient service to the surrounding community, and by virtue of its location at a planned activity center.

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

The final two Purposes,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) To increase the stability of commercial areas;

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

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

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

The final two purposes,

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

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

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

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

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

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

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

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

service use.

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

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

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

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

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

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

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

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

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

Gas Station

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

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

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

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

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

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

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

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

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

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

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

(21) The Applicant has agreed that upon abandonment of the Gas Station, the Special Exception shall terminate and all structures exclusively used in the business (including underground storage tanks), except buildings, shall be removed by the property owner. For the purposes of this proposal, the term "abandonment" shall mean non-operation of a Gas Station for a consecutive period of 14 months after gasoline retail operation cease. §27-358(c)

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

(23) Mr. Joseph Cronyn, Applicant's needs analyst, prepared Exhibit 30, an analysis of the need for a gasoline fueling facility proposed in conjunction with a Safeway, both being located in the

Brandywine Crossing Shopping Center. Mr. Cronyn opined that, based on the evidence analyzed, there is a need for the proposed Gas Station as it will be "reasonably convenient and useful to the public."

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

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

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

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

Parking Regulations

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

Landscape Manual

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

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

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

Signage

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

DISPOSITION

Special Exception is Approved, subject to the following conditions:

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

(2) If an amendment to the Approved Site Plan (Exhibit 32) is required and is limited to the removal of a small portion of the Special Exception acreage by a change in the boundary of the Special Exception area due to the approved resubdivision of Outparcel 6, such a limited amendment may be administratively approved by the Planning Board or its designee without the filing of a new Special Exception.

(3) Additional architectural features such as faux windows with a canopy, brickwork or some other feature similar to those found on the Safeway store shall be included on the rear and side elevations of the Food and Beverage Store building to break up the mass.

(4) The top portion of the canopy pillars at the fueling area shall be brick (to match the brick of the Food and Beverage Store building) rather than the exterior insulation finishing system (EIFS).

(5) The material of both the canopy of the fueling area and freestanding sign shall be identified on the Site Plans.

(6) A note shall be added to the Site Plan specifying that there shall be no vending machines.

(7) The Site Plan shall be amended to indicate the distance from the point of curvature of US 301 and the access drive off of Timothy Branch Drive.

(8) Prior to the issuance of building permits, the Applicant shall revise the Special Exception Site and Landscape Plans to reflect the Detailed Site Plan (DSP) and any architectural conditions attached to the approval of the Detailed Site Plan. The Applicant shall submit the revised Special Exception Site and Landscape Plans to the Office of the Zoning Hearing Examiner or its designee for review and approval.

(9) If necessitated by the subdivision of Outparcel 6, Revised Site and Landscape Plans accurately reflecting property boundaries, acreage, landscaping and any other changes occurring from the subdivision approval, shall be submitted to the Office of the Zoning Hearing Examiner for review and approval.

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